

LEXINGTON PLANNING COMMISSION

June 10, 2021 - 5:00 P.M
Distance Meeting held through ZOOM
300 East Washington Street, Lexington, VA 24450

AGENDA

- 1. CALL TO ORDER**
 - A. statement of emergency and authority to proceed
- 2. APPROVAL OF THE AGENDA**
- 3. APPROVAL OF MINUTES**
 - A. Minutes from May 27, 2021*
- 4. CITIZENS' COMMENTS ON MATTERS NOT ON THE AGENDA**
- 5. NEW BUSINESS**
 - A. SP 2021-01: Application by Russ Orrison, for a site plan review for the General's Retreat property at 205-211 E. Nelson Street, Tax Map #: 24-1-60.
 - 1) Staff Report
 - 2) Applicant Statement
 - 3) Public Comment
 - 4) Commission discussion
 - B. ZOA 2021-03: Annual Zoning Ordinance Amendments, Small Cell facilities.
 - 1) Discussion of Small Cell text amendment*
 - 2) Public comment
 - 3) Commission Discussion
- 6. OTHER BUSINESS**
- 7. CITY COUNCIL REPORT**
- 8. ADJOURN**

*indicates attachment

MINUTES

**The Lexington Planning Commission
Thursday, May 27, 2021 – 5:00 p.m.
Zoom Meeting – City Hall
300 East Washington Street**

Planning Commission:

Presiding: John Driscoll, Chair
Present: Pat Bradley, Vice-Chair
 Jamie Goodin
 Blake Shester
 Leslie Straughan, Council Liaison
 Matt Tuchler

City Staff:

Arne Glaeser, Planning Department
Kate Beard, Administrative Assistant

CALL TO ORDER

Chair Driscoll called the meeting to order at 5:00 p.m. A. Glaeser read a statement saying that due to the COVID-19 pandemic the City of Lexington is taking action to limit attendance at public meetings. The City Council has approved an emergency ordinance allowing all meetings to be held as real time electronic meetings streamed to the City’s Facebook page and uploaded to Youtube the following day.

AGENDA

J. Driscoll requested that scheduling be added to the agenda under Other Business. A. Glaeser requested that an announcement concerning the Bike/Pedestrian Plan be added to the agenda under Other Business. The agenda was approved unanimously with those additions (P. Bradley/L. Straughan).

MINUTES

Minutes from the May 13, 2021 meeting were approved unanimously. (L. Straughan/B. Shester).

CITIZENS’ COMMENTS ON MATTERS NOT ON THE AGENDA

None

NEW BUSINESS

A. ZOA 2021-01: Annual Zoning Ordinance amendments “Batch A”

- 1) Exterior Lighting exemptions & definitions –
 - a. Staff Report – This proposal is to amend the exemptions under §420-15.2. to clarify holiday lighting and to add string lights and gas lanterns. It would also add definitions for architectural lighting and string lights.
 - b. Public Comment – None
 - c. Commission discussion & recommendation – L. Straughan suggested adding language requiring holiday lighting to come down within one month of the holiday, this would allow holiday lighting year-round for

holidays at any time of the year but would require that it come down within a reasonable timeframe. There was discussion about the definition of “holiday,” about what would be considered holiday lighting and about the potential for imposing unintended restrictions. J. Driscoll asked for feedback regarding enforcement. A. Glaeser said that adding a specific time limit could be somewhat difficult to enforce, but that if he is called to investigate a complaint of holiday lighting that is up too long he would need a specified time limit for enforcement. He also clarified that string lighting and rope lighting should not be considered holiday lighting as they are specifically exempted. J. Goodin said he is more interested in focusing any limitations on the type of lighting than he is in creating time limits based on the Christian conception of holidays. **P. Bradley moved to accept the proposed amendment as presented. B. Shester seconded and the motion passed unanimously (6/0).**

2) Screening of mechanical equipment

- a. Staff Report – Screening is required for ground level mechanical units but there is no definition for ground level. This proposal would clarify screening requirements for mechanical units.
- b. Public Comment – None
- c. Commission discussion & recommendation – **M. Tuchler moved to accept the recommended amendment as presented. P. Bradley seconded and the motion passed unanimously (6/0).**

3) Inoperable and abandoned motor vehicle definitions

- a. Staff Report – This is to add definitions for “inoperable vehicle” and “abandoned vehicle” using the definitions found in the Virginia Code, and to clarify that auto repair facilities are not subject to outdoor storage limitation for such vehicles.
- b. Public Comment – None
- c. Commission discussion & recommendation – Commissioners expressed questions and concerns about the language in the State definition of “inoperable motor vehicle.” P. Bradley noted that it is poorly worded and grammatically incorrect. L. Straughan questioned whether the grandfather provision is appropriate or necessary. J. Driscoll asked for staff input and A. Glaeser said removing the language could create a greater restriction than that provided in the State Code. P. Bradley reiterated that he is uncomfortable with the “inoperable motor vehicle” definition. He said he would accept it if needed but has strong reservations. **L. Straughan moved to accept the language regarding inoperable and abandoned motor vehicle definitions as presented. M. Tuchler seconded and the motion passed unanimously (6/0).**

4) Warehousing definition

- a. Staff Report – Currently warehousing and distribution is a conditional use in the C-2 zoning district but there is no definition of warehousing and

distribution. This is a proposal to add a definition of warehousing and to delete “and distribution” from the Use Matrix.

- b. Public Comment – None
 - c. Commission discussion & recommendation – **M. Tuchler moved to accept the recommendation regarding the definition of warehousing in the zoning ordinance. J. Goodin seconded and the motion passed unanimously (6/0).**
- 5) Street Banners
- a. Staff Report – Due to a recent Supreme Court decision banning content based sign regulations, the City Attorney has recommended that the regulations for Street Banners be removed from Chapter 420, Zoning Ordinance and placed in Chapter 356, Streets and Sidewalks of the Lexington City Code.
 - b. Public Comment – None
 - c. Commission discussion & recommendation – **L. Straughan moved to remove Street Banners from Chapter 420, Zoning Ordinance and move it to Chapter 356, Streets and Sidewalks of the Lexington City Code. J. Goodin seconded and the motion passed unanimously (6/0).**
- 6) Remove the sunset provision for Short Term Rental
- a. Staff Report – This is a proposal to remove a now expired provision allowing an exemption to short term rental businesses.
 - b. Public Comment – None
 - c. Commission discussion & recommendation – **P. Bradley moved to approve removal of the sunset provision for Short Term Rentals. L. Straughan seconded and the motion passed unanimously (6/0).**
- 7) Short Term Rental off-street parking Conditional Use Permit requirements
- a. Staff Report – This is a proposal to amend the criteria for approval of a conditional use permit to waive or reduce the off-street parking requirement for short term rentals. Staff’s observation is that, as written, item C alone is not substantive enough to approve a conditional use and recommends that items B and C be combined for such approval.
 - b. Public Comment – None
 - c. Commission discussion & recommendation – **L. Straughan moved to approve the Short Term Rental off-street parking Conditional Use Permit requirements as presented. B. Shester seconded and the motion passed unanimously (6/0).**
- 8) Site Plans requirement to be posted to City website
- a. Staff Report – This is a proposal to delete the requirement that site plan submittals be posted to the City’s website. This is the only land use application with this requirement. As with all land use applications, site plan applications can be viewed in the Planning and Development office during regular business hours and a copy of any application can be requested from staff and provided electronically. A. Glaeser believes that

the public is not aware that Site Plan applications are posted online and is concerned that an oversight by staff to timely post a site plan application would cause delay in the application process.

- b. Public Comment – Lee Merrill, 2 S. Randolph Street – said he is in favor of continuing to post site plan applications to the City’s website if it is not an onerous requirement to staff.
- c. Commission discussion & recommendation – J. Driscoll said this proposal makes him uneasy as the trend is for more transparency and greater digital presentation. L. Straughan said that the Planning Department does an excellent job of sharing information with the public and that she shares staff’s concern about the liability of making the posting requirement a policy that could affect an applicant’s deadline. J. Goodin said he is not in favor of the proposal and believes the solution is simply that staff not forget to post applications. He would like to see the current commitment to sharing with the public continue. M. Tuchler said he believes the other requirements providing notice to the public are sufficient, especially if they remove undue burdens from City staff. J. Driscoll said that if he saw a Site Plan Notice sign, he would probably go to the website, though he acknowledged this might be a new practice. L. Straughan said there was no intention to hide information, but that City staff is not deep and have many responsibilities. B. Shester said that posting a PDF to a website is not difficult and suggested that more than one staff person be trained. J. Goodin said that the general trend for information to be available digitally is insurmountable. **P. Bradley moved to retain the requirement that Site Plan submittals shall be posted to the City website. B. Shester seconded. Commissioners Bradley, Goodin, Shester, and Driscoll voted “aye,” Commissioners Straughan and Tuchler voted “nay,” and the motion passed (4-2).** J. Goodin left the meeting. **Commission agreed to send this proposal to City Council for discussion and public hearing.**

9) R-M and R-C zoning districts rear yard setback requirements for multi-family dwellings

- a. Staff Report – This is a proposal to reduce the rear yard setback requirements for multi-family dwellings in the R-M and R-LC zoning districts in an effort to potentially improve housing affordability through increased use of property.
- b. Public Comment – Lee Merrill said he supports the proposed amendment.
- c. Commission discussion & recommendation – **B. Shester moved to approve reducing the rear yard setback requirements for multi-family structures in R-M and R-LC zoning districts to 30 feet. P. Bradley seconded and the motion passed unanimously (5-0).**

10) Multi-family dwellings permitted/conditional

- a. Staff Report – This proposal is to: 1) update the Use Matrix to reflect language in the Zoning Ordinance concerning uses in the C-1 zoning district, and 2) allow multi-family dwellings in the C-2 zoning district either by-right or conditionally. A. Glaeser added that the City would have more control over a property during a conditional rezoning process.
- b. Public Comment – Lee Merrill said he is supportive of permitting multi-family dwellings in the C-2 district but sensitive to the district’s lack of restrictions. He suggested tabling discussion until regulation deficiencies in the C-2 zone are addressed.
- c. Commission discussion & recommendation – L. Straughan said she would be comfortable allowing conditional use in the C-2 to allow for a balance between commercial and residential. Commissioners Bradley, Driscoll and Tuchler asked for clarification from staff of the existing controls in the C-2 district. A. Glaeser said the most conservative approach would be to require a re-zoning of the property, the second most conservative approach would be to require a conditional use permit which would require a public hearing process, and the least conservative approach would be to make it a by-right use. He added that because there are currently no specific conditional use and design standards for multi-family dwellings, the standards would be limited to those for health, safety and welfare. **L. Straughan moved to amend the Use Matrix for multi-family dwelling to add, for the C-1 zoning district, that it is a by-right use on the second floor or higher and a conditional use on the first floor (and to not make any amendment to the C-2 zoning district). M. Tuchler seconded, and the motion passed unanimously (5-0).**

11) Parks and Open Space Zoning District setback and building height

- a. Staff Report – This is a proposal to add the Parks and Open Space zoning district to the Lot Requirements table with the new building height and minimum yard requirements. An exemption is recommended for structures located in designated cemeteries in order to accommodate the structures recommended in the 2018 Inventory and Expansion Study of the City cemeteries.
- b. Public Comment – L. Merrill suggested adding the word “existing” to the beginning of the proposed exemption language and require a 5 foot setback for any new structures.
- c. Commission discussion & recommendation – P. Bradley said that his recollection of past discussion was that the Commission had specifically intended to give future cemetery structures the ability to use as much of the cemetery space as possible. L. Straughan agreed and added that the City owns the cemetery so a proposal for any future structure would receive considerable public scrutiny. J. Driscoll expressed reservations about the lack of height requirements for cemetery structures. A. Glaeser said that he thought the Master Plan called for niche walls that were 6 – 7

feet tall. J. Driscoll said he was satisfied by having the Master Plan as a guide. **P. Bradley moved to add the Parks and Open Space zoning district to the Lot Requirements table with new building height requirements and new minimum yard requirements, with the recommended exemption for structures located in designated cemeteries as presented by staff. B. Shester seconded, and the motion passed unanimously (5-0).**

12) Recreational Vehicle parking clarification

- a. Staff Report – This is a proposal to clarify that it is permissible to park a recreational vehicle in the side and rear yard for a period exceeding 24 hours. J. Driscoll indicated that the proposed language remained unclear. There was discussion about what is considered front yard. B. Shester asked if the restriction would apply to a driveway in the front yard of a property and A. Glaeser confirmed that it would. B. Shester said he felt that RV parking ought to be permissible in a driveway no matter where it is located.
- b. Public Comment – Lee Merrill said he believed this to be a complicated issue and suggested that Commission get input from realtors, etc.
- c. Commission discussion & recommendation – M. Tuchler said he thought the proposal would provide a nice starting point, felt Commissioner Shester made a good point and asked staff for input. A. Glaeser said he believed the existing language is unclear and had made this recommendation to clarify that parking an RV in the side yard is permissible. He said that if Commission would like to go further and define what a front yard is, or where an RV can or cannot be in a front yard, that could be done now or the proposal could be approved and clarified at a later date. P. Bradley suggested an exemption for people who have driveways that do not extend to the side yard. L. Straughan said she thought that would not be well received by the public. **L. Straughan moved to approve amending §420-12.7 Item C as presented, and M. Tuchler seconded.** There was additional discussion about the restriction imposed on front yard driveways and multiple Commissioners expressed hesitancy about effectively prohibiting some property owners from owning an RV. P. Bradley said he was comfortable voting in favor with the understanding that Commission may have to address this issue in the future. **The motion passed unanimously (5/0).**

13) Bed and Breakfast increase in number of rooms

- a. Staff Report – This is a proposal to increase the number of bedroom accommodations allowed in a Bed and Breakfast from 5 to 8, because they are only allowed as conditional use, along limited streets, in accordance with existing use and design standards, and in accordance with existing parking requirements.
- b. Public Comment – L. Merrill said that in the interest of B&B profitability he supports the increased bedroom count but noted that tree removal and

increased on-street parking are negative consequences that may flow from the change.

- c. Commission discussion & recommendation – In response to Mr. Merrill’s comment, J. Driscoll asked for clarification of the landscaping buffer requirement. A. Glaeser answered that typically between any single-family unit and multi-family unit, a 10 foot wide buffer is required with a 6 foot high planted screen which is fairly opaque within one growing season. Mr. Merrill asked how many parking spaces are required per bedroom and A. Glaeser answered 1 off-street parking space per sleeping room in addition to the parking required for the permanent residents of the building. **P. Bradley moved to increase the number of rooms allowed for a Bed and Breakfast from 5 to 8. L. Straughan seconded and the motion passed unanimously (5-0).**

14) C-2 zoning district wall sign size calculation

- a. Staff Report – This is a proposal to amend the C-2 wall sign calculation to allow 1 square foot of wall signage per foot of frontage with a minimum allowed of 32 square feet and a maximum of 100 square feet.
- b. Public Comment – None
- c. Commission discussion & recommendation – **P. Bradley moved to amend the C-2 wall sign calculation to allow 1 square foot of wall signage per foot of frontage with a minimum allowed of 32 square feet and a maximum of 100 square feet. M. Tuchler seconded and the motion passed unanimously (5-0).**

15) Home Occupation limitations

- a. Staff Report – This is a proposal to limit home occupations to a maximum of 25 percent of the gross floor area of the dwelling unit but to not limit the number of home occupations on a residential parcel. Limiting the area used by home occupation(s) assures the building remains a residential presence in a residential area.
- b. Public Comment – Lee Merrill said the 25 percent figure was arbitrary and seemed low, especially in cases of multiple home occupations in a single residence. He noted the environmental benefit of working from home.
- c. Commission discussion & recommendation – J. Driscoll theorized that an average house located in the City would allow for approximately 450 square feet of home occupation space. P. Bradley acknowledged that the figure may be arbitrary but suggested that without additional data he felt it made sense to move forward with the proposal and to encourage members of the public with home occupations to provide additional information to City Council if necessary. **L. Straughan moved to not limit the number of home occupations per house. B. Shester seconded and the motion passed unanimously (5-0).**

L. Straughan asked to return to item #14. She asked if Commission had passed the second part of the proposal limiting the total combined signage to 100 square feet. P. Bradley said that he formulated the motion by reading out the staff recommendation and asked if that took care of it. After some discussion, **Commission agreed that the intent of the motion was to limit the maximum total combined wall signage to 100 square feet.**

OTHER BUSINESS

- A. Return to in-person meeting - A. Glaeser announced that City Council intends to return to in-person meetings on June 24, 2021. He said he assumed the Commission would follow suit in July unless there were concerns, and that the Commission would return to meeting in the Community Meeting Room rather than following Council to LDMS. Lee Merrill voiced a strong plea that both forms of public participation be kept in place. He said the virtual option has been a strong and efficacious means of participation. M. Tuchler said he favors in-person meetings. J. Driscoll asked if there had been discussion of a hybrid model which he believes would be optimal and should be explored. L. Straughan said that all meetings would continue to be recorded and advised that Commission would need to follow Council. A. Glaeser advised that the City does not have the technology to run both types of meetings simultaneously and that any additional technology would likely only be added to the City Council meeting venue. He suggested the Commission consider moving meetings to LDMS.
- B. Bike/Ped plan – A. Glaeser announced that the City has been awarded technical assistance for a City-wide bike/ped plan. The Office of Intermodal Planning and Investment will select a consultant who will work with the City to develop the plan. He indicated that it was estimated to be a 9 – 12 month process. He said that a scope of work had been developed and he was waiting for feedback from the consultant once that individual was selected. A. Glaeser said the scope would be similar to that of Jordan’s Point Park. Lee Merrill asked if the scope of the grant is integrated with the Green Infrastructure Planning Process. A. Glaeser responded that there is no defined scope for the Green Infrastructure Plan. Mr. Merrill said that it is the Planning Commission’s responsibility to make sure that Green Infrastructure Planning be integrated into the scope of the work of this grant. J. Driscoll provided a brief update on the status of Green Infrastructure and noted that as a volunteer group with no staff support there is no work being done on a Plan.
- C. Scheduling – J. Driscoll requested that Commissioners share vacation dates with A. Glaeser. He also requested feedback for the timing of discussion of outstanding agenda items and for the development of an agenda for the July 1, 2021 work session with City Council. P. Bradley asked which meeting would include the vote for chair and vice-chair and A. Glaeser responded it would be the 1st July meeting. A. Glaeser reiterated the request for Commissioners’ vacation dates citing quorum concerns.

CITY COUNCIL REPORT

L. Straughan announced that the City will receive \$1.4 million from the City Rescue Plan. She indicated that the money will be restricted but very helpful. The two applications approved by the Commission at its last meeting will go before City Council on June 3, 2021.

ADJOURN

The meeting was adjourned at 7:56 pm with unanimous approval (P. Bradley/B. Shester).

J. Driscoll, Chair, Planning Commission

Project Name	Redevelopment of the General's Retreat property
Property Location	205 – 211 E. Nelson Street
Zoning	R-M (Multifamily Residential) Zoning District
Owner/Applicant	Generals Retreat Partners LLC / Russ Orrison

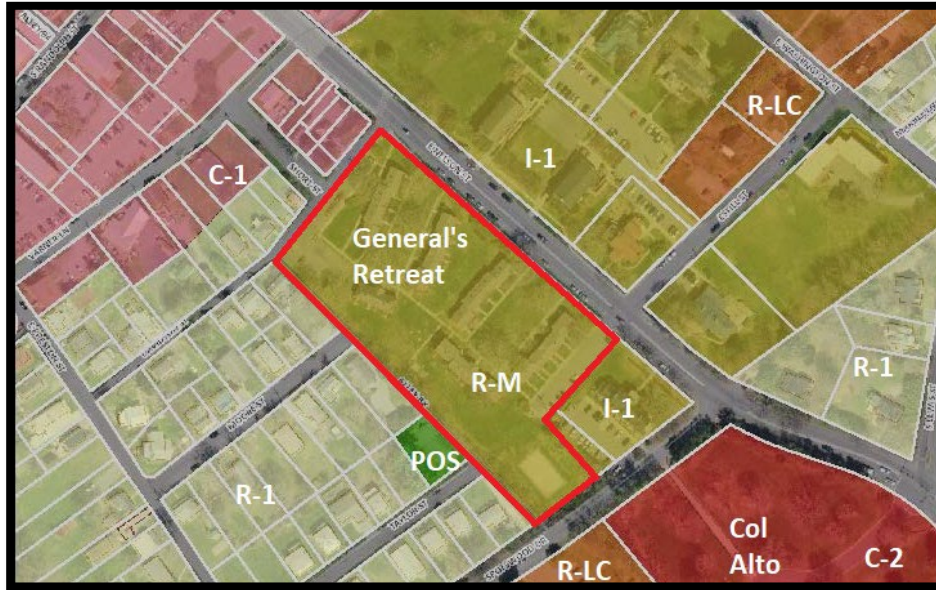
Background

This project proposes the demolition of the existing Generals Retreat townhome buildings and construction of four new apartment buildings with associated grading, utilities, and stormwater management. Existing on the site are six townhome buildings with associated sidewalks and two parking areas on the east and west sides of the site. The townhomes contain 44 dwelling units and the proposed number of new dwelling units in the four new apartment buildings is 98 dwelling units.

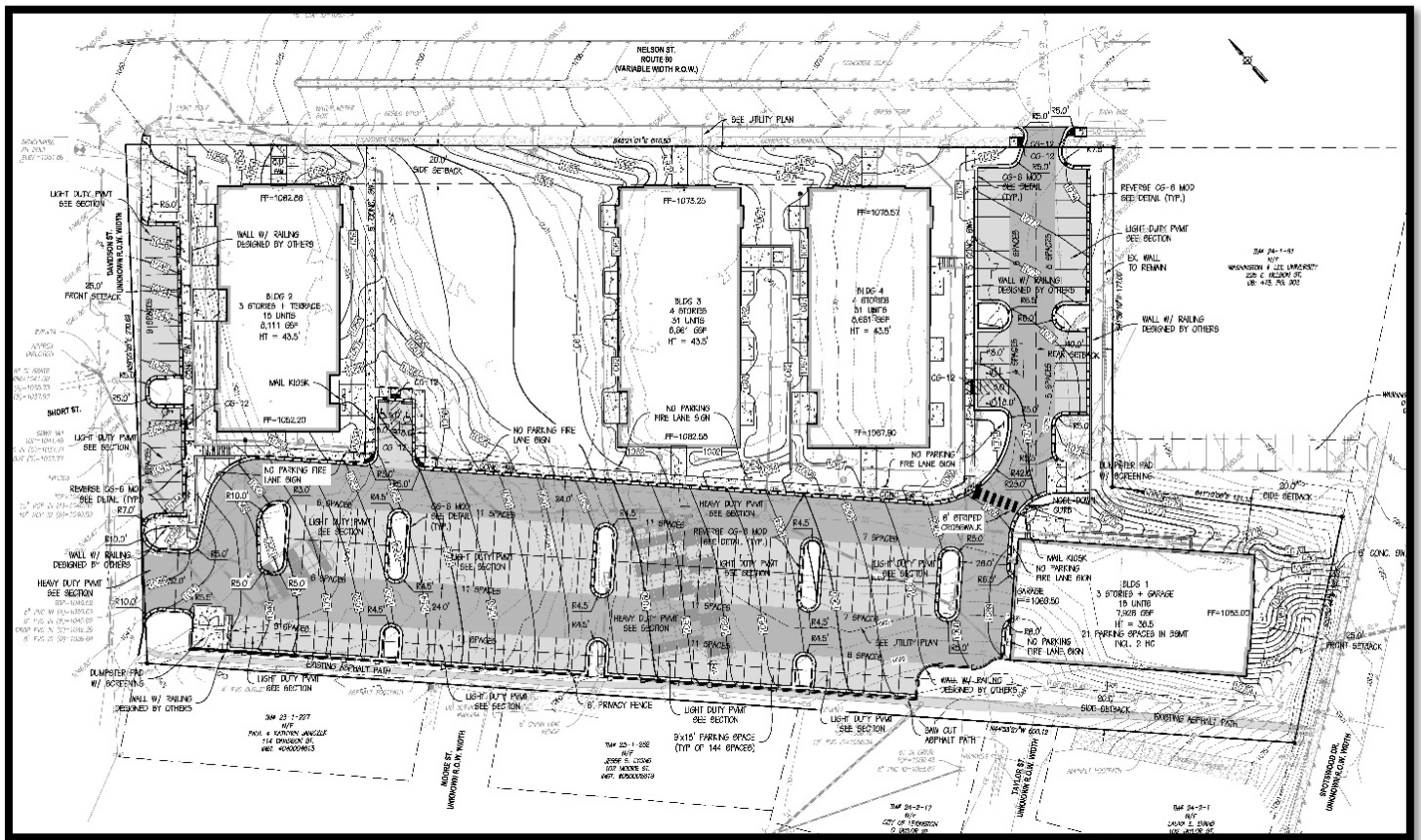
location map



zoning map



proposed site plan



Zoning Authority and Requirements

The Planning Commission has the authority and responsibility to review all site plans required by the zoning ordinance. Site plans are required and shall be submitted for all new structures, all renovated structures and all additions to existing structures (§420-2.4).

Yard Setbacks

The Multifamily Residential (R-M) zoning district requires a minimum 25 foot front yard setback, 20 foot side yard setback, and a 40 foot rear yard setback. The proposed redevelopment plan meets the yard setback requirements for multifamily dwellings in the R-M zoning district.

Parking

The zoning ordinance requires multi-family dwellings provide 1.25 parking spaces for each studio & one bedroom unit, 1.5 parking spaces for each two bedroom unit, and 2 spaces for each three or more bedroom unit. The redevelopment plan includes 28 one bedroom apartments (35 spaces required), 64 two bedroom apartments (96 spaces required), and 6 three bedroom apartments (12 spaces required). The total number of required spaces is 143 parking spaces, while the total number of spaces provided is 170 parking spaces.

Landscape Buffering

Landscape buffering is intended to provide a year-round visual screen between two or more properties in order to minimize visual and other adverse impacts. Buffering may consist of fencing, evergreens, boulders, mounds, or a combination of materials.

A landscape buffer area shall be required where a commercially zoned development abuts a residential zoning district, or where multi-family residential development abuts any property zoned R-1 or R-2 (§420-14.5.A). Where site considerations do not allow a natural buffer of ten (10) feet width, a smaller buffer, or a privacy fence or wall, may be substituted for all or a portion of that buffer as approved by the Zoning Administrator during the site plan process (§420-14.5.B).

The subject parcel is bordered along the southern property line by three single family dwellings zoned R-1 and by a City park zoned P-OS. A landscape buffer is therefore required along the southern property boundary that is adjacent to the three R-1 zoned parcels. Due to an existing public walkway located on the southern boundary of the subject parcel that provides public access between Spotswood Drive and Davidson Street, the site designer proposes to substitute a privacy fence while retaining the public walkway across the subject parcel. The public walkway consists of asphalt paving that is approximately 3 feet in width and the proposed privacy fence will be located 10 feet from the southern property boundary to provide sufficient area for pedestrians along the public walkway. The privacy fence is located adjacent to that portion of the on-site parking lot bordering the southern property boundary, and the privacy fence will not extend along Building 1 to Spotswood Drive. Along this portion of the southern boundary the existing vegetation will remain to provide the required buffer. The applicant acknowledged that any existing vegetation required to meet the landscape buffer standards that is damaged during construction will be replaced.

Screening

Screening shall be required to conceal specific areas from both on-site and off-site views. Large waste receptacles (dumpsters) and refuse collection points (including cardboard recycling

containers) for example are required to be screened (§420-14.6.A.1). The site plan includes a new 6 foot tall shadow box screening fence around the two dumpster pads.

Parking Lot Landscaping

Screening is required (§420-12.6.H) where off-street parking areas for five or more automobiles are located closer than 50 feet to a dwelling in a residential district and where such parking areas are not entirely screened visually from the dwelling by an intervening building or structure, a continuous visual screen, with a minimum height of six feet, shall be provided between the parking area and the dwelling. A six foot tall privacy fence is proposed on the site plan along the southern boundary of the parking lot.

There are additional parking lot landscaping requirements included in §420-14.7 and the proposed site plan meets those additional parking lot landscaping requirements.

Exterior Lighting

Most exterior lighting must comply with dark sky requirements and a lighting plan shall be included with site plan submittals. A lighting plan was submitted and the exterior fixtures listed on the plan are all dark sky compliant. The applicant also confirmed all site lighting is mounted on 20 foot poles meeting the limitation for exterior lighting to not be located greater than 25 feet above grade.

Public Works

No concerns with the proposed plan. There is a need to coordinate with the contractor during construction regarding replacement of the remaining public sewer in the proposed parking area.

Fire Protection

The Fire Marshal commented the connection of the parking lots will significantly improve emergency access to all sides of the proposed apartment buildings. The Fire Marshal also requested that all passable lanes be a minimum of 18 feet clear width (requirement for sprinklered structures). All passable lanes will be designated “fire lanes,” thus curb parking in the side and rear lots will be prohibited, all vehicles to be parked in the designated vehicle parking spaces, and garage. Signage or other indicator will be required to designate the fire lane(s) within the parking lots.

Police

No comments.

Building Official

The Building Official commented the Erosion and Sediment control plans were forwarded to JWS Engineering Team LLC for review. The Building Official also made the applicant aware that certain third party inspections will be required during the construction of the apartment buildings and that comment is for the future building permit and is not a site plan review comment.

Section 420-2.7.B of the Lexington Zoning Ordinance

The site plan shall be approved by the Planning Commission if it is found to be adequate with respect to:

- (1) Locations and design of vehicular entrances and exits in relation to streets giving access to the site and in relation to pedestrian traffic.
- (2) Locations and adequacy of automobile parking areas.
- (3) Adequate provision for traffic circulation and control within the site and provision for access to adjoining property.
- (4) Compliance with the requirements for setback and screening.
- (5) Adequacy of drainage, water supply, fire protection and sanitary sewer facilities.
- (6) Compliance with applicable established design criteria, construction standards and specifications for all improvements.
- (7) Approval by the City Health Officer or his agents if septic tank and other sewage disposal facilities other than sanitary sewers are involved.
- (8) Adequacy of proposed landscaping for softening the harsh visual effects of parking lots and for providing screening between the development and the street and surrounding lots.

Staff Conclusions and Recommendations

The proposed site plan complies with all zoning requirements pertaining to site design and use, and staff recommends approval of the site plan for the redevelopment of the General's Retreat property located at 205 – 211 E. Nelson Street

Suggested Motion

I move to approve Site Plan number SP 2021-02 and find the submitted site plan to be in compliance with the Zoning Ordinance.



www.lexingtonva.gov

Planning & Development Department

P.O. Box 922

300 East Washington Street

Lexington, Virginia 24450

Phone: (540) 462-3704 Fax: (540) 463-5310

SITE PLAN APPLICATION AND CHECKLIST

Applicant¹

Name: Russ Orrison Phone: (540) 464-9001

Company: Perkins & Orrison Inc. Fax: (540) 464-5009

Address: 17 W Nelson St., Lexington, VA 24450 Email: rorrison@perkins-orrison.com

Applicant's Signature:  Date: 4-26-21

Site Plan Preparer

Name: Russ Orrison Phone: (540) 464-9001

Company: Perkins & Orrison Inc. Fax: (540) 464-5009

Address: 17 W Nelson St., Lexington, VA 24450 Email: rorrison@perkins-orrison.com

Property Owner

Name: Generals Retreat Partners LLC Phone: (540) 464-3673

Address: 207 E Nelson St., Lexington, VA 24450 Email: _____

Owner's Signature:  AGENT Date: 4-26-21

Proposal Information² (attach list of properties if request includes multiple properties)

Address (or location description): 205-211 E Nelson St., Lexington, VA 24450

Tax Map: TM #24-1-60 ~~Deed Book and Page #:~~ INST# 100003326

Acreage: 3.54 Zoning (attach any existing zoning conditions or proffers): R-M

1. Prior to submitting an application, the applicant is required to meet with staff for a pre-application meeting.
2. Any application deemed incomplete by staff will not be accepted.

*Fees Non Refundable





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Planning & Development Department

P.O. Box 922

300 East Washington Street

Lexington, Virginia 24450

Phone: (540) 462-3704 Fax: (540) 463-5310

Notice to Adjacent Property Owners

Per § 420-222-B(1) of the Lexington City Code, the City shall give written notice to those persons who own property any portion of which abuts the subject property and all property which is across the street from any portion of the subject property as determined by the City's real property tax records. This notice shall give the date, time and place of the Planning Commission meeting at which the site plan is being reviewed, identify the property which is the subject of the application and give a brief description of the proposed action. This notice shall be mailed a minimum of 10 days prior to the date of the meeting of the Planning Commission at which the site plan is first considered.

Posting of the Property

Per § 420-222-B(2) of the Lexington City Code, the City will place a sign provided on the subject property which indicates that an action is pending. The sign will be located to be clearly visible from the street.

THIS SECTION TO BE COMPLETED BY STAFF ONLY

Application Fee: \$300+\$25/acre

Amount Paid: \$400

Case Number: SP- 7021 - 02

Date Received: 4/26/2021

Received By: Aimee Glass

Staff Review

Planning: ✓

Public Works: ✓

Police: ✓

Fire/Rescue: ✓

Approvals

Planning Commission

Administrator

Adj. Property Notifications: _____

Action: _____

Meeting Date: _____

Action Date: _____

Action: _____

Signature: _____





Site Plan Checklist

Contents

Every site plan prepared and submitted in accordance with Article XXII of the Lexington City Code shall contain the following information:

- A boundary survey of the tract.
- A certificate, signed by the surveyor or engineer, setting forth the source of title of the owner of the tract and the place of record of the last instrument in the chain of title.
- All existing and proposed streets and easements, their names, numbers and widths, existing and proposed utilities, owners, zoning and present use of adjoining property.
- Location, type and size of vehicular entrances to the site.
- Locations, types, sizes and heights of fencing, retaining walls and screen planting where required.
- All off-street parking, loading spaces and walkways, indicating type of surfacing, size, angle of stalls, width of aisles and a specific schedule showing the number of parking spaces provided and the number required in accordance with Article XX.
- Number of floors, floor area, height and location of each building and proposed general use for each building. If a multifamily residential building, the number, size and type of dwelling units.
- All existing and proposed water and sanitary sewer facilities, indicating all pipe sizes, types and grades and where connection is to be made.
- Provisions for the adequate disposition of natural and storm water, indicating locations, sizes, types and grades of ditches, catch basins and pipes and connections to existing drainage system.
- Existing topography, with a maximum of two-foot contour intervals. Where existing ground is on a slope of less than 2%, either one-foot contours or spot elevations where necessary, but not more than 50 feet apart in both directions.
- Proposed finished grading by contours, supplemented where necessary by spot elevations.
- A landscape plan if requested by the City Manager, his authorized agent or the Planning Commission.

Preparation and Submission

- Site plans, or any portion thereof, involving engineering, architecture, landscape architecture or land surveying shall be prepared and certified respectively by an engineer, architect, landscape architect or land surveyor duly authorized by the state to practice as such.
- Site plans shall be prepared on a scale of one inch equals 50 feet or larger.



- A clear, legible, blue or black line copy of the site plan shall be submitted to the Zoning Administrator. The Zoning Administrator shall be responsible for checking the site plan for general completeness and compliance with such administrative requirements as may be established prior to routing copies thereof for review.

Planning Commission Review

All site plans which are appropriately submitted and conform to the standards and requirements set forth in Article XXII of the Lexington City Code shall be forwarded to the Planning Commission for approval.

The site plan shall be approved by the Planning Commission if it is found to be adequate with respect to:

- Locations and design of vehicular entrances and exits in relation to streets giving access to the site and in relation to pedestrian traffic.
- Locations and adequacy of automobile parking areas.
- Adequate provision for traffic circulation and control within the site and provision for access to adjoining property.
- Compliance with the requirements for setback and screening.
- Adequacy of drainage, water supply, fire protection and sanitary sewer facilities.
- Compliance with applicable established design criteria, construction standards, and specifications for all improvements.
- Approval by the City Health Officer or his agents if septic tank and other sewage disposal facilities other than sanitary sewers are involved.
- Adequacy of proposed landscaping for softening the harsh visual effects of parking lots and for providing screening between the development and the street and surrounding lots.

Required Improvements

- Screening, fences, walls, curbs and gutters as required.
- Easements of rights-of-way for all facilities to be publicly maintained. Such easements shall be clearly defined for the purpose intended.
- Curbs and gutters for travel lanes or driveways that provide vehicular travel to and from adjacent parking areas or adjacent property for the purpose of separating such areas or property from parking areas and walkways.
- N/A Adequate "no parking" signs along such travel lanes or driveways to prohibit parking on such.
- An adequate drainage system for the disposition of storm and natural waters.
- Landscaping sufficient to soften the visual effects of parking lots and to provide screening between the development, the street and surrounding lots.



LEXINGTON ANNUAL ZONING ORDINANCE TEXT AMENDMENTS – “SMALL CELL”

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Small Cell Wireless Facilities

ISSUE:

Current use and design standards governing broadcasting and communication towers do not address “small cell” facilities used to support 4G and 5G wireless services. Recent Federal and state legislation limit localities’ ability to regulate this type of infrastructure and place restrictions on permitting fees and application review timelines. The adoption of aesthetic, design, and siting requirements will likely provide the City with more control and reduce the likelihood of non-compliance with statutory application deadlines.

Attached is a municipal action guide for small cell wireless technology from the National League of Cities that provides an overview of the recent federal and state legislation as well as items to consider in drafting local regulations.

Review of Virginia Code

Virginia Code § 15.2-2316.3. Definitions

“Small cell facility” means a wireless facility that meets both of the following qualifications:

- (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and
- (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

“Micro-wireless facility” means a small cell facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

[Code of Virginia §15.2-2316.4. Zoning; small cell facilities](#)

Localities cannot require a special use permit, special exception or variance for facilities installed on an existing structure as long as the wireless services or infrastructure provider has obtained the permission of the structure’s owner and notifies the locality.

Localities can review any required zoning permits for the installation of facilities located on existing structures and must allow the wireless services or infrastructure provider to submit up to 35 requests on one application.

Application Review:

- Localities have 60 days from date of receipt to review and approve/disapprove the application.
- Upon receiving an application and a valid email address, the locality has 10 days to notify the applicant of the application’s completeness and any items missing. If the locality fails to do this within 10 days, the application will be considered complete.

- If the application is not approved, the notification must be made in writing and contain details of why the application was not approved.
- A locality can extend the 60-day review period by an additional 30-days if done in writing.
- If a locality does not approve/disapprove an application within the 60-day or additional 30-day review period, the application will be considered approved.

Permit approval cannot be unreasonably conditioned, withheld, or delayed.

Localities may charge \$100 each for up to five small cell facilities and \$50 for each additional small cell facilities after the first five.

Localities can only disapprove of a proposed small cell facility location or installation for the following reasons:

- Material potential interference with currently existing communications facilities or other already designed and planned communications facilities at a specific location or for locations already reserved for public safety communications facilities.
- Public safety or other critical public service needs.
- If installed on or in publicly owned or controlled property [where there is an] aesthetic impact or where approvals from all departments, authorities, or agencies with jurisdiction over the property have not been obtained.
- If there is a conflict with a local ordinance that was adopted pursuant to [Virginia Code §15.2-2306](#), Preservation of historical sites and architectural areas, or a local charter on a historic property not eligible for the review process under [United States Code, Title 54, § 306108](#), Effect of undertaking a historic property.

Nothing should prohibit applicants from voluntarily submitting conditions that address the potential visual or aesthetic impacts resulting from the installation of a small cell facility, and nothing should prohibit a locality from accepting them.

A locality can adopt reasonable rules for the removal of abandoned wireless support structures or wireless facilities.

The installation, placement, maintenance, or replacement of micro-wireless facilities suspended on cables or lines strung between existing utility poles that are in compliance with national safety codes are exempt from locality-imposed permitting requirements and fees.

LEXINGTON ZONING CODE EXISTING LANGUAGE:

Article XI. Use and Design Standards

§420-11.5. Miscellaneous Uses

4. Broadcasting or Communication Tower

- A. Applicability. The requirements set forth in this section shall control all antennas and broadcasting or communication towers except any antenna that is under 75 feet in height and is owned and operated by a federally licensed amateur radio station operator.
- B. General guidelines and requirements.
 1. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or towers on that lot. Antennas or towers may be located on leased

parcels within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this section shall not be deemed to constitute the expansion of a nonconforming use or structure.

2. Inventory of existing sites. Each applicant for an antenna and/or tower shall provide to the City an inventory of its existing facilities that are either within the City or within five miles of the City limits, including specific information about the location, height, and design of each tower. The City may share such information with other applicants applying for approvals or conditional use permits under this section or other organizations seeking to locate antennas within the City; provided, however, that the City is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- C. Setbacks. The following setback requirements shall apply to all towers and antennas for which a conditional use permit is required; provided, however, that the City may reduce the standard setback requirements if the goals of this section would be better served thereby:
1. Towers must be set back a distance equal to 200% of the height of the tower from any off-site residential structure and in no case less than 400 feet.
 2. Towers, guys, and accessory facilities must satisfy the minimum zoning district setback requirements for primary structures.

Article III. Use Matrix

Zoning District	FP, Floodplain Overlay	P-OS, Parks and Open Space District	R-1, Residential General	R-2, Suburban Residential	R-M, Residential Multifamily	R-LC, Residential-Light Commercial	C-1, Central Business District	C-2, General Commercial District
Use Types								
Miscellaneous								
	Broadcasting or communication tower	C	C	C				C

RECOMMENDATION:

Staff recommends the Planning Commission review the aforementioned guide from the National League of Cities and review the three small cell ordinances from a) Williamsburg, b) Harrisonburg and c) Charlottesville for consideration. Similar to previous amendments where new subjects are included in the Lexington Zoning Ordinance, staff recommends selecting an existing code as a framework and modifying as needed to fit our needs in Lexington.

MUNICIPAL ACTION GUIDE

Small Cell Wireless Technology in Cities



Introduction

From our connected homes, where everything is controlled by the internet, to our workplaces, where reliable broadband access is paramount for almost every type of job, technology is impacting every facet of our daily lives. Cities are inextricably linked to the internet, and the integration of new technologies promises better and more innovative ways to serve our residents.

With this seismic shift toward smart cities and the internet of things (IoT), reliance on wireless and wireline broadband infrastructure is becoming greater and greater. Mobile phones, IoT devices and other small wireless gadgets are becoming ubiquitous. Wireless data consumption has reached approximately 1.8 exabytes per month in North America alone, and that number is projected to grow six-fold by 2022.² As various wireless providers maintain that the roll out of 5G internet service is approaching, and the IoT proliferates with the connection of millions of new smart devices to the internet, cities must face the reality that to meet the increasing demands of residents, more wireless facilities and infrastructure must be deployed. With that

reality, city officials must also face a number of policy, public safety, land-use and right-of-way considerations.

As cities navigate this rapidly-changing policy issue with both wireless and infrastructure providers and community residents, a number of considerations for the different stakeholders begin to emerge. This action guide from the National League of Cities (NLC) provides an overview of small cell technology, as well as guidance on how local governments can plan for, develop policy and processes around, and manage the deployment of, small cell wireless infrastructure. It will also provide city leaders with strategies for proactively engaging with wireless providers and residents to plan for small cell networks in their communities.

The Internet of Things in Connected Cities

Every consumer product and piece of infrastructure increasingly has the ability to sense surrounding stimuli, to communicate with other devices and people, and to draw on the computing and storage power of the cloud. This phenomenon has been dubbed the internet of things (IoT). The more smart devices and sharing platforms there are, the more data is generated about consumer preferences and habits. But what does this mean for cities? Smart cities are employing the same technology to connect their disparate utility, infrastructure and public service grids, generating real-time aggregate data. This, in turn, can help cities manage their programs and services more effectively and gauge their impact for residents, businesses and visitors immediately. The city of the future is an interconnected one, where devices communicate with one another in a constant stream of data that provides real-time information to the public and to the municipality.³



What is a 'Smart City'?

The term 'smart city' sometimes seems to mean everything and nothing all at once, and a common question about the phenomena is some variation on, "what is a smart city?". A smart city is a city that has developed technological infrastructure that enables it to collect, aggregate and analyze real-time data and has made a concerted effort to use that data to improve the lives of its residents and the economic viability of the community. Smart city initiatives often involve four components: the underlying communications infrastructure, information and communication technologies (ICTs) that generate and aggregate data; analytical tools which convert that data into usable information; and organizational structures that encourage collaboration, innovation and the application of that information to solve public problems.¹ Examples include water or utility monitoring devices that promote efficient or sustainable usage, smart streetlights that double as gunshot spotters and communicate with city administrators when they need maintenance, and traffic control and management systems that streamline traffic bottlenecks and report congestion and traffic data to city transportation planners.



A small cell pole in the median of the Las Vegas Strip. (Photograph by SmartWorks Partners)

Small Cell Technology

What is small cell technology?

As wireless data usage continues to escalate, providers must find new and innovative ways to keep up with consumer demand for more speed and data capacity. One way to address the capacity crunch is by deploying “small cells,” a type of wireless technology for broadband infrastructure. Various federal, state and local laws define small cell differently. Generally, “small cell” refers to both the smaller coverage area of the wireless signal, and the smaller

size of the infrastructure. Small cell installations generally cover much smaller geographic areas — measured in hundreds of feet — than the traditional macrocell towers that can cover miles in each direction. The antennas are much

smaller than those deployed at macrocell sites, and are often attached to buildings, rooftops and structures in public rights-of-way (ROW), including utility and light poles and other street furniture.⁴ Pole- or ground-mounted equipment accompanying the antenna may also be needed and can be as big as a large refrigerator. This equipment may be in the ROW, or on other public or private property.

These facilities help to complement or stretch macrocell coverage and add capacity in high demand areas.⁵ Small cell infrastructure is typically deployed to alleviate capacity constraints where crowds gather or to cover targeted areas, including public squares and spaces, downtown pedestrian areas, parks, office buildings, campuses, or stadiums and arenas.

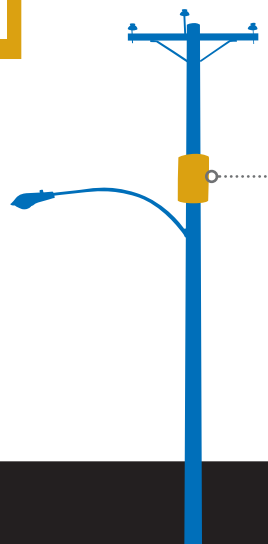


Macrocell vs. Small Cell:

Although they serve different purposes, macrocell and small cell technologies complement each other.

Macrocell: Traditional macrocell towers have a coverage area that spans several miles. They're hard to miss, although their signal degrades towards the edge of their coverage areas.

Small Cell: Small cell technology is much more discreet, mounted on existing structures like rooftops and utility poles. Sometimes, they are accompanied by refrigerator-sized equipment. Because small cells only supply a few hundred feet of coverage, they are best suited for dense areas like downtowns.



What are some of the benefits to cities?

With the increasing usage of wireless devices and data, cities are facing increased demand for reliable wireless service. Small cell facilities can be used to increase the mobile broadband network capacity in cities. This improved service and capacity has many advantages, including economic competitiveness, a “tech friendly” reputation, and more opportunities to deploy smart city and IoT applications. Given that up to 80% of today’s 911 calls are placed via wireless phones, robust wireless networks are also critical to public safety.⁶

What are some of the risks to cities?

Often, wireless providers will want small cells deployed in dense urban areas to provide adequate capacity in high demand spots, and each provider will want its own facility installed to cover the same dense area. Thus, there may be several requests to locate such facilities in the same general areas, such that four polls in a row will have small cells from four different wireless companies. This can result in clusters of small cells that are visually unappealing and detract from the aesthetic of the community. Deployment and installation of small cell facilities can potentially interfere with existing technology, such as wireless traffic signals and other municipal technology in close proximity. There is also the risk of ground

mounted equipment associated with some small cell facilities obstructing a crowded city’s rights-of-way. In addition, recent state and federal efforts to speed the deployment of small cell facilities have focused on preempting local authority to review and control small cell deployments, or to collect fair rents for the use of public property.

What federal and state policies apply to municipal siting processes?

The siting of wireless infrastructure is governed by local, state and federal law. Most wireless infrastructure siting is governed by the applicable government entity with control over the facility’s property or location, and there may also be state and/or federal laws that apply to local determination. Local governments assess applications for permits to build new or alter existing wireless facilities for a variety of purposes, including public safety, overall management of public property or rights-of-way, accessibility requirements, environmental issues, land use and community aesthetics. Local governments may charge wireless service providers or wireless facility providers for application processing, access to the rights-of-way, and/or ongoing fees for access to public property — such as municipal street lights or traffic lights — either pursuant to local codes, as part of a large master lease or license agreements with a provider, or on an application-by-application basis.

Federal oversight of wireless siting is primarily based on three federal laws: The Communications Act of 1934, the Telecommunications Act of 1996 (Telecommunications Act) and a provision of the Middle-Class Tax Relief and Job Creation Act of 2012 (Spectrum Act).

These laws contain provisions intended to spur the development of wireless infrastructure and impose some limits on local authority over that infrastructure. The Telecommunications Act, for instance, makes it unlawful for local government to prohibit, or have the effect of prohibiting, the “provision of personal wireless service,” prevents local government from “unreasonably discriminating among providers of functionally equivalent services,” and requires that local government “act on any authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time.” It also stipulates that local governments denying siting applications do so “in writing and supported by substantial evidence contained in a written record.”⁷ The Federal Communications Commission (FCC) has interpreted that a “reasonable period of time” for local governments to grant or deny siting requests is 150 days for new facilities, and 90 days for collocations.⁸ This presumed time limitation is commonly known as a “shot clock.”

Meanwhile, the Spectrum Act also contains provisions that limit local control over collocated wireless facilities to ensure the swift deployment of wireless technologies. Section 6409(a) of the Act provided that “a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does

not substantially change the physical dimensions of such tower or base station.”⁹ The FCC created regulations in support of this law, specifying that these collocation requests must be approved within 60 days of application, and that this definition includes distributed antenna system (DAS) and small cell facilities.¹⁰ If a city finds that it received an incomplete application, it has a limited period of time in which to pause, or “toll,” the shot clock by notifying applicants in writing of the missing information and relevant local requirements.

The 1934 Communications Act has been cited in recent federal petitions and rulemaking activity¹¹ relating to the deployment of small cell facilities. Section 253 of the 1934 Act requires that local governments receive “fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis,” when determining costs to access the public rights-of-way. The FCC has solicited public comment on how and whether to clarify the meaning of this phrase in relation to small cell wireless facilities but has not yet issued a decision or guidance. Likewise, the FCC has recently issued orders prohibiting moratoria on wireless deployment applications and permitting in essentially all circumstances.¹²

State governments have also passed laws intended to speed the deployment of wireless infrastructure, particularly small cell infrastructure, in recent years. For example, Arizona’s HB 2365, which was signed into law on March 31, 2017, imposes a series of new requirements on cities’ regulation of wireless infrastructure. Arizona’s law creates timelines for both cities and applicants to complete reviews of applications and buildout of the requested site. Additionally, it states that rates

The Telecommunications Act of 1996:

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or fees are limited to not more than the actual and direct costs incurred by cities to review those applications or manage the ROW, and places a fixed dollar cap on those application fees, as well as a fixed cap on annual rights-of-way access and pole collocation fees.^{13 14 15}

Other states have enacted similar limits on local review times, factors which may be considered in a site review and fees local governments may assess. State laws may limit whether local governments can enter into agreements with providers for larger-scale deployments of infrastructure within a community.

What are some of the policy challenges cities face?

Cities adapting their ordinances or processes to enable efficient small cell deployment face a number of policy challenges. First, cities must consider any recent changes to state law that impact local ordinances. Nearly half of all states had already passed small cell legislation or were considering it by their 2018 legislative sessions. Many states that passed laws exempted municipal rights of way from the legislation. These laws may impact what fees or rates cities can assess, what factors they may consider when deciding whether to approve or deny a wireless facility application, and whether the city is subject

to a stricter application review timeline than federal regulations establish.

Cities must also consider their own internal capacity when determining how much time should elapse before a new ordinance focused on small cell deployment goes into effect. For example, if the new process demands the establishment of new online application systems or forms, the city should allow ample time to create those new systems before applicants will expect access to them, to avoid unnecessary delays in the application process. Particularly in the case of small cell deployments, providers may wish to file many applications at once as part of a network build-out, and cities should be prepared to determine whether they can limit the number of applications any provider can file within a given time period under state law, or whether they are capable of accepting batches of similar applications simultaneously.

Cities should be cautious in passing moratoria on new wireless facility applications. While moratoria may provide the necessary time for policy makers to determine how best to approach this new technological and administrative challenge, they are not legal in some states, and have been prohibited by the FCC. Moratoria may invite legal challenges from wireless providers eager to start construction.

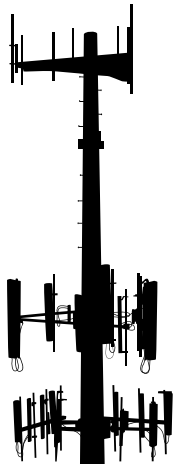
City Examples

Boston: Preserving History and Planning for a Technology-Driven Future

The city of Boston faced a unique challenge when it set out to upgrade the city's wireless networks: its history. The city contains narrow, twisting streets with little sidewalk space, carefully-maintained historic districts, and a wide variety of decorative poles and streetlights — including some gas lamps. This adds up to crowded rights-of-way

with sensitive aesthetic needs. However, a city known for its universities and tech industries needed to be a competitive leader on broadband infrastructure to retain and attract residents and businesses.

To address the growing demand for small cell wireless infrastructure, the city used widely-available online tools to create an online application and review process that has reduced the average turnaround time for small cell site application reviews to roughly two weeks. The city has also managed to stem potential floods in applications by placing reasonable obligations on providers eager to file many applications at once.



Macrocell technology is much better for large, low-density populations like quiet residential areas.

Small cells are perfect for small, dense-population areas with high-capacity needs. Downtowns, stadiums and theme parks are ideal for this technology.



For instance, after a permit for a new wireless facility is approved, the provider must build its site within sixty days.

Because of its narrow, historic streets, Boston has had to work very closely with neighbors and wireless providers to create innovative pole designs that take up less sidewalk space, or to negotiate a different pole location on a nearby arterial street with fewer residences and more room to site equipment.

Lincoln: Creating Business Solutions to Technology Challenges

In the city of Lincoln, Nebraska, broadband infrastructure is an important development priority. As demand for service, and for permission to build infrastructure, rose in the community, the city decided to tackle business process challenges. The city began physically relocating staff and grouping them by process and function, rather than department, and created a new rights-of-way construction group of staff from multiple departments to manage broadband infrastructure, small cell wireless applications and other issues. This created a one-stop-shop for private utility construction in the public right-of-way.

The city worked with carriers to create a standard pole design that met the needs of 95 percent of the city's pole locations and could accommodate most carriers' equipment. For the other five percent of locations, the city has worked with individual carriers to co-design poles to meet those

locations' needs and added those new designs to a list of pre-approved poles. The city has also developed a database of existing right-of-way infrastructure assets, such as water, power and broadband lines in the city. This helps smooth the application process and cuts down on the time needed to communicate between city departments and with providers. Additionally, the city has created a master license agreement process based on existing public-private partnership agreements and adapted the master license agreements used for broadband to business and home to mobile infrastructure. Making the agreements consistent, and posting them publicly online, has helped reassure providers that they are getting the same deal as their competitors and smoothed the negotiating process.

Lincoln has faced some challenges in recent years with its efforts to deploy wireless infrastructure. Some providers have successfully received permits to build new poles, but have not deployed in those locations, resulting in wasted city resources and no improved service for residents. The city has also fought back against attempts by the state legislature to preempt local authority over small cells. In 2017, the city battled wireless providers who claimed that city-induced costs were inhibiting infrastructure deployment. When Lincoln offered a discount to local carriers who were willing to build out connectivity in rural parts of Nebraska, the providers backed down, and ultimately preemptive legislation did not pass that year.

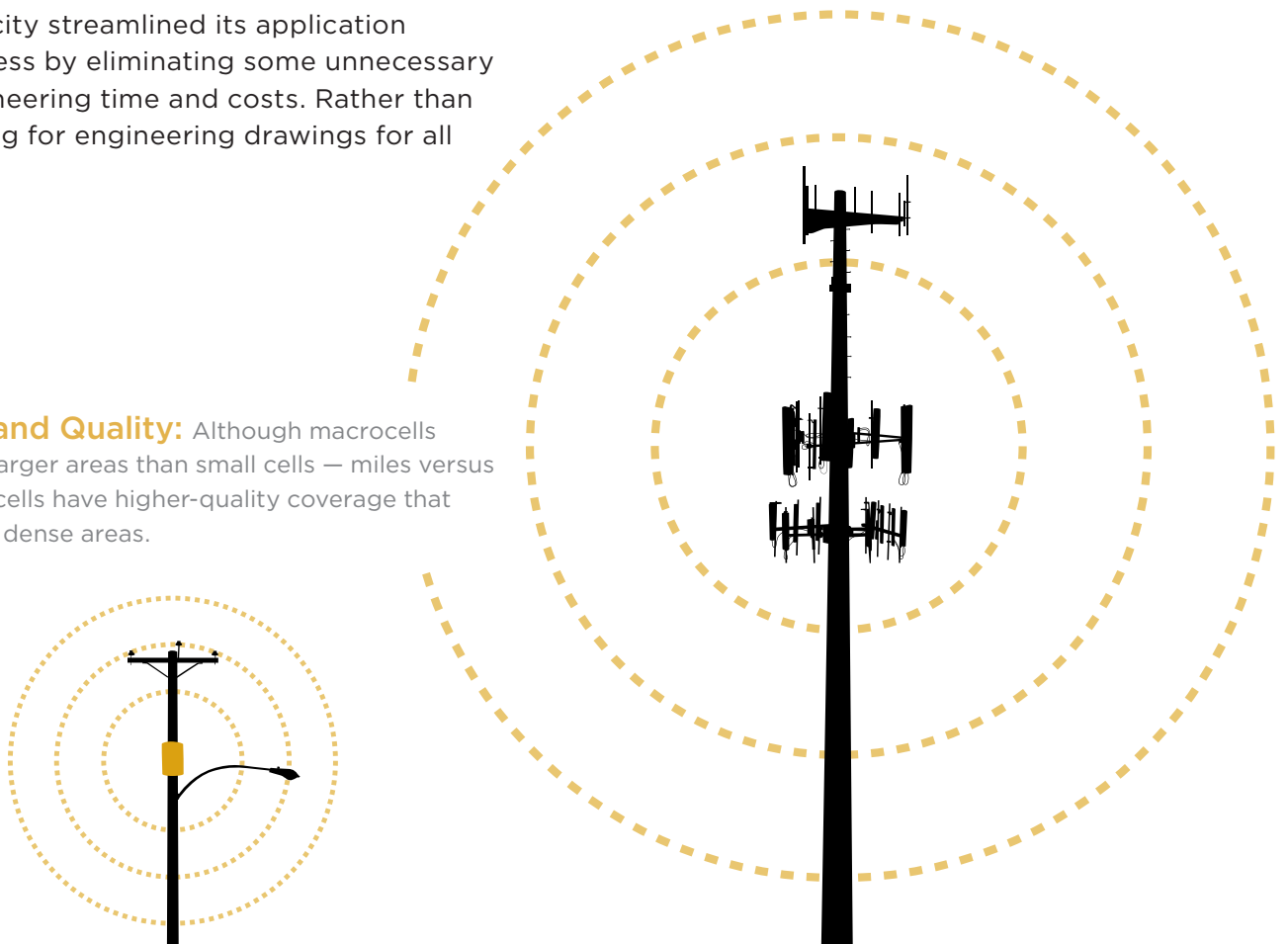
Raleigh: Finding Common Ground with Industry Through Partnerships

The city of Raleigh is focused on being the best — with hopes of being designated a ‘best place’ to live, work and play, as well as a forward-thinking leader in the technology space. The city recognized that in order to achieve those goals, it would need to be open to the prospect of small cell wireless infrastructure deployment. From the moment the city was approached about installing small cell infrastructure, the priority was to establish a good working relationship with wireless providers while protecting and upholding the values and interests of residents within our communities.

The city streamlined its application process by eliminating some unnecessary engineering time and costs. Rather than calling for engineering drawings for all

installations, the city shifted its process to require basic geographic coordinates for proposed wireless sites, so that the city could quickly work with providers to find optimal locations. Wireless providers appreciated hearing back from city staff about site feasibility within a couple of days of submittal. The city has also taken several steps to hear the wishes of residents, most directly through its 20 Citizen Advisory Councils. City employees who manage small cell deployment have been meeting regularly with these advisory boards to gather feedback and answer questions about the process of small cell installation.

Quantity and Quality: Although macrocells cover much larger areas than small cells — miles versus feet — small cells have higher-quality coverage that works well in dense areas.



What is Broadband?

According to the Federal Communications

Commission, broadband is connection speeds of at least 25 Mbps for downloads and three Mbps for uploads. About 20 percent of American households don't have access to broadband under this current definition.

One administrative challenge came about in the form of a piece of legislation passed by the state that preempts the city's ability to manage small cell applications. A 2017 law restricts local governments in the state of North Carolina from sending applications for collocated infrastructure — or infrastructure that wireless providers want to place on existing poles — to city council for review. Wireless providers that wish to collocate small cell infrastructure are allowed to seek administrative approval and place their equipment and infrastructure on those existing poles. This is intended to streamline the review process for small cell installations that do not require a new structure or pole to be constructed. While it shortens the administrative approval process, it removes the city's ability to govern on this issue.

San Jose: Welcoming New Technology While Closing the Digital Divide

Equity drives San Jose's approach to bringing new technologies to the city, and the deployment of municipal broadband and municipal fiber lines is no exception. Located in Silicon Valley, San Jose city officials are acutely aware of the technology boom happening on their doorstep and are eager to welcome these advances, provided they can do so in a way that

speaks to the needs of all residents. With only three percent of the city connected to high quality fiber lines, the city needed to both improve overall access to high speed internet and address the digital divide for 95,000 residents without access. After commissioning a study of the city's broadband approach as well as conducting surveys of low-income populations, San Jose officials set about working with the private sector on an arrangement that facilitates deployment, speaks to the city's equity goals and meets provider expectations.

They settled on a tiered pricing structure where providers pay \$750-\$2500 depending on whether they will cover the entire city or smaller areas. Larger deployments essentially receive a bulk-discounted rate. This revenue then feeds into two important city goals: internal capacity building and digital equity. For the former, the revenue bolsters the public works department, enabling staff to streamline the permitting and governance processes. Providers are therefore amenable to the deal because it facilitates faster small cell deployment. Additionally, the remaining funds, \$24 million so far, go into a "Digital Inclusion Fund" to close the digital divide for low income and vulnerable populations.

When San Jose officials stepped back to look at the whole picture, they noticed that different providers had an interest in deploying in different market segments and, therefore, different neighborhoods. By building relationships with these carriers, San Jose has been able to spread coverage across the city. Where gaps arise, the digital inclusion fund fills in. Some of the projects on deck include free device checkout at libraries and coding camps. The city will also pursue grants on top of these core funds to further build out program support in the long term.

Tempe: Bringing Transparency to the Process

The city of Tempe knows that small cell infrastructure will be integral to meeting the technological demands of the future. For city staff, determining the process for small cell infrastructure deployment and being transparent about it with wireless providers was very important. Once the city established a master license agreement with the first carrier in the market, that original agreement was used as a template to develop subsequent agreements with small cell infrastructure providers, who also wanted to deploy small cells and distributed antenna systems (DAS).

In 2017, however, preemptive legislation was passed by the Arizona state legislature that hindered the city's ability to completely control small cell infrastructure deployment. The new law imposed fee caps as well as shot clocks on the application

process. It also forced cities to reduce their fees to a rate that was significantly lower than existing market rate agreements.¹⁶ The rationalization for such legislation was that it was needed to speed up deployment in Arizona by limiting a city's capacity to interfere via local legislation and incentivize 5G by reducing the industry's costs of deployment. During the negotiation period preceding the passage of the bill, the city fought hard to maintain its ability to manage the right-of-way, mostly in order to retain control over the aesthetic elements of deployment and to minimize any visual blight caused by the size of the small cell allowed (the equivalent of 27 pizza boxes).¹⁷

The new law required Arizona cities to establish and make standard terms of agreements publicly available. Tempe viewed the legislation's six-month implementation period as an opportunity to foster collaboration between the public and private sectors. Before finalizing the standard terms and conditions, site license provisions, application processes for small cells and design criteria, the city sent draft copies of all proposed documents to the major carriers and infrastructure providers for feedback. Collaboration with the industry was important in avoiding conflict when documents advanced to the city council for deliberation and approval.

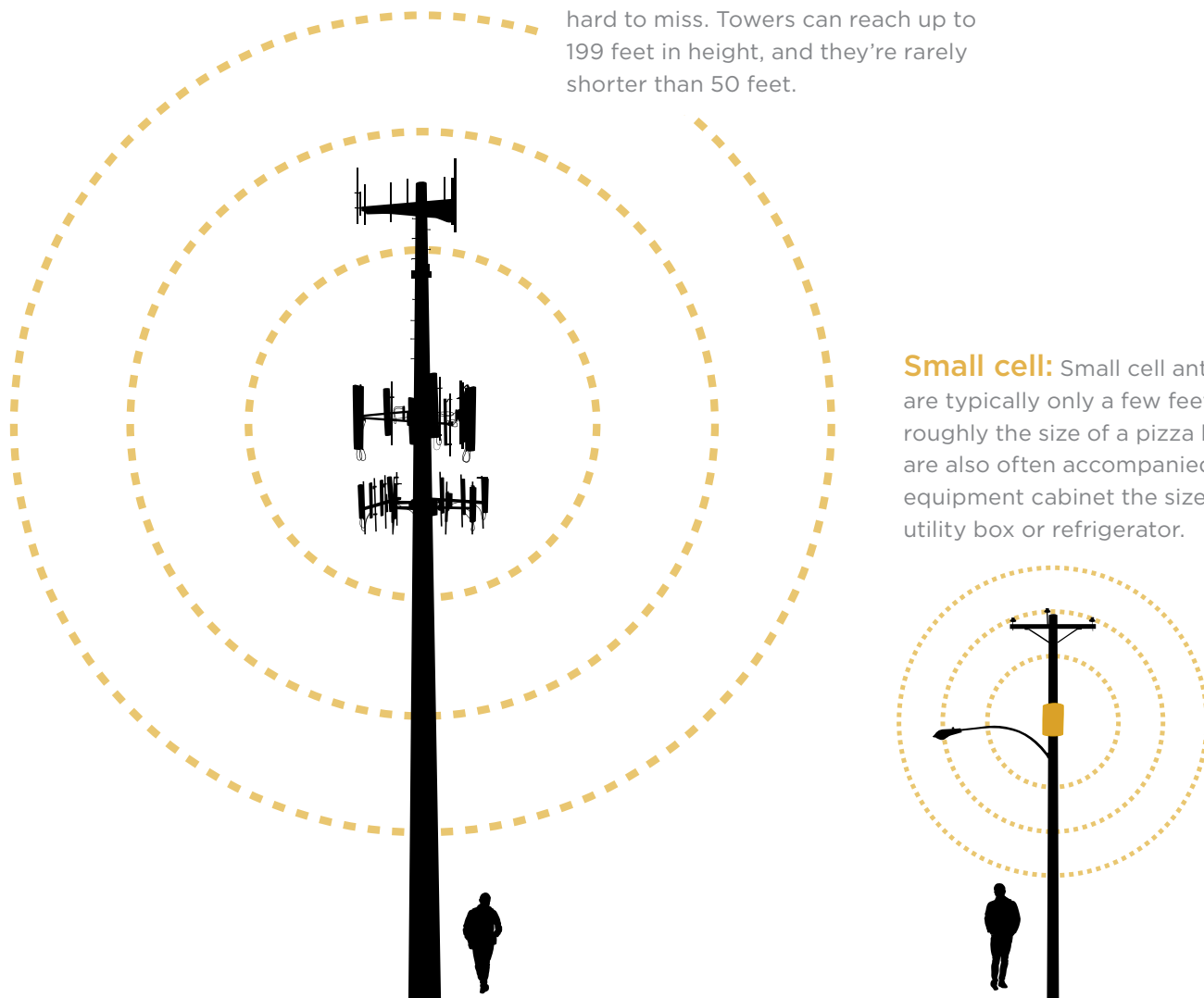
The city also carefully considered the desires and values of the public. For residents, aesthetics and the way the new

small cell infrastructure blended into the community were very important. Tempe was able to coordinate with other local cities and wireless providers to create design guidelines, ensuring that new infrastructure would mesh with the local aesthetic. The city worked to ensure that the guidelines were not too much of a

hindrance to deployment. Tempe found that balancing the concerns of industry with the city's ability to manage its poles and right-of-way is critical. Local government can function as the connection between the community and industry, ensuring that both parties' interests are represented and accounted for.

Towers: Macrocell infrastructure is hard to miss. Towers can reach up to 199 feet in height, and they're rarely shorter than 50 feet.

Small cell: Small cell antennas are typically only a few feet tall, roughly the size of a pizza box. They are also often accompanied by an equipment cabinet the size of a utility box or refrigerator.



Strategies for City Leadership



1 Gain a full understanding of the technology and important safety considerations.

Local elected officials and decision-makers should ensure that they understand technical, political and legal implications of the technology, its deployment, and any existing policies related to small cell facility siting. This will ensure that the best interests of the community are upheld when new decisions around small cell siting are being made.



2 Articulate your priorities for accommodating this technology.

City officials should determine how they want to integrate this technology into their communities and be intentional about expressing those desires during the policy-making discussions and deployment process. Some questions and considerations might include:

- a. Whether the city wants to subsidize the build-out of the facilities to speed up wireless connections;
- b. Whether the city needs extra time to conduct a thorough engineering review for public safety concerns; or
- c. Whether the city will work to harmonize the facilities with the look and feel of different parts of town.



3 Create clear policies for permit review that let both city staff and industry applicants know the expectations.

This includes establishing processes for how applications will be addressed or processed, timeframes, objective requirements for the decisions and possibly application checklists. Cities should communicate these policies broadly and transparently to potential applicants. They may also wish to collaborate with likely applicants to develop design standards compatible with technological needs.



4 Develop a template right-of-way access policy/agreement, as well as a city pole attachment agreement.

Cities should make sure these policies and agreements address multiple kinds of infrastructure, from macrocell towers to small-cell facilities. This might include the establishment of requirements for both types of structures — such as size, location, design, public safety, stealth, etc.



5 Think through in advance any beneficial items the city could negotiate with industry in exchange for use of the right-of-way — if allowed by state law.

Issues up for negotiation might include collocation; length of time for siting; terms of installation; terms for upgrade; free or discounted services for schools, libraries, or other public entities; or other provisions that benefit the community and its residents.



6 Give careful consideration to fee structures.

There are a variety of fees and charges that cities may want to address. Application fees to cover the cost of staff to review applications, permitting fees to cover costs of building permit reviews and inspections, regulatory access fees for use of public ROW (ongoing), rent based on market rates if using public property (ongoing), and ongoing maintenance fees. Cities should take care to ensure that costs for removal of abandoned equipment are not borne by taxpayers.

Definitions

Collocation:

When multiple wireless providers attach antennas and other equipment to a single shared support structure. This practice may lower barriers to entry for new providers and reduce pole proliferation. The federal government defines collocation as: the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.¹⁸

Small cell facilities:

Small cell facilities are a type of wireless broadband infrastructure. They typically take the form of small antennas that are placed on existing infrastructure (both indoors and outdoors) and ground mounted equipment. These facilities help to compliment or stretch tower macrocell coverage and add capacity in high demand areas. In many states this term is defined by state law.

Ground mounted equipment:

This type of equipment sits at ground level, such as along sidewalks. It is distinct from equipment mounted on existing infrastructure such as telephone poles or buildings. This equipment is similar to traffic control or telephone equipment cabinets.

Macrocell:

A macrocell is a wireless facility used in cellular networks with the function of providing radio coverage to a large area of mobile network access. A macrocell differs from a microcell by offering the backbone of coverage area and high-efficiency output. It is placed on stations where the output power is higher, usually in a range of tens of watts.¹⁹

Smart city:

A “smart city” is one that has developed technological infrastructure that enables it to collect, aggregate and analyze real-time data to improve the lives of its residents.²⁰

Internet of things (IoT):

The internet of things (IoT) is a computing concept that describes the idea of everyday physical objects being connected to the internet and able to identify themselves to other devices. The term is closely identified with RFID as the method of communication, although it also may include other sensor technologies, wireless technologies or QR codes.²¹

5G:

The term for emerging 5th generation wireless telecommunications standards usually associated with network speeds of 1 Gpbs or more.²²

Exabytes:

An exabyte is a unit of measurement that describes 10^{18} bytes or 1 billion gigabytes. This unit refers to such a large amount of data that it is typically used to express quantities of information transmitted over the internet in absolute terms.

Internet Service Providers:

An internet service provider (ISP) is a company that provides customers with Internet access. Data may be transmitted using several technologies, including dial-up, DSL, cable modem, wireless or dedicated high-speed interconnects. Typically, ISPs also provide their customers with the ability to communicate with one another by providing Internet email accounts, usually with numerous email addresses at the customer's discretion. Other services, such as telephone and television services, may be provided as well. The services and service combinations may be unique to each ISP.²³ Throughout the paper we use this term synonymously with the term carrier.

Infrastructure Developer:

Company or entity that invests in or builds out the basic physical and virtual systems of a community, including roads, utilities, internet and wireless networks, water, sewage, etc. These systems are considered essential for enabling productivity in the economy and require significant fiscal investments. Developers and investors can be from the public or the private sector.²⁴

Resources

National Association of Telecommunications Officers and Advisors: Wireless Facility Siting: Model Chapter Implementing Section 6409(a) and Wireless Facility Siting: Section 6409(a) Checklist — <https://www.natoa.org/documents/6409ModelOrdinance.pdf>

United States Department of Commerce Internet Policy Task Force and Digital Economy Leadership Team: Fostering the Advancement of the Internet of Things

https://www.ntia.doc.gov/files/ntia/publications/iot_green_paper_01122017.pdf

BroadbandUSA: Broadband Glossary — https://www2.ntia.doc.gov/files/bbusa_broadband_glossary_161024.pdf

BroadbandUSA: Smart Communities Glossary — https://www2.ntia.doc.gov/files/bbusa_smartcommunitiesglossary_11212017.pdf

¹ **Trends in Smart City Development.** (2016). National League of Cities. Access at: <http://www.nlc.org/sites/default/files/2017-01/Trends%20in%20Smart%20City%20Development.pdf>

² **Ericsson, Ericsson Mobility Report at 13** (Nov. 2016), <https://www.ericsson.com/assets/local/mobilityreport/documents/2016/ericsson-mobility-report-november-2016.pdf>.

³ **Trends in Smart City Development.** (2016). National League of Cities. Access at: <http://www.nlc.org/sites/default/files/2017-01/Trends%20in%20Smart%20City%20Development.pdf>

⁴ **Federal Communications Commission.** (2016). Public Notice: Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Citing Policies. Access at: https://apps.fcc.gov/edocs_public/attachmatch/DA-16-1427A1.pdf

⁵ **WIA** (2017). Enabling Wireless Networks Everywhere, Presentation.

⁶ See <https://www.nena.org/?page=911Statistics>.

⁷ **47 U.S.C. § 332(c)(7)(B)**

⁸ **Petition to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting**, WT-Docket No. 08-165 (11/18/09).

⁹ 47 U.S.C. §1455(a)

¹⁰ **Acceleration of Broadband Deployment by Improving Wireless Siting Policies**, WT Docket No. 13-238, 11-59, 13-32, (10/17/14)

¹¹ **Ibid.**

¹² **Federal Communications Commission. (2018):** Public Notice: FCC Speeds Access to Utility Poles to Promote Broadband, 5G Deployment. Access at

<https://www.fcc.gov/document/fcc-speeds-access-utility-poles-promote-broadband-5g-deployment-0>

¹³ \$750.00 (A.R.S. § 9-593(I)) and \$1000.00 (A.R.S. § 9-594(E)(3)).

¹⁴ \$50 per small cell (A.R.S. § 9-592(D)(4))

¹⁵ \$50 per pole (A.R.S. § 9-595).

¹⁶ The average small cell fee charged by Arizona cities in 2017 was \$3,530.00 per site, which included both the use of the pole and the use of the right-of-way for a small cell and associated ground equipment. (This amount was about 1/8 of the annual fees charged for macro sites). The legislation capped this fee at \$100.00 per site (\$50.00 for the use of the pole and \$50.00 for the use of the right-of-way.)

¹⁷ All antennas to be located inside an enclosure of up to 6 cubic feet in volume and the associated equipment to be up to 28 cubic feet in volume. A.R.S. § 9-591(19).

¹⁸ **47 C.F.R. § 1.40001(b)(2)**

¹⁹ <https://www.techopedia.com/definition/2950/macroucell>

²⁰ **Trends in Smart City Development.** (2016). National League of Cities. Access at: <http://www.nlc.org/sites/default/files/2017-01/Trends%20in%20Smart%20City%20Development.pdf>

²¹ <https://www.techopedia.com/definition/28247/internet-of-things-iot>

²² https://www2.ntia.doc.gov/files/bbusa_broadband_glossary_161024.pdf

²³ <https://www.techopedia.com/definition/2510/internet-service-provider-isp>

²⁴ <http://www.investorwords.com/2464/infrastructure.html#ixzz5COh9N3rU>

About NLC

The National League of Cities (NLC) is the nation's oldest and largest organization devoted to strengthening and promoting cities as centers of opportunity, leadership, and governance. NLC is a resource and advocate for more than 1,600 member cities and the 49 state municipal leagues, representing 19,000 cities and towns and more than 218 million Americans.

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- **Article**

Article 7.2. Zoning for Wireless Communications Infrastructure.

§ 15.2-2316.3. Definitions.

As used in this article, unless the context requires a different meaning:

"Administrative review-eligible project" means a project that provides for:

1. The installation or construction of a new structure that is not more than 50 feet above ground level, provided that the structure with attached wireless facilities is (i) not more than 10 feet above the tallest existing utility pole located within 500 feet of the new structure within the same public right-of-way or within the existing line of utility poles; (ii) not located within the boundaries of a local, state, or federal historic district; (iii) not located inside the jurisdictional boundaries of a locality having expended a total amount equal to or greater than 35 percent of its general fund operating revenue, as shown in the most recent comprehensive annual financial report, on undergrounding projects since 1980; and (iv) designed to support small cell facilities; or
2. The co-location on any existing structure of a wireless facility that is not a small cell facility.

"Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

"Base station" means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables, or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.

"Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Co-location" has a corresponding meaning.

"Department" means the Department of Transportation.

"Existing structure" means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality or the Department of an agreement with the owner of the structure to co-locate equipment on that structure. "Existing structure" includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles, flag poles, signs, and water towers.

"Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

"New structure" means a wireless support structure that has not been installed or constructed, or approved for installation or construction, at the time a wireless services provider or wireless infrastructure provider applies to a locality for any required zoning approval.

"Project" means (i) the installation or construction by a wireless services provider or wireless infrastructure provider of a new structure or (ii) the co-location on any existing structure of a wireless facility that is not a small cell facility. "Project" does not include the installation of a small cell facility by a wireless services provider or wireless infrastructure provider on an existing structure to which the provisions of § 15.2-2316.4 apply.

"Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

"Standard process project" means any project other than an administrative review-eligible project.

"Utility pole" means a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.

"Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

"Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless services, such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

"Wireless infrastructure provider" means any person that builds or installs transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

"Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i); (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using wireless facilities.

"Wireless services provider" means a provider of wireless services.

"Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing structure or alternative structure designed to support or capable of supporting wireless facilities. "Wireless support structure" does not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

2017, c. 835; 2018, cc. 835, 844.

§ 15.2-2316.4. Zoning; small cell facilities.

A. A locality shall not require that a special exception, special use permit, or variance be obtained for any small cell facility installed by a wireless services provider or wireless infrastructure provider on an existing structure, provided that the wireless services provider or wireless infrastructure provider (i) has permission from the owner of the structure to co-locate equipment on that structure and (ii) notifies the locality in which the permitting process occurs.

B. Localities may require administrative review for the issuance of any required zoning permits for the installation of a small cell facility by a wireless services provider or wireless infrastructure provider on an existing structure. Localities shall permit an applicant to submit up to 35 permit requests on a single application. In addition:

1. A locality shall approve or disapprove the application within 60 days of receipt of the complete application. Within 10 days after receipt of an application and a valid electronic mail address for the applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval. The 60-day period may be extended by the locality in writing for a period not to exceed an additional 30 days. The application shall be deemed approved if the locality fails to act within the initial 60 days or an extended 30-day period.

2. A locality may prescribe and charge a reasonable fee for processing the application not to exceed:

a. \$100 each for up to five small cell facilities on a permit application; and

b. \$50 for each additional small cell facility on a permit application.

3. Approval for a permit shall not be unreasonably conditioned, withheld, or delayed.

4. The locality may disapprove a proposed location or installation of a small cell facility only for the following reasons:

a. Material potential interference with other pre-existing communications facilities or with future communications facilities that have already been designed and planned for a specific location or that have been reserved for future public safety communications facilities;

b. The public safety or other critical public service needs;

c. Only in the case of an installation on or in publicly owned or publicly controlled property, excluding privately owned structures where the applicant has an agreement for attachment to the structure, aesthetic impact or the absence of all required approvals from all departments, authorities, and agencies with jurisdiction over such property; or

d. Conflict with an applicable local ordinance adopted pursuant to § 15.2-2306, or pursuant to local charter on a historic property that is not eligible for the review process established under 54 U.S.C. § 306108.

5. Nothing shall prohibit an applicant from voluntarily submitting, and the locality from accepting, any conditions that otherwise address potential visual or aesthetic effects resulting from the placement of small cell facilities.

6. Nothing in this section shall preclude a locality from adopting reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities.

C. Notwithstanding anything to the contrary in this section, the installation, placement, maintenance, or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes shall be exempt from locality-imposed permitting requirements and fees.

2017, c. 835.

§ 15.2-2316.4:1. Zoning; other wireless facilities and wireless support structures.

A. A locality shall not require that a special exception, special use permit, or variance be obtained for the installation or construction of an administrative review-eligible project but may require administrative review for the issuance of any zoning permit, or an acknowledgement that zoning approval is not required, for such a project.

B. A locality may charge a reasonable fee for each application submitted under subsection A or for any zoning approval required for a standard process project. The fee shall not include direct payment or reimbursement of third-party fees charged on a contingency basis or a result-based arrangement. Upon request, a locality shall provide the applicant with the cost basis for the fee. A locality shall not charge market-based or value-based fees for the processing of an application. If the application is for:

1. An administrative review-eligible project, the fee shall not exceed \$500; and
2. A standard process project, the fee shall not exceed the actual direct costs to process the application, including permits and inspection.

C. The processing of any application submitted under subsection A or for any zoning approval required for a standard process project shall be subject to the following:

1. Within 10 business days after receiving an incomplete application, the locality shall notify the applicant that the application is incomplete. The notice shall specify any additional information required to complete the application. The notice shall be sent by electronic mail to the applicant's email address provided in the application. If the locality fails to provide such notice within such 10-day period, the application shall be deemed complete.

2. Except as provided in subdivision 3, a locality shall approve or disapprove a complete application:

- a. For a new structure within the lesser of 150 days of receipt of the completed application or the period required by federal law for such approval or disapproval; or

b. For the co-location of any wireless facility that is not a small cell facility within the lesser of 90 days of receipt of the completed application or the period required by federal law for such approval or disapproval, unless the application constitutes an eligible facilities request as defined in 47 U.S.C. § 1455(a).

3. Any period specified in subdivision 2 for a locality to approve or disapprove an application may be extended by mutual agreement between the applicant and the locality.

D. A complete application for a project shall be deemed approved if the locality fails to approve or disapprove the application within the applicable period specified in subdivision C 2 or any agreed extension thereof pursuant to subdivision C 3.

E. If a locality disapproves an application submitted under subsection A or for any zoning approval required for a standard process project:

1. The locality shall provide the applicant with a written statement of the reasons for such disapproval; and

2. If the locality is aware of any modifications to the project as described in the application that if made would permit the locality to approve the proposed project, the locality shall identify them in the written statement provided under subdivision 1. The locality's subsequent disapproval of an application for a project that incorporates the modifications identified in such a statement may be used by the applicant as evidence that the locality's subsequent disapproval was arbitrary or capricious in any appeal of the locality's action.

F. A locality's action on disapproval of an application submitted under subsection A or for any zoning approval required for a standard process project shall:

1. Not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services; and

2. Be supported by substantial record evidence contained in a written record publicly released within 30 days following the disapproval.

G. An applicant adversely affected by the disapproval of an application submitted under subsection A or for any zoning approval required for a standard process project may file an appeal pursuant to subsection F of § 15.2-2285, or to § 15.2-2314 if the requested zoning approval involves a variance, within 30 days following delivery to the applicant or notice to the applicant of the record described in subdivision F 2.

2018, cc. 835, 844.

§ 15.2-2316.4:2. Application reviews.

A. In its receiving, consideration, and processing of a complete application submitted under subsection A of § 15.2-2316.4:1 or for any zoning approval required for a standard process project, a locality shall not:

1. Disapprove an application on the basis of:

a. The applicant's business decision with respect to its designed service, customer demand for service, or quality of its service to or from a particular site;

- b. The applicant's specific need for the project, including the applicant's desire to provide additional wireless coverage or capacity; or
 - c. The wireless facility technology selected by the applicant for use at the project;
2. Require an applicant to provide proprietary, confidential, or other business information to justify the need for the project, including propagation maps and telecommunications traffic studies, or information reviewed by a federal agency as part of the approval process for the same structure and wireless facility, provided that a locality may require an applicant to provide a copy of any approval granted by a federal agency, including conditions imposed by that agency;
 3. Require the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of an application. A locality may adopt reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities;
 4. Impose surety requirements, including bonds, escrow deposits, letters of credit, or any other types of financial surety, to ensure that abandoned or unused wireless facilities can be removed, unless the locality imposes similar requirements on other permits for other types of similar commercial development. Any such instrument shall not exceed a reasonable estimate of the direct cost of the removal of the wireless facilities;
 5. Discriminate or create a preference on the basis of the ownership, including ownership by the locality, of any property, structure, base station, or wireless support structure, when promulgating rules or procedures for siting wireless facilities or for evaluating applications;
 6. Impose any unreasonable requirements or obligations regarding the presentation or appearance of a project, including unreasonable requirements relating to (i) the kinds of materials used or (ii) the arranging, screening, or landscaping of wireless facilities or wireless structures;
 7. Impose any requirement that an applicant purchase, subscribe to, use, or employ facilities, networks, or services owned, provided, or operated by a locality, in whole or in part, or by any entity in which a locality has a competitive, economic, financial, governance, or other interest;
 8. Condition or require the approval of an application solely on the basis of the applicant's agreement to allow any wireless facilities provided or operated, in whole or in part, by a locality or by any other entity, to be placed at or co-located with the applicant's project;
 9. Impose a setback or fall zone requirement for a project that is larger than a setback or fall zone area that is imposed on other types of similar structures of a similar size, including utility poles;
 10. Limit the duration of the approval of an application, except a locality may require that construction of the approved project shall commence within two years of final approval and be diligently pursued to completion; or
 11. Require an applicant to perform services unrelated to the project described in the application, including restoration work on any surface not disturbed by the applicant's project.
- B. Nothing in this article shall prohibit a locality from disapproving an application submitted under subsection A of § [15.2-2316.4:1](#) or for any zoning approval required for a standard process project:

1. On the basis of the fact that the proposed height of any wireless support structure, wireless facility, or wireless support structure with attached wireless facilities exceeds 50 feet above ground level, provided that the locality follows a local ordinance or regulation that does not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services; or

2. That proposes to locate a new structure, or to co-locate a wireless facility, in an area where all cable and public utility facilities are required to be placed underground by a date certain or encouraged to be undergrounded as part of a transportation improvement project or rezoning proceeding as set forth in objectives contained in a comprehensive plan, if:

a. The undergrounding requirement or comprehensive plan objective existed at least three months prior to the submission of the application;

b. The locality allows the co-location of wireless facilities on existing utility poles, government-owned structures with the government's consent, existing wireless support structures, or a building within that area;

c. The locality allows the replacement of existing utility poles and wireless support structures with poles or support structures of the same size or smaller within that area; and

d. The disapproval of the application does not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services.

The locality may also disapprove an application if the applicant has not given written notice to adjacent landowners at least 15 days before it applies to locate a new structure in the area.

C. Nothing in this article shall prohibit an applicant from voluntarily submitting, and the locality from accepting, any conditions that otherwise address potential visual or aesthetic effects resulting from the placement of a new structure or facility.

D. Nothing in this article shall prohibit a locality from disapproving an application submitted under a standard process project on the basis of the availability of existing wireless support structures within a reasonable distance that could be used for co-location at reasonable terms and conditions without imposing technical limitations on the applicant.

2018, cc. [835](#), [844](#); 2020, c. [344](#).

§ 15.2-2316.4:3. Additional provisions.

A. A locality shall not require zoning approval for (i) routine maintenance or (ii) the replacement of wireless facilities or wireless support structures within a six-foot perimeter with wireless facilities or wireless support structures that are substantially similar or the same size or smaller. However, a locality may require a permit to work within the right-of-way for the activities described in clause (i) or (ii), if applicable.

B. Nothing in this article shall prohibit a locality from limiting the number of new structures or the number of wireless facilities that can be installed in a specific location.

2018, cc. [835](#), [844](#).

§ 15.2-2316.5. Moratorium prohibited.

A locality shall not adopt a moratorium on considering zoning applications submitted by wireless services providers or wireless infrastructure providers.

2017, c. [835](#).

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Chapter 15.1. Wireless Communications Infrastructure.

§ 56-484.26. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

"Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Co-location" has a corresponding meaning.

"Department" means the Department of Transportation.

"Districtwide permit" means a permit granted by the Department to a wireless services provider or wireless infrastructure provider that allows the permittee to use the rights-of-way under the Department's jurisdiction to install or maintain small cell facilities on existing structures in one of the Commonwealth's nine construction districts. A districtwide permit allows the permittee to perform multiple occurrences of activities necessary to install or maintain small cell facilities on non-limited access right-of-way without obtaining a single use permit for each occurrence. The central office permit manager shall be responsible for the issuance of all districtwide permits. The Department may authorize districtwide permits covering multiple districts.

"Existing structure" means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality or the Department of an agreement with the owner of the structure to co-locate equipment on that structure. "Existing structure" includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles, flag poles, signs, and water towers.

"Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

"Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, ground-based enclosures, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

"Utility pole" means a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.

"Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

"Wireless facility" means equipment at a fixed location that enables wireless services between user equipment and a communications network, including (i) equipment associated with wireless services, such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

"Wireless infrastructure provider" means any person, including a person authorized to provide telecommunications service in the state, that builds or installs transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

"Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i); (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using wireless facilities.

"Wireless services provider" means a provider of wireless services.

"Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing structure or alternative structure designed to support or capable of supporting wireless facilities. "Wireless support structure" does not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

2017, c. 835.

§ 56-484.27. Access to the public rights-of-way by wireless services providers and wireless infrastructure providers; generally.

A. No locality or the Department shall impose on wireless services providers or wireless infrastructure providers any restrictions or requirements concerning the use of the public rights-of-way, including the permitting process, the zoning process, notice, time and location of excavations and repair work, enforcement of the statewide building code, and inspections, that are unfair, unreasonable, or discriminatory.

B. No locality or the Department shall require a wireless services provider or wireless infrastructure provider to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements. This shall not limit the ability of localities, their authorities or commissions that provide utility services, or the Department to enter into voluntary pole attachment, tower occupancy, conduit occupancy, or conduit construction agreements with wireless services providers or wireless infrastructure providers.

C. No locality or the Department shall adopt a moratorium on considering requests for access to the public rights-of-way from wireless services providers or wireless infrastructure providers.

2017, c. 835.

§ 56-484.28. Access to public rights-of-way operated and maintained by the Department for the installation and maintenance of small cell facilities on existing structures.

A. Upon application by a wireless services provider or wireless infrastructure provider, the Department shall issue a districtwide permit, consistent with applicable regulations that do not conflict with this chapter, granting access to public rights-of-way that it operates and maintains to install and maintain small cell facilities on existing structures in the rights-of-way. The application shall include a copy of the agreement under which the applicant has permission from the owner of the structure to the co-location of equipment on that structure. If the application is received on or after September 1, 2017, (i) the Department shall issue the districtwide permit within 30 days after receipt of the application and (ii) the districtwide permit shall be deemed granted if not issued within 30 days after receipt of the complete application. Within 10 days after receipt of an application and a valid electronic mail address for the applicant, the Department shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. A districtwide permit issued for the original installation shall allow the permittee to repair, replace, or perform routine maintenance operations to small cell facilities once installed.

B. The Department may require a separate single use permit to allow a wireless services provider or wireless infrastructure provider to install and maintain small cell facilities on an existing structure when such activity requires (i) working within the highway travel lane or requiring closure of a highway travel lane; (ii) disturbing the pavement, shoulder, roadway, or ditch line; (iii) placement on limited access rights-of-way; or (iv) any specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof. Upon application by a wireless services provider or wireless infrastructure provider, the Department may issue a single use permit granting access to install and maintain small cell facilities in such circumstances. If the application is received on or after September 1, 2017, (a) the Department shall approve or disapprove the application within 60 days after receipt of the application, which 60-day period may be extended by the Department in writing for a period not to exceed an additional 30 days and (b) the application shall be deemed approved if the Department fails to approve or disapprove the application within the initial 60 days and any extension thereof. Any disapproval of an application for a single use permit shall be in writing and accompanied by an explanation of the reasons for the disapproval.

C. The Department shall not impose any fee for the use of the right-of-way on a wireless services provider or wireless infrastructure provider to attach or co-locate small cell facilities on an existing structure in the right-of-way. However, the Department may prescribe and charge a reasonable fee not to exceed \$750 for processing an application for a districtwide permit or \$150 for processing an application for a single use permit.

D. The Department shall not impose any fee or require a permit for the installation, placement, maintenance, or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes. However, the Department may require a single use permit if such activities (i) involve working within the highway travel lane or require closure of a highway travel lane; (ii) disturb the pavement,

shoulder, roadway, or ditch line; (iii) include placement on limited access rights-of-way; or (iv) require any specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof, and either were not authorized in or will be conducted in a time, place, or manner that is inconsistent with terms of the existing permit for that facility or the structure upon which it is attached.

2017, c. 835.

§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities on existing structures.

A. Upon application by a wireless services provider or wireless infrastructure provider, a locality may issue a permit granting access to the public rights-of-way it operates and maintains to install and maintain small cell facilities on existing structures. Such a permit shall grant access to all rights-of-way in the locality for the purpose of installing small cell facilities on existing structures, provided that the wireless services provider or wireless infrastructure provider (i) has permission from the owner of the structure to co-locate equipment on that structure and (ii) provides notice of the agreement and co-location to the locality. The locality shall approve or disapprove any such requested permit within 60 days of receipt of the complete application. Within 10 days after receipt of an application and a valid electronic mail address for the applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. Any disapproval shall be in writing and accompanied by an explanation for the disapproval. The 60-day period may be extended by the locality in writing for a period not to exceed an additional 30 days. The permit request shall be deemed approved if the locality fails to act within the initial 60 days or an extended 30-day period. No such permit shall be required for providers of telecommunications services and nonpublic providers of cable television, electric, natural gas, water, and sanitary sewer services that, as of July 1, 2017, already have facilities lawfully occupying the public rights-of-way under the locality's jurisdiction.

B. Localities shall not impose any fee for the use of the rights-of-way, except for zoning, subdivision, site plan, and comprehensive plan fees of general application, on a wireless services provider or wireless infrastructure provider to attach or co-locate small cell facilities on an existing structure in the right-of-way. However, a locality may prescribe and charge a reasonable fee not to exceed \$250 for processing a permit application under subsection A.

C. Localities shall not impose any fee or require any application or permit for the installation, placement, maintenance, or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes. However, the locality may require a single use permit if such activities (i) involve working within the highway travel lane or require closure of a highway travel lane; (ii) disturb the pavement, shoulder, roadway, or ditch line; (iii) include placement on limited access rights-of-way; or (iv) require any specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof, and either were not authorized in or will be conducted in a time, place, or manner that is inconsistent with terms of the existing permit for that facility or the structure upon which it is attached.

2017, c. 835.

§ 56-484.30. Agreements for use of public right-of-way to construct new wireless support structures; relocation of wireless support structures.

Subject to any applicable requirements of Article VII, Section 9 of the Constitution of Virginia, public right-of-way permits or agreements for the construction of wireless support structures issued on or after July 1, 2017, shall be for an initial term of at least 10 years, with at least three options for renewal for terms of five years, subject to terms providing for earlier termination for cause or by mutual agreement. Nothing herein is intended to prohibit the Department or localities from requiring permittees to relocate wireless support structures when relocation is necessary due to a transportation project, the need to remove a hazard from the right-of-way when the Commissioner of Highways determines such removal is necessary to ensure the safety of the traveling public, or material change to the right-of-way, so long as other users of the right-of-way that are in similar conflict with the use of the right-of-way are required to relocate. Such relocation shall be completed as soon as reasonably possible within the time set forth in any written request by the Department or a locality for such relocation, as long as the Department or a locality provides the permittee with a minimum of 180 days' advance written notice to comply with such relocation, unless circumstances beyond the control of the Department or the locality require a shorter period of advance notice. The permittee shall bear only the proportional cost of the relocation that is caused by the transportation project and shall not bear any cost related to private benefit or where the permittee was on private right-of-way. If the locality or the Department bears any of the cost of the relocation, the permittee shall not be obligated to commence the relocation until it receives the funds for such relocation. The permittee shall have no liability for any delays caused by a failure to receive funds for the cost of such relocation, and the Department or a locality shall have no obligation to collect such funds. If relocation is deemed necessary, the Department or locality shall work cooperatively with the permittee to minimize any negative impact to the wireless signal caused by the relocation. There may be emergencies when relocation is required to commence in an expedited manner, and in such situations the permittee and the locality or Department shall work diligently to accomplish such emergency relocation.

2017, c. [835](#).

§ 56-484.31. Attachment of small cell facilities on government-owned structures.

A. If the Commonwealth or a locality agrees to permit a wireless services provider or a wireless infrastructure provider to attach small cell facilities to government-owned structures, both the government entity and the wireless services or wireless infrastructure provider shall negotiate in good faith to arrive at a mutually agreeable contract terms and conditions.

B. The rates, terms, and conditions for such agreement shall be just and reasonable, cost-based, nondiscriminatory, and competitively neutral, and shall comply with all applicable state and federal laws. However, rates for attachments to government-owned buildings may be based on fair market value.

C. For utility poles owned by a locality or the Commonwealth that support aerial cables used for video, communications, or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the government entity owning or controlling the utility pole for any make-ready work necessary to enable the utility pole to support the requested co-location shall include pole replacement if necessary.

D. For utility poles owned by a locality or the Commonwealth that do not support aerial cables used for video, communications, or electric service, the government entity owning or controlling

the utility pole shall provide a good faith estimate for any make-ready work necessary to enable the utility pole to support the requested co-location, including pole replacement, if necessary, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good faith estimate by the wireless services provider or a wireless infrastructure provider.

E. The government entity owning or controlling the utility pole shall not require more make-ready work than required to meet applicable codes or industry standards. Charges for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other wireless services providers, providers of telecommunications services, and nonpublic providers of cable television and electric services for similar work and shall not include consultants' fees or expenses.

F. The annual recurring rate to co-locate a small cell facility on a government-owned utility pole shall not exceed the actual, direct, and reasonable costs related to the wireless services provider's or wireless infrastructure provider's use of space on the utility pole. In any controversy concerning the appropriateness of the rate, the government entity owning or controlling the utility pole shall have the burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs incurred for use of space on the utility pole for such period.

G. This section shall not apply to utility poles, structures, or property of an electric utility owned or operated by a municipality or other political subdivision.

2017, c. 835.

§ 56-484.32. Wireless support structure public rights-of-way use fee.

A. Notwithstanding any other provisions of law, there is hereby established an annual wireless support structure public rights-of-way use fee to replace any and all fees of general application, except for permit processing, zoning, subdivision, site plan, and comprehensive plan fees of general application, otherwise chargeable to wireless services providers and wireless infrastructure providers in connection with a permit for occupation and use of the public rights-of-way under the jurisdiction of the Department for the construction of new wireless support structures.

B. The amount of the annual wireless support structure public rights-of-way use fee shall be:

1. \$1,000 for any wireless support structure at or below 50 feet in height;
2. \$3,000 for any wireless support structure above 50 feet and at or below 120 feet in height;
3. \$5,000 for any wireless support structure above 120 feet in height; and
4. \$1 per square foot for any other equipment, shelter, or associated facilities constructed on the ground.

The fee amount specified in this subsection shall be adjusted every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, rounded to the nearest whole dollar.

C. No later than June 30 of each year, the wireless services provider or wireless infrastructure provider shall remit directly to the Department any fees owed pursuant to this section. Such fees shall be deposited in the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530.

D. The Department may elect to continue enforcing any agreement, contract, license, easement, or permit allowing the use of the public rights-of-way by a wireless services provider or wireless infrastructure provider existing prior to July 1, 2018, through and until expiration of the current term of the agreement, contract, license, easement, or permit.

2018, cc. 837, 848.

ORDINANCE #17-19

AN ORDINANCE ADDING SECTION 21-624 SMALL CELL WIRELESS FACILITIES TO CHAPTER 21, ARTICLE IV; AMENDING SECTION 9-364 AND ADDING 9-366 TO CHAPTER 9 ARTICLE X OF THE CODE OF THE CITY OF WILLIAMSBURG (PCR #17-023)

WHEREAS, SB1282 adds Sections 15.2-2316.3 and 15.2-2316.4 to the Code of Virginia, which provides for certain administrative permit processes pertaining to the installation of small cell facilities on private and public property; and

WHEREAS, said provisions limit the ability of localities to prohibit the installation of such small cell facilities; and

WHEREAS, the Code of the City of Williamsburg currently does not provide for such administrative permit processes nor does it address small cell facilities in the current zoning ordinance; and

WHEREAS, the City Code must be amended to encompass these required changes.

NOW, THEREFORE BE IT ORDAINED that Section 21-624 is hereby added to Chapter 21, Article IV of the Code of the City of Williamsburg, as follows:

CHAPTER 21

ARTICLE IV – SUPPLEMENTAL DISTRICT REGULATIONS

Section 21-624. SMALL CELL FACILITIES

(a) Intent. These regulations are established to allow small cell facilities in all zoning districts subject to the conditions contained herein.

(b) Definitions. As used in this article, unless the context requires a different meaning:

"Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

"Base station" means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables, or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.

"Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Co-location" has a corresponding meaning.

"Existing structure" means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality of an agreement with the owner of the structure to co-locate equipment on that structure. "Existing structure" includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles, flag poles, signs, and water towers.

"Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

"Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

"Utility pole" means a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.

"Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

"Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless services, such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

"Wireless infrastructure provider" means any person that builds or installs transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

"Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i); (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using wireless facilities.

"Wireless services provider" means a provider of wireless services.

"Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing structure or alternative structure designed to support or capable of supporting wireless facilities. "Wireless support structure" does not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

(c) Permitted Use. Small cell facilities when co-located on an existing structure or utility pole on private property are permitted within all zoning districts of the City of Williamsburg with an administrative permit approved by the zoning administrator. Notwithstanding the above, small cell facilities proposed to be located within an AP or CP district must be approved by the architectural review board pursuant to Sections 21-854 and 21-855, in addition to obtaining the administrative permit as provided herein.

(d) Administrative permit. Small cell facilities shall obtain an administrative permit prior to installing such co-located small cell facilities on existing structures and utility poles located on private property.

1. The following information shall be provided for each proposed location as part of the permit application:

- A. The name, trade name, address and email address of the applicant;
- B. Name and address of the property on which the small cell facility is proposed to be located;
- C. A description of the small cell facility to be installed, including dimensions, as well as all ground equipment proposed;
- D. Evidence of approval of property owner for the installation of the small cell facility on the property;
- E. A minor site plan showing the proposed location of small cell facility on the property as required by section 21-779 of this chapter;
- F. All other necessary or required approvals for the installation of the small cell facility, including but not limited to, ARB approval, if required.
- G. Provide certification for each location that it does not interfere with other pre-existing communications facilities or with future communications facilities that have already been designed and planned.

2. An application fee of \$100 for up to five small cell facilities plus \$50 for each additional small cell facility applied for. No more than 35 locations for small cell facilities may be requested per application.

3. Within 10 days after receipt of an application, along with a valid email address for the applicant, the zoning administrator shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise the application shall be deemed complete.

4. The zoning administrator shall approve or disapprove the application within 60 days of receipt of the completed application, which shall be in writing. The 60 day period

may be extended, in writing, for a period not to exceed 30 days. If the zoning administrator fails to either approve or disapprove the application within the initial 60 days or an extended 30 day period, the application shall be deemed approved.

5. A proposed location for installation of a small cell facility may be disapproved for the following reasons:

A. A material potential interference with other pre-existing communications facilities or with future communications facilities that have already been designed and planned for a specific location or that have been reserved for future public safety communications facilities;

B. Public safety or other critical public service needs;

C. If the small cell facility is proposed to be installed within an AP and CP District and fails to obtain the necessary approvals of the ARB.

6. Nothing shall prohibit an applicant from voluntarily submitting, and the city from accepting any conditions that otherwise address potential visual or aesthetic effects resulting from placement of small cell facilities, provided such conditions comply with applicable law and are approved by the ARB, if required.

(e) Abandoned facilities. Wireless facilities along with any structures or equipment associated therewith, shall be removed from any property within 60 days upon cessation of use or abandonment.

(f) The installation, placement, maintenance, or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes shall be permitted in all zoning districts, and exempt from the administrative permit requirement and fees herein provided.

Secs. 21-625 - 21-700. Reserved.

Chapter 9, Article X, Section 9-366 is hereby added to the City Code:

Chapter 9. Licenses, Permits, and Business Regulations.

ARTICLE X. USE PERMITS FOR PUBLIC RIGHTS-OF-WAY AND PLACES

Sec. 9-364. - Right-of-way use permit processing fee.

Except as provided in Section 9-366, the applicant for a right-of-way use permit hereunder shall complete a permit application on a form provided by the city and shall pay to the city an application and processing fee in the amount of \$20.00 per permit issued for projects of not more than 400 linear feet and in the amount of \$40.00 per permit for projects greater than 400 linear feet. In lieu of paying fees for individual permits an applicant may at its election, pay to the city an annual permit processing fee of \$400.00 which will cover all permits issued hereunder to such applicant during the calendar year. Such annual permit fee shall be paid in one lump sum.

Sec. 9-366. Wireless facilities within city rights-of-way.

a. Definitions. As used in this article, unless the context requires a different meaning:

"Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

"Base station" means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables, or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.

"Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Co-location" has a corresponding meaning.

"Existing structure" means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality of an agreement with the owner of the structure to co-locate equipment on that structure. "Existing structure" includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles, flag poles, signs, and water towers.

"Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

"Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

"Utility pole" means a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.

"Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless services, such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services,

such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

"Wireless infrastructure provider" means any person that builds or installs transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

"Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i); (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using wireless facilities.

"Wireless services provider" means a provider of wireless services.

"Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing structure or alternative structure designed to support or capable of supporting wireless facilities. "Wireless support structure" does not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

b. Application. Wireless service providers installing small cell facilities co-located on existing structures shall utilize the application process as provided in Section 9-364, except that the permit processing fee for such application(s) shall not exceed \$250.00. Said application shall either be approved or disapproved within 60 days of the date the completed application is received. The 60 day period may be extended in writing for a period not to exceed 30 days. The applicant shall be notified within 10 days from the date the application is received if the application is incomplete and specify any missing information. Said application shall also contain notice of an agreement to co-locate on one or more existing structures in the rights-of-way.

c. Wireless service providers installing or maintaining micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes shall not be required to obtain a permit except as herein below provided. The wireless provider shall notify the city in the event that they propose to install or repair micro-wireless facilities within a public right-of-way at least twenty four hours prior to performing the work. A permit may be required by the city in the event that the work involves working within the highway travel lane or requires closure of a highway travel lane, disturbs the pavement, shoulder, roadway or ditch line, includes placement on a limited access right-of-way, or requires any specific precautions to ensure safety of the traveling public or the protection of public infrastructure or the operation thereof, and either were not authorized in or will be conducted in a time, place and manner that is inconsistent with terms of an existing permit for that facility or the structure upon which it is attached. In the event an application is required to obtain a permit herein, no application fee shall be required for such application.


d. Wireless facilities other than co-located small cell facilities or wireless facilities shall only be permitted within city rights-of-ways with the approval of city council as part of a franchise application for use of the public rights-of-ways, consistent with state law.

e. Wireless facilities permitted within city rights-of-ways which cease to be used or which are abandoned shall be removed from city rights-of-ways within 60 days upon cessation of use or abandonment.


Secs. 9-367-9-370. Reserved.

Except as otherwise herein amended, the city code shall remain unchanged.

Adopted: November 9, 2017



Donna Scott, City Council Clerk



Paul F. Freiling, Mayor

ORDINANCE #17-20

AN ORDINANCE TO AMEND DESIGN REVIEW GUIDELINES OF THE CITY OF WILLIAMSBURG TO REGULATE THE LOCATION, APPEARANCE AND SCREENING OF SMALL CELL WIRELESS FACILITIES (PCR #17-023)

These revisions to the Design Review Guidelines are intended to promote the health, safety, and general welfare of the public, and to carry out the purpose and intent of Chapter 21 of the Williamsburg Zoning Ordinance as stated in Sec. 21-1.

BE IT ORDAINED that Chapter V and Chapter VI of the Design Review Guidelines are hereby amended to include the following language:

CHAPTER V. ARCHITECTURAL REVIEW DISTRICT AP-1

SMALL CELL WIRELESS FACILITIES

1. Exterior location is not permitted. Any proposed facilities must be located on the interior of a building.

CHAPTER V. ARCHITECTURAL REVIEW DISTRICT AP-2

SMALL CELL WIRELESS FACILITIES

1. Facilities located on the interior of a building are permitted. Facilities not visible from the Colonial Williamsburg Historic Area CW or from a public right-of-way may be allowed if appearance and screening requirements are designed as outlined in the Design Review Guidelines. Co-location on utility poles may be permitted if appearance and screening requirements are designed as outlined in the *Design Review Guidelines*.
2. Facilities shall not be visible from the Colonial Williamsburg Historic Area CW or a public right-of-way. Facilities shall be painted the same color as the structure for facilities affixed to the exterior of a building. All surfaces must contain a matte finish. Co-location on utility poles on private property must be painted to match the utility pole color. No shiny or reflective surfaces shall be allowed.
3. Screening may be required for facilities. If required, screening shall match the existing building material. If there is no existing building, the facility must be screened with a wooden privacy fence not to exceed six-feet in height. Salt-treated wooden fences must be painted or stained with the finished side of the fence facing the street and/or adjacent properties.

CHAPTER V. ARCHITECTURAL REVIEW DISTRICT AP-3

SMALL CELL WIRELESS FACILITIES

1. Facilities located on the interior of a building are permitted. Facilities not visible from the Colonial Williamsburg Historic Area CW or from a public right-of-way may be allowed if appearance and screening requirements are designed as outlined in the *Design Review Guidelines*. Co-location on utility poles may be permitted if appearance and screening requirements are designed as outlined in the *Design Review Guidelines*.
2. Facilities shall not be visible from the Colonial Williamsburg Historic Area CW or a public right-of-way. Facilities shall be painted the same color as the structure for facilities affixed to the exterior of a building. All surfaces must contain a matte finish. Co-location on utility poles on private property must be painted to match the utility pole color. No shiny or reflective surfaces shall be allowed.
3. Screening may be required for facilities. If required, screening shall match the existing building material. If there is no existing building, the facility must be screened with a wooden privacy fence not to exceed six-feet in height. Salt-treated wooden fences must be painted or stained with the finished side of the fence facing the street and/or adjacent properties.

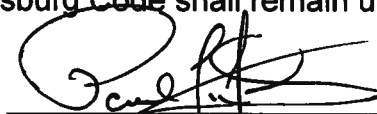
CHAPTER VI. CORRIDOR PROTECTION DISTRICT COMMERCIAL AND RESIDENTIAL BUILDINGS

SMALL CELL WIRELESS FACILITIES

1. Facilities may be located where they are not visible from a public right-of-way if appearance and screening requirements are designed as outlined in the *Design Review Guidelines*. Co-location on utility poles on private property may be permitted if appearance and screening requirements are designed as outlined in the *Design Review Guidelines*.
2. Facilities shall be painted the same color as the building for facilities affixed to the exterior of a building. All surfaces must contain a matte finish. Co-location on utility poles on private property must be painted to match the utility pole color. No shiny or reflective surfaces shall be allowed.
3. Screening may be required for facilities. If required, screening shall match the existing building material. If there is no existing building, the facility must be screened with a wooden privacy fence not to exceed six-feet in height. Salt-treated wooden fences must be painted or stained with the finished side of the fence facing the street and/or adjacent properties.

EXCEPT, as here amended, the Williamsburg Code shall remain unchanged.

Adopted: November 9, 2017



 Paul T. Freiling, Mayor

Attest: 
 Donna Scott, City Council Clerk

Sec. 10-3-195. - Purpose.

The regulations set forth in this article are to regulate wireless telecommunications facilities as defined in Section 10-3-24, Definitions. They are to provide opportunities to supply wireless telecommunications services in the city with minimal negative impact to the community while respecting both residential and commercial neighborhoods.

With the exception of telecommunications towers primarily erected for the use of the Harrisonburg-Rockingham Emergency Communications Center as regulated by this article, wireless telecommunications facilities considered public uses and temporary facilities needed for government-declared emergencies and disasters shall be permitted in all zoning districts at appropriate locations and heights necessary to adequately provide the service. No minimum setback requirements or maximum height regulations shall apply to such facilities, but reasonable efforts shall be made to be sensitive to the surrounding neighborhood and environment in which they are located.

Furthermore, the installation, placement, maintenance or replacement of equipment meeting the specifications to be considered micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes, and so long as permission is granted by the owners of the cables or lines on which the facilities are located, shall be exempt from the City's permitting requirements and fees.

(Ord. of 7-28-15(33); Ord. of 5-22-18(14))

Sec. 10-3-196. - Wireless telecommunications facilities within residential districts and the MX-U, Mixed Use Planned Community District.

The requirements within this section apply to all wireless telecommunications facilities, except facilities as specified in Section 10-3-195, as identified in all residential districts and the MX-U district.

(1) *Uses permitted by right.*

a. Small cell facilities.

- i. Other than associated equipment cabinets and other equipment that may be located on the ground, such facilities shall be collocated.
- ii. The height of such equipment shall not increase the height of the utilized support structure by more than five (5) feet.
- iii. All collocated equipment shall be camouflaged.
- iv. Equipment cabinets and related structures or equipment not located within central communications hubs shall be screened or camouflaged and if not collocated shall meet the requirements for accessory buildings per Section 10-3-114. Central communications hubs shall be considered principal buildings and shall meet the minimum setback regulations and maximum height restrictions of the district in which they are located.
- v. Unless otherwise required, artificial lighting is prohibited.
- vi. No advertising of any type may be placed on the facility.

(2) Uses permitted only by special use permit.

a. Concealed wireless telecommunications facilities.

- i. The height of such facilities may exceed the maximum height regulation of the district in which it is located but shall be limited to the height specified in the special use permit application or as may be more strictly conditioned and approved by city council.
- ii. Unless collocated, minimum setback regulations shall be controlled by the district in which it is

- located or as may be more strictly conditioned and approved by city council.
- iii. Equipment cabinets and related structures or equipment shall be screened or camouflaged and if not collocated shall meet the requirements for accessory buildings per section 10-3-114 or as may be more strictly conditioned and approved by city council.
 - iv. Unless otherwise required, or as part of the intent of the facility, artificial lighting is prohibited.
 - v. No advertising of any type may be placed on the facility.
- b. Industrial microcells, distributed antenna systems (DAS), macrocells, and similar facilities
- i. Other than associated equipment cabinets and other equipment that may be located on the ground, such facilities shall be collocated.
 - ii. The height of such equipment shall not increase the height of the utilized support structure by more than five (5) feet.
 - iii. All collocated equipment shall be camouflaged.
 - iv. Equipment cabinets and related structures or equipment not located within central communications hubs shall be screened or camouflaged and if not collocated shall meet the requirements for accessory buildings per section 10-3-114 or as may be more strictly conditioned and approved by city council. Central communications hubs shall be considered principal buildings and shall meet the minimum setback regulations and maximum height restrictions of the district in which they are located or as may be more strictly conditioned and approved by city council.
 - v. Unless otherwise required, artificial lighting is prohibited.
 - vi. No advertising of any type may be placed on the facility.
- c. Telecommunications towers primarily erected for the use of the Harrisonburg-Rockingham Emergency Communications Center, which may include rental of space for private wireless telecommunications providers.
- i. The facility shall be no taller than two hundred (200) feet in height.
 - ii. Minimum setback regulations shall be controlled by the district in which it is located or as may be more strictly conditioned and approved by city council.
 - iii. Equipment cabinets and related structures or equipment shall be screened or camouflaged and shall meet the requirements for accessory buildings per section 10-3-114 or as may be more strictly conditioned and approved by city council.
 - iv. Unless otherwise required, artificial lighting is prohibited.
 - v. No advertising of any type may be placed on the facility.

(Ord. of 7-28-15(33)); Ord. of 2-23-16(1); Ord. of 5-22-18(15))

Sec. 10-3-197. - Wireless telecommunications facilities within the B-1, Central Business District and the B-2, General Business District.

The requirements within this section apply to all wireless telecommunications facilities, except facilities as specified in section 10-3-195, as identified in the B-1 and B-2 districts.

(1) *Uses permitted by right.*

- a. Concealed wireless telecommunications facilities.
 - i. The height of such facilities shall be controlled by the maximum height regulation of the district in

- which they are located.
- ii. Unless collocated, minimum setback regulations shall be controlled by the district in which they are located.
 - iii. Equipment cabinets and related structures or equipment shall be screened or camouflaged and if not collocated shall meet the requirements for accessory buildings per Section 10-3-114.
 - iv. Unless otherwise required, or as part of the intent of facilities, artificial lighting is prohibited.
 - v. No advertising of any type may be placed on the facility.
- b. Small cell facilities, industrial microcells, distributed antenna systems (DAS), macrocells, and similar facilities.
- i. Other than associated equipment cabinets and other structures or equipment that may be located on the ground, such facilities shall be collocated.
 - ii. The height of such facilities shall not increase the height of the utilized support structure by more than five (5) feet.
 - iii. All collocated equipment shall be camouflaged.
 - iv. Equipment cabinets and related structures or equipment not located within central communications hubs shall be screened or camouflaged and if not collocated shall meet the requirements for accessory buildings per Section 10-3-114. Central communications hubs shall be considered principal buildings and shall meet the minimum setback regulations and maximum height restrictions of the district in which they are located or as may be more strictly conditioned and approved by city council.
 - v. Unless otherwise required, artificial lighting is prohibited.
 - vi. No advertising of any type may be placed on the facility.
- (2) *Uses permitted only by special use permit.*
- a. Wireless telecommunications facilities not permitted by, or not meeting the requirements within, section 10-3-197(1), including minimum setback regulations and maximum height restrictions. (Wireless telecommunications facilities exceeding seventy-five (75) feet in height do not need a separate special use permit as allowed by section 10-3-85 (5) of the B-1 district or section 10-3-91(12) of the B-2 district.)
 - i. All regulating details of the facility (i.e. type, height, setbacks, etc.) shall be as specified in the special use permit application or as may be more strictly conditioned and approved by city council.
 - ii. If installing a telecommunications tower, it shall be designed for more than one (1) accommodation. (This rule does not apply to telecommunications towers primarily erected for the use of the Harrisonburg-Rockingham Emergency Communications Center.)
 - iii. Support structures shall be designed to collapse upon themselves or to collapse within the smallest possible area should structural failure occur. The applicant shall submit written certification and supporting documentation from a structural engineer to this effect.

(Ord. of 7-28-15(33)); Ord. of 2-23-16(2); Ord. of 5-22-18(16); Ord. of 5-22-18(16))

Sec. 10-3-198. - Wireless telecommunications facilities within the M-1, General Industrial District.

The requirements within this section apply to all wireless telecommunications facilities, except facilities as specified in section 10-3-195, as identified in the M-1 district.

- (1) Uses permitted by right.

- a. Any wireless telecommunications facility.
 - i. Facilities shall not exceed one hundred twenty-five (125) feet in height.
 - ii. Support structures shall meet the minimum setback regulations of the M-1 district.
 - iii. Telecommunications towers shall be designed for more than one (1) accommodation. (This rule does not apply to telecommunications towers primarily erected for the use of the Harrisonburg-Rockingham Emergency Communications Center.)
 - iv. Support structures shall be designed to collapse upon themselves or to collapse within the smallest possible area should structural failure occur. The applicant shall submit written certification and supporting documentation from a structural engineer to this effect.
 - v. Equipment cabinets and related structures or equipment not located within central communications hubs shall be screened or camouflaged and shall meet the requirements for accessory buildings per section 10-3-114. Central communications hubs shall meet the minimum setback regulations and maximum height restrictions of the M-1 district.
 - vi. Unless otherwise required, or as part of the intent of a concealed wireless telecommunications facility, artificial lighting is prohibited.
 - vii. No advertising of any type may be placed on the facility.
- (2) Uses permitted only by special use permit.
 - a. Wireless telecommunications facilities not permitted by, or not meeting the requirements within, section 10-3-198(1), including minimum setback regulations and maximum height restrictions. (Wireless telecommunications facilities exceeding seventy-five (75) feet in height do not need a separate special use permit as allowed by section 10-3-97(11) of the M-1 district.)
 - i. All regulating details of the facility (i.e. type, height, setbacks, etc.) shall be as specified in the special use permit application or as may be more strictly conditioned and approved by city council.
 - ii. Support structures shall be designed to collapse upon themselves or to collapse within the smallest possible area should structural failure occur. The applicant shall submit written certification and supporting documentation from a structural engineer to this effect.

(Ord. of 7-28-15(33).)

Sec. 10-3-199. - Submittal requirements and other application requirements.

- (1) Applications for wireless telecommunications facilities, including small cell facilities, allowed by right shall be accompanied with one hundred dollars (\$100.00) for each facility up to the first five (5) facilities, and fifty dollars (\$50.00) for each additional facility on the same application. Applicants may request up to thirty-five (35) facilities on one application. The following information and, if necessary, the information as required by Section 10-3-10 of this chapter shall be submitted. Note that building permits and sub-trade permits may be required.
 - a. Name, address, telephone numbers, and email addresses of the property owner, the applicant, and the ultimate owner of the facility.
 - b. Documentation from the property owner consenting to both the installation of the facility and the terms of Sections 10-3-200, 10-3-201, and 10-3-202.
 - c. If erecting a new telecommunications tower or concealed wireless telecommunications facility, a physical survey of the property must be submitted.
 - d. Location map and elevation drawings of the proposed facility prepared and certified by a professional

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engineer indicating:

- i. Location, type, and height of all structures associated with the facility,
 - ii. Facility's planned capacity (i.e. collocation potential/number of accommodations)
 - iii. On-site and abutting land uses,
 - iv. Means of access,
 - v. Support structure's setbacks from property lines, and
 - vi. All applicable American National Standards Institute (ANSI) technical and structural codes.
- e. Screening plan (i.e. fence type and/or vegetation to be planted). See definition of "screening" within section 10-3-24.
- f. Photo simulations of the proposed facility.
- g. If camouflaging, an explanation of how the facility will be camouflaged.
- h. Evidence that the applicant has contacted the Emergency Communications Center (ECC) and verified the installation of the proposed equipment will not interfere with the ECC's operations.
- (2) Applicants desiring to install wireless telecommunications facilities allowed only by special use permit shall reference the requirements for special use permits per article V of this title. Applicants shall submit as part of their special use permit application all information as described in 10-3-199(1) as well as the following:
- a. A listing of all property owners within one-quarter ($\frac{1}{4}$) mile from the subject property. These property owners shall be notified along with the property owners notified as required by section 15.2-2204 of the Code of Virginia. (Staff may assist in supplying this list.)
 - b. A description of how the proposed facility fits into the applicant's telecommunications network.
 - c. An explanation as to why the particularly proposed wireless telecommunications facility is needed to meet the desired results as opposed to installing a facility allowed by right that may provide the same results.
 - d. An explanation or evidence demonstrating that no existing support structure or building can accommodate the applicant's proposed facility or evidence that the applicant has made diligent good faith efforts to negotiate collocation on an existing support structure or building in the area needing service or improved service.
 - e. If requesting to install a new telecommunications tower, concealed wireless telecommunications facility, or to increase the allowable height of a facility above that permitted by right, a balloon test shall be performed. The special use permit application shall not be considered complete until the test is performed and staff has visually witnessed the test. The applicant shall contact the Department of Planning and Community Development to schedule a date and time when the balloon test will be conducted. If inclement weather prevents the scheduled test, a new schedule shall be established. The test shall consist of raising at least one (1) balloon from the site to a height equal to the proposed facility. Proposed collocated facilities which increase the height of existing support structures shall not be required to perform a balloon test.

(Ord. of 7-28-15(33); Ord. of 5-22-18(17))

Sec. 10-3-200. - Reporting of wireless telecommunications facilities.

For each wireless telecommunications facility, except wireless telecommunications facilities deemed to be an eligible facility in existence prior to the original enactment of this article, the property owner on which a facility is located shall be responsible for ensuring a report is submitted to the zoning administrator once a year, no later than June 30, stating, at minimum, the following:

- ⁷⁴ (1) Name, address, telephone numbers, and email addresses of the property owner and, if applicable, the owner of support structure.
- (2) The support structure's (including alternative support structures) location (latitude and longitude), street address, height; and structure type.
- (3) The current user status of the facility including the name and contact information of each active tenant/wireless service provider leasing space from the site. If vacant/collocation space is available, the report shall indicate such information and explain the facility's available accommodations.
- (4) An explanation or listing of each tenant's/wireless service provider's equipment identifying at least the type and number of all antennae, equipment cabinets, and any other supporting equipment. The location of such equipment shall also be described or illustrated.

(Ord. of 7-28-15(33); Ord. of 5-22-18(18))

Sec. 10-3-201. - Maintenance of wireless telecommunication facility sites; enforcement.

- (1) All required screening, landscaping, camouflaging, concealment mechanisms, and other features shall be maintained, repaired, or replaced.
- (2) Enforcement and penalties due to violations of any section of this article shall be as otherwise stated in this title.

(Ord. of 7-28-15(33).)

Sec. 10-3-202. - Removal of defective or abandoned wireless telecommunications facilities.

- (1) Any component of a wireless telecommunications facility that is found to be defective or unsafe shall be repaired immediately by the owner or operator to comply with federal, state, and local safety standards or removed within thirty (30) days upon receipt of written notice.
- (2) A wireless telecommunications facility that is not operated for a continuous period of twenty-four (24) months shall be considered abandoned. The owner of the property on which the facility is located shall be notified in writing and given ninety (90) days from the receipt of the written notice to remove the facility and all associated components and equipment and return the site to its condition prior to construction of the facility or to a seeded or sodded condition.

Upon receipt of the notice, the first thirty (30) days of the ninety (90) day rectification period shall be the amount of time the property owner has to demonstrate the facility has not been abandoned. If the property owner fails to prove the facility is actively operating, the owner shall have the remaining sixty (60) days to remove the facility. If the facility is not removed within the allotted time, the city may cause the facility to be removed at the property owner's expense.

(Ord. of 7-28-15(33).)

Sec. 10-3-203. - Utilization of Section 6409 Wireless Facilities Deployment of the Spectrum Act being part of the Middle Class Tax Relief and Job Creation Act of 2012.

The permissions granted by the Spectrum Act Section 6409 Wireless Facilities Deployment (Section 6409) shall be applicable only to wireless telecommunications facilities deemed to be an eligible facility in existence prior to the original enactment of this article. Modifications shall not substantially change eligible facilities.

To make modifications to a wireless telecommunications facility per the permissions of Section 6409, the property owner shall submit the following information:

- (1) Name, address, telephone numbers, and email addresses of the property owner, the applicant, and the owner of the facility proposed for modification.
- (2) Evidence that the wireless telecommunications facility is an eligible facility that existed prior to the original enactment of this article.
- (3) Location map and elevation drawings of the existing facility and the proposed modifications prepared and certified by a professional engineer. The information shall include all existing equipment from all providers and, if applicable, all equipment owned and operated by railroad companies. (The information provided for the existing eligible facility may be used as the baseline of facts regarding the site's characteristics if it is the facility's first utilization of Section 6409 and shall be used to prevent abuse of the legislation.)
- (4) Submit a letter describing the request. The letter, and additional application submissions as required above, must clearly demonstrate the proposed modification would not substantially change the existing eligible facility. Substantial changes are made if any one of the following occurs:
 - (a) For towers outside of public rights-of-way, it increases the height by more than twenty (20) feet or ten (10) percent, whichever is greater; for those towers in the rights-of-way and for all wireless telecommunication facilities, it increases the height of the facility by more than ten (10) percent or ten (10) feet, whichever is greater;
 - (b) For towers outside of public rights-of-way, it protrudes from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for those towers in the rights-of-way and for all wireless telecommunications facilities, it protrudes from the edge of the support structure more than six (6) feet;
 - (c) It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets;
 - (d) It entails any excavation or deployment outside the current site of the wireless telecommunications facility;
 - (e) It would defeat the existing concealment elements of the wireless telecommunications facility; or
 - (f) It does not comply with conditions associated with the prior approval of the tower or base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding "substantial change" thresholds.

(Ord. of 7-28-15(33).)

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Sec. 10-3-24. - Definitions.

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

Accessory: As applied to use or structure, means customarily subordinate or incidental to, and on the premises of such use or structure. The words "on the premises of" mean on the same lot or on the contiguous lot in the same ownership.

Accessory living unit: A portion of a detached single-family dwelling unit to include such incidental and subordinate facilities necessary to accommodate either relatives, nontenant employees, or no more than two (2) persons.

Acreege: A parcel of land, regardless of area, described by metes and bounds and not a lot of any recorded subdivision plat.

Addition: Any construction which increases the area of cubic content of a building or structure. The construction of walls which serve to enclose completely any portion of an existing structure, such as a porch, shall be deemed an addition within the meaning of the chapter.

Administrator: The zoning administrator of the City of Harrisonburg as designated by resolution of the city council.

Adult bookstore/videostore: An establishment having as a substantial or significant portion of its stock-in-trade books, magazines and other periodicals and/or videotapes, computer disks, CD-ROMs, DVD-ROMs, virtual reality devices or any other similar media that are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities", or "specified anatomical areas" or are intended for the sexual stimulation or titillation of patrons.

Adult business: Adult bookstore/videostore, adult mini-motion picture theater, adult motion picture theater, adult store, a business providing adult entertainment or any other establishment, including without limitation any adult modeling studio, adult cocktail lounge or adult nightclub, that regularly emphasizes an interest in matter relating to specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons.

Adult day care center: A building or structure where care and supervision are provided on a regular schedule for disabled adult persons and/or senior citizens for less than twenty-four (24) hours per day.

Adult entertainment: Dancing, modeling or other live performances if the performers' performance is characterized by an emphasis on specified anatomical areas or specified sexual activities, or is intended for the sexual stimulation or titillation of patrons. Also includes the showing of films, motion pictures, video cassettes, slides, photographic reproductions, virtual reality devices, internet sites or files transmitted over the internet, or other medial that are characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons.

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Adult merchandise: Magazines, books, other periodicals, videotapes, movies, photographs, slides, CD-ROMs, DVD-ROMs, virtual reality devices or other similar media that are characterized by their emphasis on matter depicting, describing or relating to specific sexual activities or specified anatomical areas or are intended for the sexual stimulation or titillation of patrons. Also includes toys, novelties, instruments, devices or paraphernalia either designated as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs and lingerie or leather goods marketed or presented in a context to suggest their use for sadomasochistic practices.

Adult mini-motion picture theater: An enclosed building with a capacity of less than fifty (50) persons used for presenting material for observation by patrons distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".

Adult motion picture theater: An enclosed building with a capacity of fifty (50) or more persons used for presenting material for observation by patrons distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".

Adult store: An establishment having adult merchandise as a substantial or significant portion of its stock-in-trade.

Alley: Any passage or way open to public travel, affording generally a secondary means of vehicular access to abutting lots and not intended for general traffic circulation.

Alteration: Any material change in the floor area, use, adaptability or external appearance of an existing structure.

Alternative support structure: With regard to wireless telecommunications, any structure currently used primarily for something other than supporting a wireless telecommunications facility.

Antenna: A whip, panel, disc, rod, dish, or similar device used for transmission or reception of telecommunications.

Apartment building: See "Dwelling, multiple."

Assisted living facility: Residential facilities with ninety (90) percent occupancy by persons sixty (60) years or more of age that provide rooms, meals, personal care and supervision of self-administered medication.

Base station: A wireless telecommunications facility; such facility may consist of radio transceivers; antennas; coaxial, fiber optic, or other cables; a regular and back-up power supply; and other associated electronics and technology. Such facilities are sometimes referred to as base transceiver stations. Base stations may also be structures that currently support or house any of the technology listed in this definition or other associated equipment that constitutes part of a base station in any technological configuration, including distributed antenna systems and industrial microcells.

Basement: A story at least one-half (½) its height below grade. A basement is not counted as a story for the purpose of height regulations.

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Bed and breakfast facilities: See "short-term rental."

Board: The board of zoning appeals.

Boardinghouse or rooming house: A single detached dwelling, where the property owner or property lessee/operator resides on the premises, and where for compensation and by prearrangement, for definite periods, lodging and/or meals are provided for three (3) persons to a maximum of ten (10) persons. The resident property owner or resident property lessee, who operates the boardinghouse or rooming house, shall be responsible for making an application for any required special use permit. A boardinghouse or rooming house must obtain an annual business license as required by the Harrisonburg City Code and the boardinghouse or rooming house shall also be in compliance with the Virginia Maintenance Code (VMC). The responsible party shall schedule a yearly inspection that shall be conducted between October 1st and October 31st to ensure compliance with the current VMC and other applicable regulations. Should the property not comply with the VMC or other regulations, a specified time shall be given to make corrections. If the corrections are not made within the allotted time, or if the responsible party fails to have the property inspected by October 31st, the special use permit shall automatically expire and become null and void. Operation of a boardinghouse or rooming house shall not be deemed a home occupation.

Building: Any structure intended for shelter, housing or enclosure of persons, animals, chattels or property of any kind.

Building area: The portion of a lot remaining after required yards have been provided.

Building, community: A building for social, educational, cultural, and recreational activities for a neighborhood or community, provided any such use is not operated primarily for commercial gain.

Building, height of: The vertical distance measured from the floor closest to curb grade to the level of the highest point of the roof surface, if the roof is flat or inclines not more than one (1) inch vertical to one (1) foot horizontal, or the mean level between the eaves and the highest point of the roof if the roof is of any other type.

Building, principal: A building which contains the principal use of the lot on which it is situated. In any residential district any dwelling shall be deemed to be a main building.

Building, public: A building owned (or leased) by a governmental agency and used for governmental functions.

Building setback line: A line establishing the minimum allowable distance between the nearest portion of any building, excluding any uncovered porches, steps, patios, fences, etc., and similar fixtures.

Bus shelter: A structure located at a designated transit stop designed primarily for the shelter of transit bus passengers.

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Business garden: A home occupation, where areas of a parcel are managed and maintained by individuals residing on the same parcel or adjoining parcels under the same ownership, used to cultivate fruits, vegetables, herbs, or flowers for sale purposes. This definition does not include cultivation only for personal consumption or use. (See article BB, business gardens for operating regulations.)

Caliper: The diameter of a tree trunk measured in inches. At planting, the caliper shall be measured at six (6) inches above the ground for trees expected to be four (4) inch caliper size and below at maturity, and twelve (12) inches above the ground for trees expected to be larger than four (4) inches in caliper at maturity.

Camouflage: With regard to wireless telecommunications facilities, a way of painting, mounting, or locating related equipment so it is not readily apparent to the casual observer. Camouflaged wireless telecommunications facilities are often collocated, utilize flush mounted antennas and related equipment, are painted to match the color of the support structure, or hidden from view by things like parapet walls. Camouflaging equipment is not equivalent to concealing equipment.

Child day care center: A regularly operating service arrangement for two (2) or more children under the age of thirteen (13), where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision and well-being of a child for less than a twenty-four-hour period, in a facility that is not the residence of the provider or of any of the children in care. A nursery school shall be considered to be a child day care center.

Church: Church as used in the adult business sections of this Code is defined as an organization consisting of a minimum of twenty-five (25) persons, who have made a public confession of religion and who are associated together by a covenant of church fellowship for the purpose of celebrating and uniting in their faith and watching over the spiritual welfare of each other and which owns its church building in fee simple or otherwise leases an existing church building.

Clinic: An establishment where patients, who are not lodged overnight, are admitted for examination and treatment by one (1) or more physicians practicing medicine, dentistry or psychiatric treatment.

Club: A building or portion thereof or premises owned or operated by a corporation, association, person or persons for a social, educational or recreational purpose, but not primarily for profit or to render a service which is customarily carried on as a business.

Collocate: With regard to wireless telecommunications facilities, the act of locating wireless telecommunications facilities on any existing support structure.

Commission: The city planning commission.

Concealed wireless telecommunications facility: Any wireless telecommunications facility that is integrated as an architectural feature of an existing structure or any new support structure designed so that the purpose of the facility or support structure for providing wireless telecommunications services is not

readily⁸⁰ apparent to a casual observer. Examples include but are not limited to: bell towers, clock towers, faux trees, flag poles, minarets, monuments, parapets, religious symbols, smoke stacks, steeples, or structures intended as art.

Condominiums: Real property and any incidentals thereto or interests therein which have been or are to be lawfully established as such under the Virginia Condominium Act.

Consumer microcell: With regard to wireless telecommunications, a signal booster that is marketed and sold to the general public for use without modification. These types of devices do not require professional installation and are used for personal use by individuals to improve coverage in a home, car, boat, recreational vehicle and other related areas.

Convenience store: A small commercial shopping facility designed as a component of the neighborhood or district in which it is located.

Curb grade: The elevation of the established curb in front of the building measured at the midpoint of such frontage. Where no curb exists, the city engineer shall establish such curb grade for the existing or proposed street in accordance with the existing street grading plans of the city.

Deciduous shrub: A low woody plant usually having multiple stems or branches that loses its foliage at the end of the growing season.

Deciduous tree, large: A tree that loses its foliage at the end of the growing season, which at maturity exceeds four (4) inches in caliper. When planted, these trees shall be at least two (2) inches in caliper and be a minimum of ten (10) feet in height. Multi-stem trees shall also be a minimum of ten (10) feet in height.

Deciduous tree, small/ornamental: A tree that loses its foliage at the end of the growing season, which at maturity is four (4) inches or less in caliper. When planted, these trees shall be at least one (1) inch in caliper and be a minimum of six (6) feet in height. Multi-stem trees shall also be a minimum of six (6) feet in height.

Density: The total number of dwelling units divided by the area in acres of all land within a development dedicated to residential uses, including residential lots and buildings and the streets, parking areas, landscape areas, parks and open space serving the residential uses.

Distributed antenna systems (DAS): A wireless telecommunications facility; a system or network of spatially separated antennas connected to a common transport medium (i.e. coaxial, fiber optic, or other cable) to a signal source, such as a base station or an external antenna capable of connecting to a base station wirelessly. Such systems/networks commonly have three primary components: remote communications nodes, each having at least one antenna for transmission and/or reception; a high capacity signal transport medium, which is either underground or aerial; and a central communications hub to propagate and/or convert, process or control signals transmitted and received through the nodes. DAS may also include additional equipment such as amplifiers, remote radio heads, signal converters, power supplies, and other related equipment.

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District: Any section of the City of Harrisonburg for which the regulations governing the use of the buildings and premises, the heights of building, the size of yards and the intensity of the use are uniform.

Drive-through facility (same as "drive-in"): Any portion of a building or structure from which customers can receive a service or obtain a product while in their motor vehicle. Regulated as a subordinate use to a principle use, regardless of the nature of the principle use.

Driveway: That space specifically designated and reserved on the site for the movement of vehicles from one site to another or from a site to a public street.

Dwelling: A building or portion thereof which is designed or used exclusively for residential purposes.

Dwelling, single-family: A building occupied by or designed for occupancy by one (1) family or occupancy as described by the specific zoning district.

Dwelling, duplex: Two (2) connected dwelling units where each is designed for one (1) family or occupancy as described by the specific zoning district.

Dwelling, multiple-family: A building comprised of at least three (3) dwellings, not separated by a property line, where each unit is designed for one (1) family or occupancy as described by the specific zoning district.

Dwelling, quadraplex: A type of attached multiple dwelling containing four (4) attached dwelling units in one (1) building with each unit having a minimum of two (2) outside walls and sharing one (1) or more walls with an adjoining unit or units. These dwellings would be designed and constructed to permit individual and separate ownership of lots and dwellings or combinations of dwelling units.

Dwelling, townhouse: Unless otherwise specified within a zoning district, a townhouse is one (1) of a series of at least three (3) attached dwelling units, not to exceed eight (8), for rent or sale, separated from one another by common walls and property lines without openings from basement floor to roof and having varied but compatible elevations, and with not more than two (2) abutting dwelling units having the same front yard setback. The lots, utilities and other improvements for each "townhouse" would be designed to permit individual and separate ownership of such lots and dwelling units.

Dwelling, unit: One (1) or more rooms located within a building and forming a singular unit with facilities which are used or intended to be used for living, sleeping and dining purposes. A dwelling unit shall have customary kitchen facilities. An efficiency apartment unit is defined as a dwelling unit. Dwelling units which will be occupied for predetermined periods of time of more than one (1) month in succession shall be termed nontransient dwelling units.

Dwelling unit(s), CBD: One (1) or more dwelling units of nontransient occupancy within the Central Business District (CBD) that are designed to promote the most desirable uses and rehabilitation of the district.

⁸²
Equipment cabinet: With regard to wireless telecommunications, a cabinet, shed, shelter, or other structure, where equipment is housed to support wireless telecommunications services.

Evergreen shrub: A low woody plant usually having multiple stems or branches and keeping its foliage all year.

Evergreen tree: A tree that does not shed its foliage annually. When planted, these trees shall be at least six (6) feet in height.

Facade, front: The principal frontage of a building which, by either aesthetic attention, main entry and egress, or the longitudinal dimension of the structure, becomes the primary frontage.

Facade, rear: That portion of a building which is, by either service area, secondary entry and egress or the facade directly opposite the front facade of the structure, the reverse frontage of the building.

Family: One (1) or more persons occupying a dwelling and living as a single housekeeping unit, all of whom are related to each other by birth, adoption or marriage as distinguished from a group occupying a boardinghouse, roominghouse or hotel as herein defined.

Family day home, major: A child day care program offered in the residence of the provider or the home of any of the children in care for five (5) through twelve (12) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation.

Family day home, minor: A child day care program offered in the residence of the provider or the home of any of the children in care for one (1) through four (4) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation. A minor family day home shall be considered a home occupation and therefore requires that a home occupation permit be granted by the zoning administrator; however, no conditions more restrictive than those imposed on residences occupied by a single family shall be imposed on the day home.

Financial institution and offices: Any building wherein the primary occupation is concerned with such state regulated businesses as banking, savings and loans, loan companies and investment/securities companies.

Floor area: The gross horizontal areas of all floors, including basements, cellars and attics (but not such areas within a building which are used for parking), measured from the exterior faces of the exterior walls of a building.

Floorplate: The horizontal land area occupied by a building at finished grade including projections and overhangs.

Fraternity or sorority house: A single detached dwelling being occupied by persons who are members of a fraternity, sorority, association or group chartered for social, educational, religious or service purposes.

⁸³
Fraternity or sorority house in R-3 zones: A building or any portion thereof being lived in for dwelling purposes by a fraternity, sorority, association or group of more than three (3) persons, but not more than ten (10) persons, who are associated or formally organized for social, educational, religious or recreational purposes, and subject to the same permit and license requires as needed for operating a boarding or roominghouse. (See sections 11-4-3 and 12-1-10(24) of this Code.)

Funeral home: A building used for the preparation of corpses for burial or for cremation which may also be used for funeral services.

Garage, storage, or parking: A building or portion thereof designed or used exclusively for storage or motor-driven vehicles.

Group housing project: A group housing project shall consist of two (2) or more buildings located on a site where the building arrangement is such that the property cannot be subdivided into conventional streets and lots that meet the requirements of this chapter and chapter 2 of this title.

Historic area: An area or existing site containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community of such significance as to warrant conservation and preservation.

Home occupation: Any occupation or activity which is clearly incidental to the use of the premises for dwelling purposes and which is carried on wholly within a main building or accessory building, other than business gardens as defined, by a member of a family residing on the premises, in connection with which there is no advertising on the premises, and no other display or storage or variation from the residential character of the premises, and in connection with which no person outside the family is employed and no equipment which is deemed to be in conflict with the intent of this definition. A home occupation shall not include beauty parlors, barber shops or doctors' offices for the treatment of patients. The foregoing notwithstanding, providing professional counseling services by appointment only for not more than ten (10) clients per week, and giving music lessons shall constitute home occupations.

Homestay: In a single-family detached, duplex, or townhouse dwelling unit, the provision of a guest room or accommodation space within the principal building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.

Hotel, motel and similar transient housing: A building or group of buildings which are designed or intended to be used or hired out on a weekly basis, primarily for transient or temporary occupancy.

Housing: See "Dwelling."

Industrial microcell: A wireless telecommunications facility; a standalone, short range radio transceiver located in specific locations, either indoors or outdoors, where there is often low signal quality and high demand for a wireless telecommunications signal. Examples include but are not limited to industrial signal

boosters, repeaters, bi-directional amplifiers, and devices specifically identified as microcells. Consumer microcells, such as femtocells, for residential or household use or mobile use (i.e. vehicular, boat, etc.), and equipment meeting the thresholds to be considered small cell facilities, are excluded from this definition.

Industrialized building: A combination of one (1) or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Manufactured homes defined in the Code of Virginia and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act shall not be considered industrialized buildings for the purpose of this law.

Institution: A nonprofit corporation or a nonprofit establishment whose purpose is civic, educational, charitable, religious or philanthropic in nature.

Junk yard: Any space or area or portion of lots used for the storage, sale, keeping or abandonment of junk or waste materials, including used building material, or for the dismantling, demolition, sale or abandonment of automobiles and other vehicles, machinery or parts thereof.

Landscaping: Living vegetation primarily used to enhance property aesthetics, values, and/or to improve environmental conditions. Landscaping may include grasses, shrubbery, trees, and other vegetation. Mulch and/or stone shall be used only for the enhancement of vegetation. The use of mulch and/or stone alone is not considered landscaping.

Landscaping island: An area that includes landscaping within a parking lot.

Lot: A parcel of land occupied or intended to be occupied by a use permitted in this chapter, including one (1) main building together with its accessory buildings, and the yards and parking spaces required herein, and having its principal frontage upon a street or upon an officially approved place.

Lot area: The total horizontal area within the lot lines of a lot. No existing alley, public way, public land or area proposed for future street (alley) purposes is included within the net area of a lot. On-site easements are included in the land area of a lot.

Lot depth: The average horizontal distance between the front and rear lot lines.

Lot of record: A lot which has been recorded in the office of the clerk of the circuit court.

Lot, nonconforming: An otherwise legally platted lot that does not conform to the minimum area of width requirements of this chapter for the district in which it is located either at the effective date of this chapter or as a result of subsequent amendments to this chapter.

Lot, width: The distance between side lot lines measured at the building line.

Macrocell: Any wireless telecommunications facility not considered a concealed wireless telecommunications facility, a consumer microcell, a small cell facility, an industrial microcell, or a distributed antenna system.

⁸⁵
Manufactured home: A structure subject to federal regulation, which is transportable in one (1) or more sections; is eight (8) body feet or more in width and forty (40) body feet or more in length in the traveling mode, or is three hundred twenty (320) or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

Manufactured home sales and service establishment: Use of land whereon the primary occupation is the sale and ancillary service of manufactured homes. This use shall not include storage of nonhabitable manufactured homes for a period of time exceeding ninety (90) days.

Manufactured home park: An area designed, constructed, equipped, operated and maintained for the purpose of providing spaces for two (2) or more manufactured homes intended to be used as living facilities.

Micro-wireless facility: A small cell facility that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, not longer than eleven (11) inches.

Net development area: The total area of land in the MX-U development designated on the master development plan for residential, nonresidential, or open space uses, excluding streets.

Nonconforming structure: Any lawful structure existing at the time of the enactment or subsequent amendment of this chapter which does not conform to the current zoning regulations prescribed in the district in which it is situated.

Nonconforming use: Any lawful use existing at the time of the enactment or subsequent amendment of this chapter which does not conform to the current zoning regulations prescribed in the district in which it is situated.

Nursing home: A home for the aged, or infirm, senile, chronically ill or convalescent in which persons not of the immediate family are received, kept or provided with food, shelter, treatment and care for compensation, but not including hospitals, clinics or similar institutions.

Open space, common: Land within a private development set aside, dedicated and designed to protect natural environmental resources, to serve as a visual amenity, and/or to provide recreational opportunities that is owned by a property owners association and is designed and intended for the common use or enjoyment of the residents of the development. Such land shall be primarily naturally vegetated or landscaped, but may include limited paved areas, such as sidewalks, pedestrian plazas, trails, and recreational courts. Such land shall not include streets, street rights-of-way, driveways, parking areas, structures, above ground public utilities, including stormwater management facilities, or other improvements, except as may be approved for recreational or historic preservation purposes in a development plan or site plan.

⁸⁶
Outdoor display area: An area generally considered accessible to the public that utilizes parking spaces or paved and/or graveled areas to display goods for sale, rental, or lease, except those areas counted as part of the gross floor area for purposes of calculating required parking. Goods include but are not limited to vehicles, recreation equipment, trailer sales, heavy equipment, manufactured homes, industrialized buildings, agricultural equipment, yard and landscaping equipment, and other similar products.

Parking bay: Multiple parking spaces arranged in single or double loaded rows.

Parking lot: A defined area for the storage of operable motor-driven vehicles and operable accessory vehicles. A parking lot includes all areas used for parking, maneuvering, loading, driveways, travelways, and drive-throughs, except public street ingress and egress.

Parking, off-street: Any on-site space specifically allotted to or required for vehicle and bicycle parking.

Parking space: The area required for parking one (1) automobile which shall be a minimum of nine (9) feet wide and eighteen (18) feet long, not including passageways.

Parking unit, private: A self-contained and privately maintained area accessed by a public street but allowing no through traffic routes and providing such off-street parking as may be required under this chapter for the building served. Said parking unit may be entered by a private drive from the public street; provided, that such drive offers adequate ingress and egress for emergency vehicles and otherwise complies with acceptable city standards.

Plan of development: A sketch of the site drawn to scale, showing the dimensions and acreage of the property, and approximate location of buildings, roads, parking areas and landscaping, the number of dwelling units or commercial or other types of buildings and other information essential for determining whether the provisions of this chapter are being observed, such as pertinent site engineering data.

Plant nurseries, greenhouses, landscaping businesses, and similar operations: A facility where plants and landscaping materials are raised and/or sold. Such uses must be served by a permanent building. These uses may include the storage of materials used for installation of landscaping materials.

Plat: A drawing, map or plan for a parcel of land or subdivision, or rearrangement, revision or resubdivision of land.

Portable restroom facility: A movable restroom facility including but not limited to single portable toilets, portable sinks, trailer-mounted toilets, and restroom trailers that may include showers and tubs. Portable restroom facilities, as defined herein, shall be considered accessory buildings.

Premises: A parcel of land, together with any building or structures occupying it.

Private club: An association organized and operated on a nonprofit basis for persons who are bona fide members paying dues, with which the association owns or leases premises, the use of which premises is restricted to such members and their guests, and which manages the affairs of such association by and

through a board of directors, executive committee, or similar body chosen by the members. Food, meals and beverages may be served on such premises, provided adequate dining space and kitchen facilities are available. This definition includes country clubs.

Professional offices: Offices limited to personal services customarily performed by professionals such as doctors, dentists, architects, engineers, lawyers, accountants, real estate agents, insurance agents and brokers, who are not dependent on extensive on-site advertising.

Property owners' association: A non-profit organization or other legal entity established and constituted in accordance with the Virginia Property Owners' Association Act.

Public floor area: The gross building area, as figured on a per-story basis, which clearly serves the general public, such as vestibules and lobbies, corridors, waiting rooms and toilets, servicing areas, and required stairs, ramps and elevators. Employee oriented areas, such as kitchens and freezer rooms, storage, maintenance and service areas, shall not apply. Unfinished areas shall be included and figures on the basis of potential use.

Public use: Any instance where a lot or parcel of land, or any improvement on a lot or parcel of land, is used by (1) the city, or (2) another governmental entity having a contractual relationship with the city for the use of such lot or parcel or improvement.

Right-of-way lines: Lines which separate private property from dedicated public property containing or proposed to contain publicly owned street surfaces, curb and gutter, sidewalks and planted strips. Where a public street is designated on the major thoroughfare plan, all requirements of this chapter which relate to rights-of-way shall be measured from the indicated proposed right-of-way lines.

Screening: The use of fences, decorative walls or other physical or structural enclosures or plant material to separate uses and hide from view materials which require screening. Screening shall be required for outside storage areas only when called for by the zoning ordinance. Fences, decorative walls or other physical or structural enclosures used for screening shall be opaque to obstruct view of storage materials, with the finished face facing outside, and shall be at least six (6) feet in height with a maximum of eight (8) feet in height. If plant materials are used for screening purposes, they shall be three (3) to four (4) feet in height at planting time and shall otherwise meet the same intent as stated for fencing, etc. with the exception of height described herein. Screening, including walls and plant material, for parking lots and garages adjacent to public streets may be a minimum of four (4) feet in height rather than six (6) feet as specified above for other types of screening.

Setback: The minimum distance by which any building or structure must be separated from all lot lines.

Shopping center: Commercial development of more than one (1) retail sales or service establishment on a single parcel of common ownership attached by common walls or if located in separate buildings are interconnected by walkways and/or access ways, providing common parking facilities for all establishments, having multiple tenancy of a single or several large common structures, and otherwise present the appearance of one continuous commercial area.

⁸⁸
Short-term rental: The provision of a dwelling unit, a guest room or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.

Site plan: Refer to article D for site plan review.

Small cell facility: A wireless telecommunications facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

Specified anatomical areas: (1) Less than completely and opaquely covered: (i) human genitals, pubic region, buttock; and (ii) female breast below a point immediately above the top of the areola. (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities: (1) Human genitals in a state of sexual stimulation or arousal. (2) Acts of human masturbation, sadomasochistic abuse, sexual penetration with an inanimate object, sexual intercourse or sodomy. (3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

Steep slopes: Natural slopes prior to land disturbance or construction that exceed fifteen (15) percent (0.15). Such slopes are measured as the rise in elevation over the horizontal distance between contour lines on a topographic map with a contour interval of five (5) feet or less.

Story: Excluding basements, a portion of a building for living between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, the space between the floor and the ceiling next above it.

Street: A public thoroughfare which affords the principal means of access to abutting property, including any avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare except an alley which is designated or dedicated for public use.

Structure: Anything constructed or erected, the use of which requires location on the premises or which is attached to something having location on the premises.

Structural alteration: Any change in the supporting members of a structure, such as bearing walls or partitions, columns, beams, or girders.

⁸⁹
Support structure: With regard to wireless telecommunications, any structure that may support a wireless telecommunications facility including but not limited to telecommunications towers, alternative support structures, and structures that may be attached to or on top of buildings and other structures.

Telecommunications: Any transmission, emission or reception of signs, signals, sounds, voice, text, images, video, data, information or intelligence of any nature by wire, radio, optical or other electromagnetic systems.

Telecommunications tower: Any structure, except concealed wireless telecommunications facilities, designed, constructed, erected, repurposed or re-used for the sole or primary purpose of providing and supporting wireless telecommunications services. Such structures include but are not limited to guyed structures, monopole structures, lattice-type structures, and other freestanding self-supporting structures as well as decommissioned water towers and tanks, feed mills, utility towers, towers erected primarily for the use of the Harrisonburg-Rockingham Emergency Communications Center, and other decommissioned structures that were erected primarily for something other than providing and supporting wireless telecommunications services.

Temporary wireless telecommunications facility: A readily movable self-contained wireless telecommunications facility used to provide provisional wireless telecommunications services. An example is a cell on wheels (COW).

Variance: A reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of the ordinance, and would result in substantial justice being done. It shall not include a change in use which change shall be accomplished by a rezoning or by a conditional zoning.

Vehicle fuel station: Any building, structure, or land used for the dispensing, sale or offering for sale at retail of any vehicle fuels, oils or accessories.

Vehicle, inoperable: Any vehicle not capable of being used on public streets or roads and/or on which a state inspection and/or license is not displayed or has expired for more than thirty (30) days.

Vehicle repair: Premises where mechanical, bodywork, or other similar work is performed on vehicles.

Vehicle sales: Premises where the primary occupation is the sale or rental of any vehicle and can include ancillary service or repair of any vehicle. Such use may include the storage of inoperable vehicles for a period not to exceed ninety (90) days.

Wireless telecommunications facility: Any unmanned facility established for the purpose of providing wireless telecommunications services. Such facilities can consist of one or more antennas and accessory equipment, equipment cabinets, telecommunications towers, concealed wireless telecommunications

facilities,⁹⁰ distributed antenna systems, industrial microcells, base stations, small cell facilities, or any combinations thereof. This definition does not apply to equipment for radio or television studios, facilities designed for amateur radio use, or for residential or household uses (i.e. consumer microcells, etc.).

Yard: A space on the same lot with a principal building, open, unoccupied and unobstructed by buildings or structures from ground to sky except where encroachment and accessory buildings are expressly permitted herein.

Zoning district: See "District."

Zoning administrator: See "Administrator."

(Ord. of 4-23-96; Ord. of 10-28-97; Ord. of 2-10-98; Ord. of 6-9-98; Ord. of 1-12-99; Ord. of 2-22-02; Ord. of 3-26-02; Ord. of 9-24-02; Ord. of 8-12-03; Ord. of 6-14-05; Ord. of 10-25-05; Ord. of 8-14-07; Ord. of 11-25-08(1); Ord. of 2-24-09(1); Ord. of 4-28-09(3); Ord. of 6-23-09(3); Ord. of 3-13-12(10); Ord. of 4-24-12(3); Ord. of 11-27-12(1); Ord. of 3-26-13(1); Ord. of 8-26-14(1); Ord. of 7-28-15(2); Ord. of 8-25-15; Ord. of 5-10-16(2); Ord. of 3-28-17(1); Ord. of 8-22-17(1); Ord. of 5-22-18(1); Ord. of 11-27-18(2); Ord. of 3-26-19(1); Ord. of 6-25-19(4); Ord. of 9-8-20(2))

**AN ORDINANCE
AMENDING AND RE-ORDAINING CHAPTER 28 (STREETS AND SIDEWALKS) OF
THE CODE OF THE CITY OF CHARLOTTESVILLE, VIRGINIA (1990) AS
AMENDED, TO ESTABLISH PROCEDURES FOR APPROVAL OF SMALL CELL
FACILITIES IN THE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF
CHARLOTTESVILLE AND TO ESTABLISH STANDARDS FOR SUCH FACILITIES**

WHEREAS, the City of Charlottesville (“City”) desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that small wireless facilities are critical to delivering wireless access to advanced technology, broadband and 9-1-1 services to homes, businesses, and schools within the City; and

WHEREAS, the City recognizes that small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way; and,

WHEREAS, within the Virginia Acts of Assembly, Article 835 (2017), the state legislature mandated that localities must accommodate certain types of wireless communications infrastructure within its public rights-of-way, and the City intends to comply with this state mandate, and with requirements of other state and federal laws pertaining to wireless communications facilities, to the extent such laws preempt local municipal control;

NOW, THEREFORE, BE IT ORDAINED by the Charlottesville City Council that Title 28 (Streets and Sidewalks) of the Code of the City of Charlottesville shall be amended and re-ordained, by adding the following Article VIII (Wireless Communications Facilities in Public Rights of Way), as follows:

CHAPTER 28. STREETS AND SIDEWALKS

**ARTICLE VIII. WIRELESS COMMUNICATIONS FACILITIES IN
PUBLIC RIGHTS OF WAY**

Sec. 28-235. Purpose and Scope.

(a) Purpose. The purpose of this Article is to establish policies and procedures for the placement of certain small cell facilities in public rights-of-way within the City’s jurisdiction,

which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole.

(b) Intent. In enacting this Article, the City is establishing uniform standards to address issues presented by small cell facilities located within the public rights-of-way, including without limitation, to:

- (1) limit interference with the use of streets, sidewalks, alleys, parkways, public utilities, public views, certain city corridors, and other public ways and places;
- (2) limit the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (3) limit interference with the facilities and operations of public utilities and other facilities lawfully located in rights-of-way or public property;
- (4) minimize impact on the City's historic districts; and
- (5) respect the character of the neighborhoods in which facilities are installed; and
- (6) facilitate the deployment of small cell facilities to meet the increasing telecommunications needs of its citizens.

(c) Zoning. Applications to collocate small cell facilities on structures located outside public rights-of-way shall be treated as required by Virginia Code § 15.2-2316.4 and City Code § 34-1070 et seq.

(d) Conflicts with Other Chapters. To the extent any provision of this Article may be in conflict with other provisions of the City Code, the provisions of this Article shall take precedence over any such conflicting provisions.

(e) Conflicts with State and Federal Laws. In the event that applicable federal or State laws or regulations conflict with the requirements of this Article, a wireless services provider shall comply with the requirements of this Article to the maximum extent possible without violating federal or State laws or regulations.

Sec. 28-236. Definitions

- (a) Terms defined within Virginia Code § 15.2-2316.3 and § 56-484.26 shall have the meanings set forth therein.
- (b) "Applicable Safety Codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with this Article. The term shall include, without

limitation, (i) the Virginia Uniform Statewide Building Code (USBC), (ii) the Virginia Statewide Fire Prevention Code (VSFPC), (iii) any international building or fire codes incorporated into the USBC or VSFPC, and (iv) the most recent editions of the National Electrical Code and National Electrical Safety Codes, regardless of whether a building permit is required by the City's Building Official for or in connection with the installation of a wireless facility.

- (c) "Applicant" means any wireless services provider who is authorized by this article to submit an application, or a duly authorized agent for such wireless services provider.
- (d) "Application" means a request submitted by an applicant pursuant to this Article.
- (e) "Day" means calendar day.
- (f) "Emergency" is a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause wireless facilities in the right-of-way to be unusable and result in loss of the services provided.
- (g) "FCC" means the Federal Communications Commission of the United States.
- (h) "Fee" means a one-time charge.
- (i) "Law" means federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.
- (j) "Permit" means a written authorization required by the City or other state or federal authority to perform an action or initiate, continue, or complete a project.
- (k) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.
- (l) "Project" means (i) the installation or construction by a wireless services provider or wireless infrastructure provider of a new structure or (ii) the collocation on any existing structure of a wireless facility that is not a small cell facility. "Project" does not include the installation of a small cell facility by a wireless services provider or wireless infrastructure provider on an existing structure to which the provisions of Va. Code § 15.2-2316.4 apply.
- (m) "Rate" means a recurring charge.
- (n) "ROW" means "rights-of-way" or "right-of-way", as indicated by context, which terms each refer to the entire width between the boundary lines of a way or place open to the use of the public for purposes of pedestrian, bicycle or vehicular travel, including, without limitation, areas on, below, and/or above a City-owned roadway, highway, street, sidewalk, alley, or

similar property (but not including a federal interstate highway or any state-maintained roads), within the jurisdictional limits of the City of Charlottesville.

Section 28-237. Permitted Use; Application and Fees.

(a) Permit Required. No person shall place a small cell facility, or a support structure for such facility, within the ROW, without first filing an application and obtaining a permit therefor, except as otherwise provided in this Article. No special exception, special use permit, or variance required by provisions of the City's zoning ordinance shall be required for (i) any small cell facility installed by a wireless services provider or wireless infrastructure provider on an existing structure within the ROW, provided that the wireless services provider or wireless infrastructure provider has permission from the owner of the structure to collocate equipment on the structure; or (ii) the installation or construction of an administrative review-eligible project.

(b) Application. Each application for a permit filed pursuant to this Article shall be on a form, paper or electronic format provided by the City. The applicant may designate any portions of its application materials that contain proprietary or confidential information as "proprietary" or "confidential" by clearly labeling such content where it appears on a particular page of the application materials. The City makes no representations or warranties as to whether any such marking(s) will allow any portion(s) of an application marked by an applicant to be exempt from public inspection under the Virginia Freedom of Information Act.

(c) Application Requirements. An application shall be made by a wireless services provider or its duly authorized agent and shall contain the following:

- (1) The wireless services provider's name, address, telephone number, and e-mail address;
- (2) If a duly-authorized agent for a wireless services provider is making the application, then the agent's name, address, telephone number, and e-mail address shall be provided, as well as the wireless services provider's, and the application shall include evidence of the agent's written authorization to act as the agent of the wireless services provider, and make binding representations and commitments on behalf of such provider, for and in connection with the application;
- (3) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting together with the applicant with respect to the preparation of materials submitted with the application.
- (4) A general description of the scope of work necessary for the construction or installation and the purposes and intent of the small cell facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.

- (5) A site plan, with sufficient detail to show the proposed location of all items the applicant seeks to construct or install in the ROW, including any manholes, poles, or other structures, and the size, type, and depth of any conduit, enclosure, or cabinets.
 - (6) For facilities proposed to be located on an existing structure, evidence that the applicant has permission from the owner of the structure to co-locate equipment on each such structure.
 - (7) An attestation that the construction of the proposed small cell facility(ies) will commence within two years of final approval and be diligently pursued to completion, unless the City and the applicant agree to extend this period. No extension(s) shall be granted to allow, cumulatively, more than 12 additional months beyond the permit issuance date.
 - (8) An attestation that, to the best of the applicant's knowledge, the information contained in the application is true.
- (d) When Application Not Required. An application shall not be required for: (i) routine maintenance of any wireless facility within the ROW; (ii) the replacement of an existing small cell facility within the ROW with another small cell facility that is substantially similar or smaller in size, weight, and height; (iii) the installation, placement, maintenance, operation, or replacement of micro-wireless facilities that are strung on cables between existing utility poles in the ROW, in compliance with applicable Safety Codes; or (iv) replacement of wireless facilities or wireless support structures within the ROW, within a six-foot perimeter with wireless facilities or wireless support structures that are substantially similar or the same size or smaller. Notwithstanding the foregoing, the City may require a single use permit for an activity referenced within clause (i), (iii), or (iv) preceding above in this paragraph, if such activity will: involve working within a vehicular travel lane or require closure of a vehicular travel lane; disturb the pavement, shoulder, roadway or ditch line of any street; include placement on limited access ROW; require any specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof, and either were not authorized in, or will be conducted in a time, place, or manner that is inconsistent with, terms of the existing permit for that facility or the structure upon which it is attached.
- (e) Application Fees. All applications for permits shall be accompanied by the following fees:
- (1) \$250.00, for processing a permit seeking authorization to attach or collocate small cell facilities on existing or proposed new structures within a ROW; and, in addition,
 - (2) \$100.00 each, for up to five small cell facilities addressed in an application, plus \$50.00 for each additional small cell facility addressed in the application (on a

single application an applicant may include not more than 35 individual facilities for review).

- (3) The maximum fee that may be charged in accordance with the provisions of Virginia Code §15.2-2316.4:1 for an administrative-eligible project is \$500.00.

Sec. 28-238. Action on Permit Applications.

(a) Review of Applications.

(1) Within ten days of receiving an application and a valid email address for the applicant, the City will determine and notify the applicant by electronic mail whether or not the application is complete. If an application is incomplete, the City will specifically identify any missing information in the electronic mail to the applicant; otherwise, the application shall be deemed complete. The processing deadline in subsection (2) is tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information. That processing deadline also may be tolled by agreement of the applicant and the City.

(2) An application shall be processed on a nondiscriminatory basis. The City shall approve or disapprove a requested permit for collocation of a small cell facility on an existing structure, and it shall be deemed approved if the City fails to approve or deny the application within 60 days of receipt of the complete application, in accordance with the requirements of Virginia Code § 56-484.29.

(3) Any disapproval of an application for a small cell facility shall be in writing and accompanied by an explanation for the disapproval. For any disapproval of an administrative review-eligible project or any standard process project, the City shall provide the applicant with a written statement of the reasons for such disapproval and, if the City is aware of any modifications to the project as described in the application that, if made, would permit the City to approve the proposed project, the City shall identify them in the written statement.

(4) The City shall approve or disapprove an application for a new structure within the lesser of 150 days of receipt of the completed application or the period required by federal law for such approval or disapproval.

(5) The City shall approve or disapprove the application for the collocation of any wireless facility that is not a small cell facility within the lesser of 90 days of receipt of a completed application or the period required by federal law for such approval or disapproval, unless the application constitutes an eligible facilities request as defined in 47 U.S.C. § 1455(a), in which approval shall be pursuant to Sec. 34-1083(b).

(6) The City may deny a proposed collocation of a small cell facility on an existing structure only for the following reasons:

- a. Material potential interference with other pre-existing communications facilities, or with future communications facilities that have already been issued a permit for a specific location, or that have been reserved for future public safety communications facilities;
- b. Substantial adverse effect on public safety or any critical public service needs;
- c. Conflict with a local ordinance adopted pursuant to Virginia Code § 15.2-2306 or pursuant to the City's charter, on an historic property that is not eligible for the review process established under 54 U.S.C. §306108.

(7) If an applicant submits an application seeking approval of a single permit for the collocation of multiple small cell facilities on existing structures, then the denial of one or more such facilities shall not delay processing of any other facilities that are part of that same application.

(8) For an application seeking a permit to authorize construction or installation of a new support structure within any ROW for a small cell facility, or for relocation of any existing utility pole or other existing wireless support structure within a ROW, for the purpose of accommodating the attachment of a small cell facility, the application shall (in addition to the materials required by Section 3(C) above) include a written agreement with the City, in a form approved by the Office of the City Attorney and approved by City Council in accordance with any applicable requirements of Article VII, Section 9 of the Constitution of Virginia.

No such agreement shall exceed an initial term of ten (10) years or allow more than three options for renewals for terms of five years; each agreement shall include terms allowing for early termination by the City for cause, and for early termination by mutual agreement of the parties; and each agreement shall allow the City to require a permittee to relocate wireless support structures in accordance with the provisions of Virginia Code § 56-484.30.

(9) For an application seeking a permit to authorize the attachment of a small cell facility to a government-owned structure, the application shall (in addition to the materials required by Section 3(C) above) include a written agreement with the City, in a form approved by the Office of the City Attorney, containing rates, terms, and conditions compliant with the provisions of Virginia Code § 56-484.31, and approved by City Council in accordance with applicable legal requirements.

(b) Permit Scope and Effect.

Approval of a permit authorizes the applicant to:

- (1) Undertake the installation, modification or collocation; and
- (2) Subject to applicable relocation requirements and the applicant's right to terminate at any time: operate and maintain the small cell facilities on the existing support structure(s) identified within the application so long as they are in compliance with the criteria set forth in section 5 and do not create or result in any conditions for which the permit could have originally been denied, as set forth within subsection 4(A)(3), above.

(c) Authority Granted; No Property Right or Other Interest Created.

A permit from the City authorizes an applicant to undertake only certain activities, and to install only certain encroachments within a ROW, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the ROW.

Sec 28-239. Small Wireless Facilities in the Right Of Way; Maximum Height; Other Requirements.

(a) **Technical Requirements.** Small cell facilities and utility poles to which such facilities are attached shall comply with the following requirements:

(1) Height of new small cell facilities. New small cell facilities in the ROW may not extend (i) more than ten feet above an existing utility pole in place as of the effective date of this Article; (ii) for a replacement utility pole installed in the ROW, the top of the facility shall not exceed the greater of: (a) seventeen (17) feet in height above the pole being replaced, or (b) 60 feet above ground level; or (iii) for small cell facilities on a new utility pole, above the height permitted for a new utility pole under this Article.

(2) Height of new or modified utility poles installed to support small cell facilities. Each new structure designed to support small cell facilities installed in the ROW shall meet the maximum height limitations of an administrative review-eligible facility (i.e. not exceed fifty (50) feet above ground level, provided that the structure with attached wireless facilities is (i) not more than ten (10) feet above the tallest existing utility pole located within 500 feet of the new structure within the same ROW or within the existing line of utility poles; and (ii) not located within the boundaries of a local, state, or federal historic district); or, if a proposed new pole designed to support small cell facilities does not meet the height limitations of an administrative review-eligible facility, then it would require review and approval pursuant to Sec. 34-1083(e).

- (3) Maximum Size. The small cell facility must conform to the size and height limitations specified within the definition of a small cell facility as set forth within Va. Code § 56-484.26.
- (4) Utility Pole Modifications. Utility pole modifications proposed for the purpose of accommodating a small cell facility collocation shall be fabricated from material having a degree of strength capable of supporting the small cell facility and shall be capable of withstanding wind forces and ice loads in accordance with applicable Safety Codes. A deviation from any applicable Safety Code shall be by written modification that is securely bound by an engineer in accordance with applicable engineering standards.
- (5) Color. Small cell facilities shall blend in with the surrounding environment or otherwise concealed to the extent practicable. Small cell facilities shall be of the same color for the antenna and related equipment. The color shall be one consistent with or that blends into the wireless support structure on which such facilities are installed, unless a different color is needed for public safety or service reliability reasons, or unless a different color is required within an architectural design control district, consistent with the provisions of City Code § 34-1080(a)(3).
- (6) Wiring and Cabling. Wires and cables connecting the antenna and appurtenances serving the small cell facility shall be installed in accordance with applicable Safety Codes, National Electrical Code and National Electrical Safety Code. In no event shall wiring and cabling serving the small cell facility interfere with any wiring or cabling installed by a cable television or video service operator, gas or electric utility, water or sewer utility, or telephone utility.
- (7) Guy Wires Restricted. Guy wires and similar support structures may not be used as part of the installation of any small cell facility, unless the small cell facility is proposed to be attached to an existing utility pole that incorporated guy wires prior to the date of the small cell facility application.
- (8) Grounding. The small cell facility, including any ground-mounted equipment, shall be grounded in accordance with the requirements of the most recent edition of the National Electrical Code regarding grounding of small cell facilities.
- (9) Signage. No small cell facility may bear any signs or advertising devices other than certifications, warnings, or other information as required by federal or state law and/or regulation or by the City Code of Ordinances. Other than warning or notification signs required by federal law or regulations, or identification and location markings, a small cell facility shall not have signs installed thereon.
- (10) Access. Wireless service providers and their employees, agents, and contractors shall have the right of access to utility poles, wireless support structures and small cell facilities in the ROW at all times, following written notice to the City Engineer, for purposes consistent with this Article.

(b) Other Requirements. A wireless services provider that seeks to collocate small cell facilities or install or modify a utility pole supporting small cell facilities shall be subject to the following requirements:

(1) Small cell facilities shall be located such that they do not interfere with public health or safety facility, such as, but not limited to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility. New utility poles and small cell facilities shall not be installed directly over any water, sewer, gas, electric or reuse main or service line.

(2) New utility poles installed to support small cell facilities shall be made of the same or similar material as existing poles in the immediate area.

(3) Small cell facilities and utility poles or wireless support structures on which they are collocated shall not be lighted or marked by artificial means, except when small cell facilities are collocated on a light pole or where illumination is specifically required by the Federal Aviation Administration or other federal, state, or local regulations.

(4) A wireless services provider shall repair, at its sole cost and expense, any damages including but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer or water systems and water and sewer lines that are directly caused by any activities performed in connection with the installation and/or maintenance of a wireless facility in the ROW. The wireless services provider shall restore such areas, structures and systems to substantially the same condition in which they existed prior to the installation or maintenance that necessitated the repairs.

(c) Undergrounding Provisions. Wireless service providers shall comply with laws, ordinances, regulations and other requirements that prohibit installation of structures above ground within the ROW in areas designated solely for underground or buried cable and utility facilities where the City has required all cable and utility facilities other than City poles and attachments to be placed underground by a date certain that is at least three months prior to the submission of the application. If a permit applicant claims that compliance with such undergrounding provisions would constitute an “effective prohibition” under federal law, then the application shall contain the written opinion of an attorney licensed to practice within the Commonwealth of Virginia to that effect, and such written opinion shall set forth all of the factual bases for the attorney’s conclusions.

Sec. 28-240. Removal, Relocation or Modification of Small Cell Facility in the Right Of Way.

(a) Notice. Within ninety days following written notice from the City, a wireless services provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small cell facilities or utility pole for which it has a permit, whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the ROW.

(b) Emergency Removal or Relocation of Facilities. The City retains the right to cut or move any small cell facilities or utility poles located within the ROW, as the City may determine to be necessary, appropriate or useful in response to any public health or public safety emergency. If circumstances permit, the City shall notify the wireless services provider and provide it an opportunity to move its small cell facilities or utility poles prior to cutting or removing them and shall notify the wireless services provider after cutting or removing a small cell facility or utility pole.

(c) Abandonment of Facilities. A wireless services provider shall remove an abandoned small cell facility within 180 days of abandonment of such facility. Should the wireless services provider fail to timely remove the abandoned small cell facility or utility pole, the City may remove the small cell facility and may recover the actual cost of such removal from the wireless services provider, plus an administrative fee in the amount of ten percent (10%) of such actual cost. A small cell facility or utility pole shall be deemed abandoned at the earlier of the date that: (i) the wireless provider notifies the City in writing that it intends to abandon the small cell facility, or (ii) the City provides the wireless provider with written notice that it believes a facility has been abandoned, and the wireless provider has not notified in the City in writing within 90 days of receipt of such written notice from the City that the small cell facility is in service or that the wireless provider is working diligently to put the small cell facility into service.

(d) No wireless services provider shall allow any employee or contractor to perform any construction, installation, or removal of a small cell facility, or any structure supporting such facility, unless that employee or contractor holds a valid Virginia contractor's license or certificate.

Sec. 28-241. Liability of wireless service providers.

(a) Liability. Each wireless services provider who owns or operates any small cell facility within a ROW assumes all risk of liability for personal injuries and damages to persons or property that are directly caused by such facility, including all work associated with the construction, installation, relocation, operation or removal of such facility, whether completed by the wireless services provider or the provider's agent or contractor. Each wireless services provider shall procure and maintain insurance, as specified in the license agreement between the City and the wireless services provider.

(b) Indemnification. Each wireless services provider who receives a permit approved under this Article shall defend, indemnify, and hold harmless the City, its boards, commissions, officials, officers, agents, contractors, volunteers, and employees from and against any and all loss, damages, liability, claims, suits, costs and expenses, including court costs and reasonable attorney's fees, resulting from the alleged acts or omissions of permittee and the permittee's officers, agents, contractors or employees in connection with the permitted activities. This indemnity provision shall be applicable regardless of the merit or outcome of such claim or suit.

Sec. 28-242. Attachment to City Structures.

(a) Exclusivity. The City will not enter into arrangements with any person for the right to collocate on City-owned which would be unfair, unreasonable or discriminatory.

(b) Rates. The rate for collocation of small cell facilities on a City-owned structure shall be \$20 per City structure per year.

(c) Make-Ready Work

(1) The City may, by resolution, establish rates, terms and conditions for agreements by which it may authorize the installation of small cell facilities to City-owned structures. Any such rates, terms and conditions shall comply with the standards set forth within Virginia Code § 56-484.31.

(2) For utility poles owned by the City, estimates for make-ready work necessary to enable the utility pole to support an agreed upon collocation shall be provided in accordance with Virginia Code § 56-484.31.

Secs. 28-243—28.250. Reserved.

Approved by Council
August 6, 2018



Clerk of Council