

LEXINGTON PLANNING COMMISSION

July 8, 2021 - 5:00 P.M

**First Floor Meeting Room (Community Meeting Room), Lexington City Hall
300 East Washington Street, Lexington, VA 24450**

AGENDA

- 1. CALL TO ORDER**
- 2. APPROVAL OF THE AGENDA**
- 3. APPROVAL OF MINUTES**
 - A. Minutes from June 24, 2021*
- 4. CITIZENS’ COMMENTS ON MATTERS NOT ON THE AGENDA**
- 5. NEW BUSINESS**
 - A. Elect Chairperson
 - 1) Nominations
 - 2) Motion & Vote
 - B. Elect Vice-Chairperson
 - 1) Nominations
 - 2) Motion & Vote
 - C. 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, June 24, 2021 – 5:00 p.m.
Zoom Meeting – City Hall
300 East Washington Street**

Planning Commission:

Presiding: John Driscoll, Chair
Present: Leslie Straughan, Council Liaison
Blake Shester
Matt Tuchler

City Staff:

Arne Glaeser, Planning Department
Kate Beard, Administrative Assistant

Absent: Pat Bradley, Vice-Chair
Blake Shester

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

The agenda was approved unanimously (L. Straughan/J. Goodin).

MINUTES

Minutes from the June 10, 2021 meeting were approved unanimously (L. Straughan/M. Tuchler). J. Goodin abstained as he was not present on June 10th.

CITIZENS' COMMENTS ON MATTERS NOT ON THE AGENDA

None

NEW BUSINESS

A. SP 2021-03: Application by Roy LeNeave, for a site plan review for the Heritage Hall property at 205 Houston Street, Tax Map #: 29-1-55.

- 1) Staff Report – This is a public hearing for an application for the addition of a pavilion to the rear of the existing Heritage Hall building. This application was submitted after construction was underway. The pavilion cannot be seen from Houston Street but is visible from the side street and bubble pool area. L. Straughan asked if the pavilion is to be a permanent structure with hard sides. A. Glaeser answered that the wooden structure would be open on the sides with a roof and permanent floor. He added that it was replacing a smaller, carport-like structure. J. Driscoll offered that it is located off of the dining room and is an area used for family gatherings. In response to questions from Commissioners Tuchler and Driscoll, A. Glaeser stated that when reviewed against the eight criteria to be

considered in Site Plan approvals, nothing in the proposal stood out as unusual, and he had received no comments from adjacent property owners.

- 2) Applicant Statement – None
- 3) Public Comment – None
- 4) Commission Discussion & Decision – **L. Straughan moved to approve Site Plan number SP 2021-03 and find the submitted site plan to be in compliance with the Zoning Ordinance. J. Goodin seconded and the motion passed unanimously (4-0).**

B. ZOA 2021-03: Annual Zoning Ordinance Amendments, Small Cell facilities.

- 1) Discussion of Small Cell text amendment – A. Glaeser began by saying that any regulations would need to make distinctions between new and existing structures, administrative review-eligible projects and standard process projects, and structures that are in the right-of-way and those outside the right-of-way. He noted that Conditional Use Permits, variances, special use permits and special exceptions cannot be applied to small cell facilities – that, in essence, the Virginia Code largely disallows having a public hearing process for small cell facilities. He suggested that as the Commission considers drafting an ordinance for these facilities, one of its primary focuses should be on what regulations are and are not allowable in the Historic Districts. He then led the Commission through a side-by-side comparison of the Charlottesville and Virginia State Codes concerning small cell facilities. He noted that the definition of “administrative review-eligible project” is a new project not located within a historic district. M. Tuchler questioned how the Commission would feature in the permitting process for small cell facilities. A. Glaeser said he believed the process would be largely administrative with exceptions for permitting in the historic districts where a review process is allowable. He said he believed review of applications for small cell permits in the historic districts could be public, though he is unsure at this point whether it would follow the process for a Conditional Use Permit or a Certificate of Appropriateness for review by the ARB. He indicated that lack of Planning Commission oversight may be why Charlottesville put their regulations in the Streets and Sidewalks chapter rather than the Zoning chapter of their city code. L. Straughan said that based on what she learned at a conference on this subject she also believes that having design standards and ARB review is the only real way to have oversight of these facilities. There was discussion of what is and is not within the right-of-way. A. Glaeser responded to a question from J. Goodin by confirming that the Charlottesville permitting and application fee structure seems to directly track the Virginia Code. Commissioners acknowledged the potential issues presented by the shot clock mandated in the Virginia Code. A. Glaeser pointed out allowable reasons for denying collocation of small cell facilities and again suggested the Commission focus on providing as much oversight as is allowable in the historic districts. He suggested the Williamsburg small cell design guidelines language be adopted in order to retain authority over

these facilities in the historic districts but explained that he is still unsure whether the Williamsburg language can/should be made a part of the Zoning Ordinance or adopted as design guidelines. J. Driscoll asked if the ARB ought to review the final text once it has been drafted and A. Glaeser agreed that it should. In response to a question from M. Tuchler, A. Glaeser clarified the only districts that would fall under any historic preservation guidelines/regulations are the Residential Historic and Downtown Historic Districts. There was more discussion of how the ownership of utility poles and whether they are located within the right of way might affect collocation of small cell facilities. L. Straughan suggested inserting the Williamsburg design guideline language into the Charlottesville Code in Sec. 28-239.(b) *Other requirements* on page 13 of the staff-prepared working document. A. Glaeser pointed out the Virginia Code does allow for undergrounding requirements, though he added that the City could likely only make that requirement in areas where undergrounding has already occurred. He also noted that the Virginia Code allowed for enforcement provisions for abandoned facilities. A. Glaeser suggested that for Commission's next discussion he would provide more details on restrictions and guidelines that may be adopted for the historic districts. Commissioners indicated their approval of this plan.

2) Public comment - None

OTHER BUSINESS

- A. Chair and Vice-Chair nominations and vote first meeting in July – J. Driscoll reminded the Commission that nominations and voting for Chair and Vice-Chair would take place at the July 8, 2021 meeting. He stated that he does not intend to stand for Chair again next year. L. Straughan said she would not be present for the July 8th meeting but believes that as Council Liaison it would not be appropriate for her to serve as Chair or Vice-Chair. J. Driscoll thanked the other Commissioners for their help during his Chairmanship and noted that his primary goal has been implementation of the Comp Plan.
- B. VA American Planning Association conference session to present Lexington Comprehensive Plan 2040 – J. Driscoll explained the application submittal was a last minute decision. He said the idea was to have Kelly Davis of the Berkley Group prepare an introduction based on her presentation for the public hearing and to invite former Commissioner Camille Miller as she had worked extensively on both Comp Plans and could address the shift in focus between the two. He asked if any Commissioner would like to attend in his stead and invited input on the presentation.
- C. Draft Joint City Council & Planning Commission Worksession agenda for July 1, 2021 – J. Driscoll said he had met with Mayor Friedman to discuss the Agenda for the Joint Work Session and the draft Agenda presented to the Commission has the Mayor's approval. L. Straughan suggested #3 (Proposed Planning Commission Schedule) be heard before #2 (Developing priorities within Staffing and Community Resources). J. Driscoll indicated he would like to schedule the small area plan session for some time after Labor Day. A. Glaeser provided clarification of the issues remaining on Commission's schedule for the year and added that the Bike/Ped Plan is now an item for immediate consideration. L. Straughan asked how the Bike/Ped Plan would move forward and if a committee would be

formed. A. Glaeser said the process would be very similar to the one used for Jordan's Point Park. J. Driscoll suggested the Green Infrastructure group may have useful input. L. Straughan suggested that City Council be asked about what the Commission's role in the implementation of the Bike/Ped should be. In response to a question from Commissioner Tuchler, L. Straughan said that the Mayor chooses which Boards/Commissions Council Members serve on and she anticipates remaining on the Planning Commission for the next year at least. J. Driscoll agreed to the agenda change suggested by Commissioner Straughan and reviewed the remaining agenda items.

CITY COUNCIL REPORT

L. Straughan said Council started the June 17, 2021 meeting with a work session regarding capital projects. She said the Nelson Street bridge over Woods Creek needs to be replaced and Council will need to reprioritize capital improvement projects. During the regular meeting there was a brief discussion of the RARA contract on the Piovano building. The City Attorney and the attorney for RARA are working on the contract and she anticipates it being ready for Council's review by their next meeting. The City Manager is meeting with other parties interested in the remaining 2 acres.

ADJOURN

The meeting was adjourned at 6:30 pm with unanimous approval (M. Tuchler/L. Straughan).

J. Driscoll, Chair, Planning Commission

Charlottesville, VA – 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;
 - (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.

Code of Virginia

In 2017 and 2018, the Virginia General Assembly adopted legislation to enable the roll-out of small cells across the Commonwealth and to facilitate cell tower approvals. The 2017 Virginia legislation, often referred to as SB 1282, introduced the concept of the small cell facility to the Virginia Code. With its amendments to sections of Title 15.2 and Title 56, SB 1282 establishes a framework for permitting and constructing small cells in city and VDOT right-of-way. Local governments are prohibited from requiring wireless providers and wireless infrastructure providers to obtain special use permits that can take 3-9 months to obtain, assuming planning commissions and city councils can be convinced to grant them over the objections of a public concerned about “visual impact.” The law also sets maximum permitting fees and approval deadlines.

The 2018 legislation (HB 1258) closed a loophole in the 2017 legislation by addressing new (or replacement) poles (up to 50’ tall) in rights of way to accommodate small cells. In many cases, power poles must be replaced to provide sufficient strength and separation

- (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 section 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 this 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.

Terms defined within Virginia Code, §§ 15.2-2316.3 and 56-484.26 shall have the meanings set forth therein.

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:

- (1) The Virginia Uniform Statewide Building Code (USBC);
- (2) The Virginia Statewide Fire Prevention Code (VSFPC);
- (3) Any international building or fire codes incorporated into the USBC or VSFPC; and
- (4) 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.

between power lines and small cells. Notably, the 2018 legislation also sets out new limitations on application requirements and reasons for denial for all other types (non-small cell) of wireless applications. For example, localities can no longer condition approval on a wireless provider's giving the locality free space on the tower for county services or require propagation maps and other data that wireless providers consider proprietary. (Lori H. Schweller for Williams Mullen law firm)

15.2-2316.3 – Counties, Cities and Towns. Planning, Subdivision of Land and Zoning. Zoning for Wireless Communications Infrastructure (see attached)

56-484.26 – Public Service Companies. Wireless Communications Infrastructure. Definitions (see attached)

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.

Application means a request submitted by an applicant pursuant to this article.

Day means calendar day.

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.

FCC means the Federal Communications Commission of the United States.

Fee means a one-time charge.

Law means federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.

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.

Person means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the city.

Project means:

- (1) The installation or construction by a wireless services provider or wireless infrastructure provider of a new structure; or
- (2) 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 Virginia Code, § 15.2-2316.4 apply.

Rate means a recurring charge.

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.

Sec. 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:
- (1) 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
 - (2) 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)

§15.2-2316.4.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.

§15.2-2316.4:1.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, ...

§15.2-2316.4:2.A.2. A locality shall not require an applicant to provide proprietary, confidential, or other business information to ...

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 (2) 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 twelve (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:
- (1) Routine maintenance of any wireless facility within the ROW;
 - (2) 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;
 - (3) 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
 - (4) 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.

§15.2-2316.4:3.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.

(e) *Application fees.* All applications for permits shall be accompanied by the following fees:

- (1) Two hundred fifty dollars (\$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
- (2) In addition, one hundred dollars (\$100.00) each, for up to five (5) small cell facilities addressed in an application, plus fifty dollars (\$50.00) for each additional small cell facility addressed in the application (on a single application an applicant may include not more than thirty-five (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 five hundred dollars (\$500.00).

Sec. 28-238. - Action on permit applications.

(a) *Review of applications.*

- (1) Within ten (10) 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 sixty (60) days of receipt of

§ 56-484.29.B ... However, a locality may prescribe and charge a reasonable fee not to exceed \$250 for processing a permit application under subsection A.

§ 15.2-2316.4.B.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. § 15.2-2316.4.B ...Localities shall permit an applicant to submit up to 35 permit requests on a single application. ...

§ 15.2-2316.4.B.1. Within 10 days after receipt of an application (for a small cell facility on an existing structure) 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.

A similar 10 day completeness shot clock exists for administrative review-eligible projects in § 15.2-2316.4:1.C.1.

§ 15.2-2316.4.B.1. A locality shall approve or disapprove the application within 60 days of receipt of the complete application (for a small cell facility on an existing structure).

the complete application, in accordance with the requirements of Virginia Code, § 56-484.29. *(is § 15.2-2316.4.B.1 the correct reference here?-yes it is)*

- (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 one hundred fifty (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 ninety (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 section 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;

§ 15.2-2316.4:1.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.

§ 15.2-2316.4:1.C.2 ... 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;

§ 15.2-2316.4:1.C.2.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).

§ 15.2-2316.4.B.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

- 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.

If the small cell facility is proposed to be installed within an AP (Architectural Preservation) and CP (Corridor Protection) District and fails to obtain the necessary approvals of the ARB. (from Williamsburg code language)

- (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 (1) 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 (3) options for renewals for terms of five (5) 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.

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.

§ 56-484.30.A 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. ...

- (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:
 - a. More than ten (10) feet above an existing utility pole in place as of the effective date of this article;

§ 56-484.31. Attachment of small cell facilities on government-owned structures. (A through G)

It appears the maximum height of wireless facilities and structures were left to local control.

- b. For a replacement utility pole installed in the ROW, the top of the facility shall not exceed the greater of:
 - 1. Seventeen (17) feet in height above the pole being replaced; or
 - 2. Sixty (60) feet above ground level; or
 - c. For small cell facilities on a new utility pole, above the height permitted for a new utility pole under this article. *(next section limits new structures to 50 feet in height)*
- (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:
- a. Not more than ten (10) feet above the tallest existing utility pole located within five hundred (500) feet of the new structure within the same ROW or within the existing line of utility poles; and
 - b. Not located within the boundaries of a local, state, or federal historic district); or
 - c. 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 section 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 Virginia 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

§ 15.2-2316.3. Definitions.

"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; ...

§ 56-484.26. 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. ...

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 section 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 this Code. 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 (3) 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 (90) 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

§ 15.2-2316.4:2. Application reviews.

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:

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; ...

§ 56-484.30. 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. ...

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 one hundred eighty (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 (10) percent of such actual cost. A small cell facility or utility pole shall be deemed abandoned at the earlier of the date that:
- (1) The wireless provider notifies the city in writing that it intends to abandon the small cell facility; or
 - (2) The city provides the wireless provider with written notice that it believes a facility has been abandoned, and the wireless provider has not notified the city in writing within ninety (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

§ 15.2-2316.4:2.B.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.

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 twenty dollars (\$20.00) 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.

§ 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.

For rate limitations see § 56-484.32.B.

[§ 56-484.31.C.](#) [§ 56-484.31.D,](#) and [§ 56-484.31.E](#) all contain references to make-ready work

Williamsburg Design Review Guidelines to Regulate the Location, Appearance and Screening of Small Cell Wireless Facilities

*Chapter V. Architectural Review Districts AP-2 & AP-3
and*

*Chapter VI. Corridor Protection District Commercial and Residential Buildings
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.*

§ 15.2-2316.4.B.4.

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

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.

(§ 15.2-2306. Preservation of historical sites and architectural areas.

A.1. Any locality may adopt an ordinance setting forth the historic landmarks within the locality ...)

PC meeting questions for small cell facilities – 6.24.2021

What is approved by public hearing?

The installation or construction of a new structure, provided the structure with attached wireless facilities is located inside a local, state, or federal historic district (per §15.2-2316.3.Definitions. Administrative review-eligible project).

What is approved administratively?

1. Small cell facilities installed on an existing structure (located in a right of way or on private property) are approved administratively per §15.2-2316.4.

10 day shot clock for locality to notify applicant whether application is incomplete.

60 day shot clock to approve or disapprove an application on an existing facility.

Locality can deny only based on:

- a. Interference with other pre-existing or planned communications facilities
 - b. Public safety or other critical public service needs,
 - c. Installation on public property, aesthetic impact, or absence of required approval from others with jurisdiction over such property, and
 - d. Conflict with local historic preservation ordinance (*. . . need new language in zoning chapter or in design guidelines*)
2. The installation or construction of an administrative review-eligible project (i.e. a new structure that is ≤ 50' in height) per §15.2-2316.4:1.

Fee shall not exceed \$500 for an administrative review-eligible project

10 day shot clock for locality to notify applicant whether application is incomplete for an administrative review-eligible project or for a standard process project.

150 day shot clock to approve or disapprove a new structure.

90 day shot clock to approve or disapprove the co-location of any wireless facility that is not a small cell facility

30 days for applicant to appeal the disapproval of an application for an administrative review-eligible project

Is historic district approval a PC public hearing or an ARB Certificate of Appropriateness?

Only way to limit in historic district is to have ARB COA with specific design standards.

How does Williamsburg or Charlottesville handle small cells in historic districts?

Put the historic district requirements into "other requirements" section on page 13.

What happens with small cells on private property?

What happens with small cells on public property?

Does \$500 fee in #3 include the \$250 in #1? (See top of page 7) What is difference between E1 and E3?

These fees appear to be separate. E1 provides a \$250 processing fee to collocate small cell facilities on an existing or proposed new structure within a ROW and is a permit granting access to the public rights-of-way. E3 provides a \$500 fee for a zoning permit to review and approve an administrative review-eligible project.

Can we cut and paste design guidelines from other jurisdictions?

What is the difference between b and c on page 11?

B provides height limitations when a replacement utility pole is utilized and C limits the height of a new utility pole (that does not replace a previous utility pole).

Who gets to say no to a small cell request?

Presumably Dominion Power, City of Lexington, and the Department of Transportation

Can the City say no?

A locality can disapprove an application for an administrative review-eligible project or for a standard process project (per §15.2-2316.4:2.B):

1. The proposed height exceeds 50 feet above ground level, provided the locality follows a local ordinance that does not discriminate, etc.
2. A new structure, or to co-locate a wireless facility in an area where all cable are required to be placed underground by a date certain or ... if a-d

A locality can disapprove 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 per §15.2-2316.4:2.D.

A locality can limit the number of new structures or the number of wireless facilities that can be installed in a specific location per §15.2-2316.4:3.B.

Can Dominion Power say no to a small cell request on their pole?

Is there anything Charlottesville wished they had added to page 11?

Guy wires or guide wires? Guy wires is correct.

What are the undergrounding requirements in our historic districts?

What is make ready work?

Make-ready construction means all work that is required to accommodate Licensee's wireless installation on a service pole in compliance with applicable engineering standards.

Code of Virginia

[Table of Contents](#) » [Title 15.2. Counties, Cities and Towns](#) » [Chapter 22. Planning, Subdivision of Land and Zoning](#) »

[Chapter 22. Planning, Subdivision of Land and Zoning](#) » [Article 7.2. Zoning for Wireless Communications Infrastructure](#)

- **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.