

LEXINGTON PLANNING COMMISSION

November 10, 2022 - 5:00 P.M

Rockbridge County Administrative Offices – First Floor Meeting Room
150 South Main Street, Lexington, VA 24450

AGENDA

1. **CALL TO ORDER**
2. **APPROVAL OF THE AGENDA**
3. **APPROVAL OF MINUTES**
Minutes from October 27, 2022*
4. **CITIZENS' COMMENTS ON MATTERS NOT ON THE AGENDA**
5. **NEW BUSINESS**
 - A. ZOA 2021-03: An application by the City of Lexington proposing amendments to the City Code for the regulation of small cell wireless facilities.
 - 1) Staff Report*
 - 2) Public Comment
 - 3) Commission Discussion & Decision
6. **OTHER BUSINESS**
 - A. Zoning and Planning Report – If applicable
 - B. Catalyst Project Updates – If applicable
 - 1) Bike/Ped Plan: Complete
 - 2) Increase Sidewalk Connectivity: Ongoing
 - 3) Accessory Dwelling Unit Ordinance: Starting soon
 - 4) Jordan's Point Park Plan Implementation: Ongoing
 - 5) Reprogram Traffic Signals Downtown: Complete
 - 6) Assess Stormwater Fees: Tabled until next year
 - 7) Green Infrastructure Group: Ongoing
 - C. Key Annual PC Milestones: Ongoing. Remaining items:
 - 1) Zoning Text Amendments: Ongoing. Remaining items:
 - a. Small Cell
 - b. Planned Unit Development
 - c. Accessory Dwelling Unit
 - d. Cottage Housing
 - e. What else, if any?
 - 2) Comp Plan Review: Ongoing

7. CITY COUNCIL REPORT

8. ADJOURN

*indicates attachment

MINUTES

**The Lexington Planning Commission
Thursday, October 27, 2022 – 5:00 p.m.
Rockbridge County Administrative Offices – First Floor Meeting Room
150 South Main Street, Lexington, VA 24450**

Planning Commission:

Presiding: Blake Shester, Chair
Present: Nicholas Betts, Vice-Chair
John Driscoll
Leslie Straughan, Council Liaison
Matt Tuchler (arrived 5:05 p.m.)

City Staff:

Arne Glaeser, Planning Director
Kate Beard, Administrative Assistant

Absent: Pat Bradley

CALL TO ORDER

Chair Shester called the meeting to order at 5:03 p.m.

AGENDA

The agenda was unanimously approved as presented. (N. Betts / L. Straughan)

MINUTES

The minutes from the October 13, 2022 meeting were unanimously approved as presented. (J. Driscoll / L. Straughan)

CITIZENS' COMMENTS ON MATTERS NOT ON THE AGENDA

None

NEW BUSINESS

A. Green Infrastructure Working Group Final Report

1) Introductory Remarks from Planning Commission Liaison –

Commissioner Driscoll reminded the Commission that the Green Infrastructure Working Group (Working Group) was charged with recommending how the City can achieve the goals, objectives and strategies in the Green Infrastructure chapter of the Comprehensive Plan and said the Report represents the recommendations, suggestions and collective wisdom of an engaged and thoughtful group that knows Lexington well. He suggested the goal for this meeting was to familiarize the Planning Commission with the Report and the recommended Collective Impact model approach to implementation.

He explained that the Working Group organized itself around the six initiatives that are a focus of the Report and learned from one another what various local organizations are already doing – pointing out the multi-disciplinary nature of green infrastructure. He offered that the initiatives were synthesized from the strategies in the Green Infrastructure chapter of the Comprehensive Plan and form the basis of an integrated approach. He noted the Report also provides potential partners; a suggested model for project implementation and potential funding sources. He emphasized that the Report is not a statutory document,

but should be used as a road map to continue the conversation and to develop a strategy for implementation using the varied resources available within the City.

Commissioner Driscoll explained that the Collective Impact model is a means of bringing together and harnessing the efforts of existing organizations rather than creating a new institution. He noted it is becoming the preferred adaptive management technique for addressing complex sustainability challenges, is favored by funders, and is a model already used by other local groups. The Working Group has recommended the model as the most economical way to accomplish the strategies in the Comprehensive Plan as it provides flexibility with a low budget start up. He asked that the Planning Commission explore and validate the model as a viable approach, and participate in and support the development of the model as a means of accomplishing many of the Green Infrastructure initiatives. He reported the next steps would be to finalize the Report after discussion with the Commission, presenting the Report to City Council, developing consensus about who would act as the backbone of the organization(s), supporting that person in communicating with interested parties, and supporting them in seeking funding.

Commissioner Tuchler expressed enthusiasm for the report and gratitude for the work involved and asked how the Commission could see that it becomes an action item. A. Glaeser noted that the Commission could make a recommendation endorsing the plan, but implementation would be up to City Council. J. Driscoll emphasized that the priority for the Planning Commission should be the validation of the Collective Impact model as an implementation tool, rather than suggesting actionable individual projects.

Before opening the hearing to public comment, Chair Shester, on behalf of the Planning Commission, thanked the members of the Green Infrastructure Group for their diligent work over the past year and the impressive results.

2) Public Comment –

Holly Ostby, 16 Edmondson Ave – stated she is a member of the Working Group and works for the hospital where she leads a coalition that uses the Collective Impact model. She suggested the model would allow the City to coordinate with other local organizations to better prioritize and to best utilize resources. She said the model is similar to a regular coalition with the difference that with Collective Impact there is a framework. The collective approach brings more resources to bear with greater impact, but in order for it to work there must be a backbone entity and a point person to stay in touch with all parties and facilitate communication. She suggested the model could involve one, over-arching “Green Infrastructure” group with various committees for specific topics. She said she envisioned the point person as acting as extra staff for the Planning Director to keep the City abreast of projects in the area and inform the projects the City decides to allocate resources to. She stressed that the point person need not be a City employee and could perhaps be housed in a local non-profit serving as the backbone entity. L. Straughan remarked that she thought that was a realistic model and encouraged an approach that was not City led but included a City staff or Council liaison.

Charles Aligood, 506 Cavalry Rd. – expressed support and approval of the Report and extolled the Working Group’s efforts in developing it and in influencing the

Comprehensive Plan and Catalyst Projects. He recognized the work of Commissioner Driscoll as well as that of former Planning Commission Chair, Jamie Goodin, and praised the entire group's benefit to the City. He agreed that a liaison should be identified and pledged to lend his support here and in City Council.

Arthur Bartenstein, 614 Stonewall St. – remarked that Lexington is appreciated for its historic character and that he sees green infrastructure as not only relevant to recreation, the environment, and health, but also to Lexington's historic identity. He noted the strong, local preservation community and suggested they would be an interested party. He observed that many cities have a dedicated Parks Department and said it was a concern of his that Lexington has no staff who is specifically concerned with the City's open spaces

Lee Merrill, 2 S. Randolph St. – stated that, as a member of the Working Group, he was very encouraged by the Commissioners supportive reaction to the report. He voiced support for the Collective Impact model as a means of implementation and indicated there was potential for big impacts within the next several years. He remarked on the community's wealth of resources and argued a backbone entity would be necessary to make this work.

Responding to questions from various Commissioners about practical organization and procedure, Ms. Ostby recommended the adoption of loose bylaws or a general agreement among the partners, but noted bylaws are not necessary. She indicated the goal should be on building in and maintaining enough flexibility to be able to shift and adapt depending on what City Council and other community partners are willing to focus on at any given time. She added the coalition partners would decide and agree together on a shared metric to measure progress and provided a brief explanation of how her coalition functions while stressing that other Collective Impact coalitions function differently.

Elise Sheffield, 1 South River Rd. – explained she, through her affiliation with Boxerwood, is part of a Collective Impact model, the Rockbridge Waste Reduction Roundtable, and offered a description of how it functions as a way of assisting the Commissioners in understanding how this type of model works. She encouraged the Commissioners to think of the model as a Venn diagram and explained that Boxerwood, in its work with schools and waste reduction, found that it and other local organizations also working on waste reduction were stepping on each other's toes. Using the Collective Impact model, with Boxerwood as the backbone entity and Ms. Sheffield as the facilitator, they were able to organize their efforts simply by disseminating information among the coalition members. She said it allows the members to work on a common interest with each member bringing their own strengths to the table, and she has found having the various entities in communication has created a synergy in which new opportunities become apparent.

- 3) Commission Discussion – Chair Shester suggested the Commission discuss next steps, implementation and how to move the Report forward. M. Tuchler requested that emphasis be placed on moving the report on effectively so that it is well used and referenced in the future. L. Straughan agreed and said she would encourage the idea

of an outside entity acting as the backbone entity and housing the coordinator. She suggested the details be better fleshed out before being presented to City Council so as to be better received and more quickly acted upon. Following additional discussion of how and when to make a recommendation to City Council, J. Driscoll suggested the Green Infrastructure Group would tighten up the implementation priorities, provide potential funding sources and identify outside organizations to act as the backbone entity. It was determined that the Commission would consider the Working Group's more specific practical language at its December 8th meeting. There appeared to be a general understanding that the Commission would make its formal recommendation at its joint meeting with City Council to be scheduled in early 2023.

Responding to a question from L. Straughan about an item that came to her attention with in the recognition of the City's Arbor Day, Betty Besal of the Tree Board provided a brief explanation of an effort to expand protection of private trees by adding the designations *memorial heritage specimen* and *street trees* to the Tree Ordinance.

OTHER BUSINESS

A. Zoning and Planning Report – Director Glaeser reported the following:

- He contacted the Farmers' Co-op again about the non-compliant exterior lights and was told they had contacted an electrician.
- The Commissioner of Revenue found a food truck scheduled for an event at the Farmer's Co-op. Staff contacted the vendor and coordinated with the Health Department in order to issue a Mobile Restaurant license in time for the scheduled event.
- The City received its first Building Code Appeal and Planning Department staff are working on the Staff Report. This will be the first appeal heard by the Lexington and Buena Vista Joint Board of Building Code Appeals.
- He and Scott Dameron of Public Works registered for a Bicycles & Pedestrian class held by the UVA Transportation Training Academy.
- Arthur Bartenstein stopped by City Hall with an Accessory Dwelling Unit proposal that will be useful during the Commission's discussion of accessory dwelling units in accessory structures.

B. Key Annual PC Milestones

Chair Shester noted a public hearing for the Small Cell zoning amendment would be on the November 10th agenda and materials for a preliminary discussion of the Accessory Dwelling Unit zoning amendment would be added to the December 8th agenda after the continued discussion of the Green Infrastructure Report.

CITY COUNCIL REPORT -

L. Straughan reported City Council met on October 20th and held public hearings for the two Conditional Use Permits reviewed by the Commission on September 22nd. Both were

approved unanimously. Council also approved a recommendation to purchase property adjacent to Evergreen Cemetery which will be used, at least in part, to expand the cemetery.

ADJOURN

The meeting was adjourned at 6:24 pm with unanimous approval. (N. Betts / J. Driscoll)

B. Shester, Chair, Planning Commission

Draft amendments to the Zoning Ordinance (*Chapter 420*) and to the Streets and Sidewalks Chapter (*Chapter 356*) for Small Cell Wireless Facilities

Contents

- A. Introduction 2
- B. Proposed Amendments to the Zoning Chapter (*Chapter 420*) 4
 - 1. Article II. Use Matrix (*Zoning Ordinance*) 5
 - 2. Article VIII. Historic Downtown Preservation District & Article IX. Residential Historic Neighborhood Conservation District (*Zoning Ordinance*) 7
 - 3. Article XI. Use and Design Standards (*Zoning Ordinance*) 8
 - 4. Article XXI. Definitions (*Zoning Ordinance*) 21
- C. Proposed Amendments to the Streets and Sidewalks Chapter (*Chapter 356*) 22

A. Introduction

In the past several years, there has been an exponential increase in the number of wireless devices such as cell phones, laptops, sensors, etc., and wireless service providers such as Verizon, AT&T, Sprint and T-Mobile have had to find a way to densify their wireless networks in order to keep up with the increased demand. Prior to 2017, these electronic devices were connected wirelessly through macro-towers, the traditional “cell tower” that you may have seen with little more frequency than municipal water towers. As demand increased, a new type of antenna known as a “small cell” was introduced into the marketplace, with the ability to supplement traditional macro-towers to provide ubiquitous broadband coverage to connect these devices. Although smaller in size than macro-towers, these need to be much lower to the ground and there needs to potentially be many more of them in order to accommodate the ever increasing demand. The wireless providers began negotiating with individual businesses and property owners to get access to property and install the antennas and infrastructure. The providers quickly found out that due to the amount of small cells needed, especially in densely populated areas, this one-by-one approach was not easy. So in 2017, the providers began fiercely lobbying the Virginia General Assembly (and a multitude of other states), and the federal government to pass legislation that would streamline the process and allow providers unfettered access to public rights-of-way to install wireless infrastructure. Between 2017 and 2019, several bills were passed in Virginia, as well as 23 other states. In 2018, the Federal Communications Commission released an order that took effect in 2019, making all states subject to small cell legislation and pre-empting many of the state laws in the process.

In 2017 and 2018, the Virginia General Assembly adopted legislation to enable the roll-out of small cell wireless facilities across the Commonwealth. The 2017 Virginia Legislation, often referred to SB 1282, introduced the concept of the small cell facility to the Virginia Code. Small cell wireless facilities are low-powered antennas that provide wireless service coverage to a limited geographic area (often with ranges of a few hundred feet), and are used to supplement and expand the coverage provided by the traditional, larger-scale network. Senate Bill 1282 in 2017 amended sections of Title 15.2 (Counties, Cities and Towns) of the Code of Virginia and sections of Title 56 (Public Service Companies) to establish 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 and the law also sets maximum permitting fees and shot clocks for approval deadlines.

House Bill 1258 in 2018 addressed new (or replacement) poles up to 50 feet in height in rights of way to accommodate small cells. The 2018 legislation also sets out new limitations on application requirements and reasons for denial for all other types of wireless applications beyond small cell facilities. A locality for example can no longer condition approval on a wireless provider’s giving the locality free space on the tower for public services.

It is important for Lexington to adopt regulations for the installation of new small cell facilities in those limited instances where State legislation allows local oversight. Without the adoption of new regulations, small cell facilities may be installed according to current use and design standards found in the Zoning Ordinance for *Broadcasting or Communication Towers* and those requirements are minimal. We should avail ourselves of the limited review and oversight permitted by the State for small cell facilities.

The following report proposes amendments to two separate chapters of the Code of the City of Lexington to provide additional regulations for small cell facilities in compliance with the new State legislation. A majority of the amendments are proposed in the Zoning Chapter (Chapter 420) with additional amendments proposed in the Streets and Sidewalks Chapter (Chapter 356).

B. Proposed Amendments to the Zoning Chapter (*Chapter 420*)

Most of the amendments to the City Code propose detailed use and design standards for small cell facilities in the Zoning Ordinance. There are additional amendments needed in three other sections of the Zoning Ordinance to supplement the proposed use and design standards. The additional amendments are to the Use Matrix, Design Guidelines for historic districts, and to the Definitions section. The following Zoning Ordinance table of contents shows the sections proposed to be amended **highlighted** in yellow.

Chapter 420. Zoning Ordinance Table of Contents

Article I. In General

Article II. Review and Approval Procedures

*Article III. **Use Matrix.***

Article IV. Zoning District Regulations

Article V. Planned Unit Development (PUD)

Article VI. Entrance Corridor Overlay District (EC)

Article VII. Institutional District I-1

*Article VIII. **Historic Downtown Preservation District***

*Article IX. **Residential Historic Neighborhood Conservation District***

Article X. General Floodplain District FP

Article XI. Use and Design Standards

§420-11.1. Residential Uses

§420-11.2. Civic Uses

§420-11.3. Commercial Uses

§420-11.4. Industrial Uses

§420-11.5. Miscellaneous Uses

1. Parking Facility

2. Portable buildings

3. Portable Storage Container

*4. **Broadcasting or Communication Tower***

Article XII. Off-Street Parking and Loading Requirements

Article XIII. Signs

Article XIV. Landscaping

Article XV. Exterior Lighting

Article XVI. Nonconforming Uses

Article XVII. Amendments

Article XVIII. Enforcement

Article XIX. Board of Zoning Appeals

*Article XX. **Definitions***

The proposed amendments to Zoning Ordinance are presented here in accordance with their position in the table of contents starting with the Use Matrix followed by the Design Guidelines referenced in the two historic districts, etc. It should also be mentioned that a number of codes for Virginia municipalities were examined and the Planning Commission decided to base the Lexington amendments on the use and design standards from the Chesapeake, VA zoning ordinance.

1. Article II. Use Matrix (*Zoning Ordinance*)

The Use Matrix on the following page is proposed to be amended in order to distinguish the two types of communication towers approvals in accordance with the State's convention of an approval for a "standard process project" versus an approval for an "administrative review eligible project." The State legislation limits what can be reviewed and approved through a public hearing process (i.e. approval of a conditional use permit) and makes more small cell projects meeting certain criteria eligible to be reviewed administratively without a public hearing review process.

The distinction between a Standard Process Project and an Administrative Review Eligible Project will be further explained in the use and design section.

The standard process projects will remain conditional uses in the P-OS, R-1, R-2, and C-2 zoning districts, while the Planning Commission recommends the R-M and R-LC zoning districts be added to the list. Communication towers that meet the State criteria for an administrative review eligible project will be by-right uses provided the proposed communication tower meets all of the use and design standards for small cell facilities and for other communication towers.

Zoning District	FP, Floodplain Overlay	P-OS, Parks and Open Space District	R-1, Residential General	R-2, Suburban Residential	R-M, Residential Multifamily	R-LC, Residential-Light Commercial	C-1, Central Business District	C-2, General Commercial District
-----------------	------------------------	-------------------------------------	--------------------------	---------------------------	------------------------------	------------------------------------	--------------------------------	----------------------------------

B = By-right uses, C = Conditional uses

Use Types

Miscellaneous

Amateur radio tower			B	B		B	B	B
Building, Portable	B	B	B ⁵	B ⁵	B ⁵	C ⁶	C ⁶	C ⁶
Broadcasting or communication tower (Standard Process Project)		C	C	C	C	C		C
Communication tower (Admin. Review Eligible Project)	B ⁷	B ⁷	B ⁷	B ⁷	B ⁷	B ⁷	B ⁷	B ⁷
Cemetery, private						C		
Garage, private			B	B		B	C	C

¹ Second floor and higher

² First floor

³ Bed & Breakfasts only allowed along Main, Washington, and Nelson Streets

⁴ Bed & Breakfasts only allowed along S. Main Street

⁵ accessory building is by right

⁶ temporary construction office and storage sheds are by-right

⁷ permitted if requirements of 420-11.5.4 are met

2. Article VIII. Historic Downtown Preservation District & Article IX. Residential Historic Neighborhood Conservation District (*Zoning Ordinance*)

Both of the Lexington historic districts reference the Design Guidelines adopted in 2020 to be used in the consideration of a certificate of appropriateness by the Architectural Review Board. The Lexington Historic Districts Design Guidelines are a separate document from the Zoning Ordinance and the recommendation is to amend the Design Guidelines that are referenced in both historic districts and not to amend any language in either zoning article devoted to the historic districts.

While the Design Guidelines provide recommendations for site design elements such as fences, outbuildings, utility poles, satellite dishes, etc., the Design Guidelines do not specifically contain recommendations for the siting of small cell wireless facilities. The review and approval of small cell facilities in historic districts is one of the few areas where standards for small cell facilities are allowed by the State legislation, and the following proposed guidelines for the siting of small cell facilities in the historic districts are proposed for a new section G in Article IV. of the Lexington Historic District Design Guidelines manual.

G. Facilities

In concert with the preceding guidelines for appurtenances, the following guidelines are provided pertaining to small cell, other wireless antennas, and other technological infrastructure (collectively “facilities”):

1. The aesthetic and historic character and integrity of the streetscape is to be protected to the greatest extent possible.
2. To the greatest extent practicable, facilities and cabling should be hidden from view and be as small as possible. Underground installation is preferable.
3. In no case, shall any installation of such facilities directly to a building be done in such a manner that the attachment will cause harm or degradation to the building facade, architectural features or any structural element.
4. Facilities may be required to be screened with vegetation or with material that compliments the building it is mounted on or near.
5. Collocation of facilities on existing buildings and structures is preferred over the installation of new stand-alone poles.
6. Any new support structure located along an existing sidewalk or street shall align with existing features such as utility poles and trees as to maintain organization.

7. The height of any new support structure shall be no higher than necessary consistent with the requirements for reception and transmission, but in no case shall exceed 30 feet in height.

The above recommended guidelines for the siting of small cell facilities in the Historic Districts were reviewed and recommended by the Lexington Architectural Review Board following four meetings, and then reviewed and recommended by the Lexington Planning Commission for inclusion in the draft proposal for this zoning text amendment for small cell facilities.

3. Article XI. Use and Design Standards (*Zoning Ordinance*)

The following additional regulations apply to specific uses as set forth below. These regulations are intended to serve as the minimum standards for these uses, and are not intended to be in substitution for other provisions of this ordinance that may apply.

§420-11.5. Miscellaneous Uses.

4. ~~Broadcasting or~~ Communication Tower.

~~A. Applicability. The requirements set forth in this section shall control all antennas and broadcasting or communication towers except any antenna that is under 75 feet in height and is owned and operated by a federally licensed amateur radio station operator.~~
(Language in blue is deleted here but included elsewhere in this section.)

~~B. General guidelines and requirements.~~

- ~~1. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or towers on that lot. Antennas or towers may be located on leased parcels within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this section shall not be deemed to constitute the expansion of a nonconforming use or structure.~~
- ~~2. Inventory of existing sites. Each applicant for an antenna and/or tower shall provide to the City an inventory of its existing facilities that are either within the City or within five miles of the City limits, including specific information about the location, height, and design of each tower. The City may share such information with other applicants applying for approvals or conditional use permits under this section or other organizations seeking to locate antennas within the City; provided, however, that the City is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.~~

~~C. Setbacks. The following setback requirements shall apply to all towers and antennas for which a conditional use permit is required; provided, however, that the City may reduce the standard setback requirements if the goals of this section would be better served thereby:~~

- ~~1. Towers must be set back a distance equal to 200% of the height of the tower from any off-site residential structure and in no case less than 400 feet.~~
- ~~2. Towers, guys, and accessory facilities must satisfy the minimum zoning district setback requirements for primary structures.~~

A. Definitions and Scope

1. Communication tower is defined as a tower or antenna which supports communication (broadcasting and/or receiving) equipment utilized by commercial, government or other corporate, public and quasi-public users. Towers include radio, television, cellular telephone, personal communication services (PCS), microwave, internet, and other similar communications facilities, satellite earth station and building-supported antennas. The towers may be self-supporting or guy-supported. The regulations set out below do not apply to the following: (1) amateur radio communications antennas under 75 feet in height owned and operated by a federally licensed amateur radio station operator; (2) antennas and dishes limited exclusively to home use; and (3) towers owned by the city. All communication towers shall be classified as an administrative review-eligible or standard process project, as defined below.

a. 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 service provider or wireless infrastructure provider on an existing structure to which the provisions of subsection 420-11.5.4.B.2.c of this ordinance apply.

(1) Administrative review-eligible project means a project that provides for:

(a) The installation or construction of a new wireless support structure, as defined below, that is no more than fifty (50) feet above ground level, provided that the structure with attached wireless facilities is (i) not more than ten (10) feet above the tallest existing utility pole located within five hundred (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 thirty-five (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)

the new wireless support structure is designed to support small cell facilities; or

(b) The co-location on any existing structure of a wireless facility that is not a small cell facility.

(2) Standard process project means any project other than an administrative review-eligible project. All such projects shall require a conditional use permit in accordance with this ordinance.

2. Antenna means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.
3. 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.
4. 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. For purposes of this ordinance, "co-location" shall have the same meaning.
5. Department means the Department of Transportation.
6. 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. It shall also include the replacement of a structure, located within a six (6) foot perimeter of the original placement of the structure, with structures that are the same size or smaller.
7. Micro-wireless facility is defined as a small cell facility that is no larger than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, no longer than eleven (11) inches.
8. 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.
9. Small cell facility means a wireless facility that meets both of the following qualifications:

- a. each antenna is located inside an enclosure of no more than six (6) 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 (6) cubic feet; and 2) all other wireless equipment associated with the facility has a cumulative; and
- b. all other wireless equipment associated with the facility has a cumulative volume of no more than twenty eight (28) cubic feet, or such higher limit as established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume calculation: electric meters, 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.
10. 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.
11. "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.
12. "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.
13. "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.
14. "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.
15. "Wireless services provider" means a provider of wireless services.
16. Wireless support structure means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing structure or alternative

structure designed to support or capable of supporting wireless facilities. "Wireless support structure" does not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

B. Conditional Use Permit required

1. Except as provided in subsection D. below, all communication towers shall be handled as standard process projects and shall require a conditional use permit, obtained in accordance with the provisions of Article 1 of this ordinance. Standard process projects shall be reviewed pursuant to the criteria put forth in Virginia Code Section 15.2-2316.4:2, as amended. The processing of a standard process project application shall be subject to the following parameters:

a. Within ten (10) days after receipt of a conditional use permit 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. All such applications shall be approved or denied within the following specified time periods:

(1) For a new structure, as defined by this ordinance, within the lesser of one hundred and fifty (150) days of receipt of the completed application or the period required by federal law for such approval or disapproval; or

(2) For the co-location of any wireless facility that is not a small cell facility within the lesser of ninety (90) days of receipt of the completed application or the period required by federal law for such approval or disapproval.

(3) Any period specified above for the city council to approve or disapprove an application may be extended by mutual agreement between the applicant and the city.

b. A completed conditional use permit application shall be deemed approved if the city council fails to approve or disapprove the application within the periods specified above or any agreed extension thereof.

c. Any disapproval of the conditional use permit application shall be in writing and accompanied by an explanation for the disapproval, and the locality shall identify any modifications that could be made to the application which would permit the city to approve the proposed project. City council's action on disapproval of an application submitted under this section 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 thirty (30) days following the disapproval.
- d. The fee for processing standard process projects shall be five hundred dollars (\$500.00), which shall not exceed the actual direct costs to process the application, including permits and inspection, in accordance with Virginia Code Section 15.2-2316.4:1, as amended.
- e. Nothing in this section shall prohibit the denial of an application because:
- (1) The proposed height of any wireless support structure, wireless facility, or wireless support structure with attached wireless facilities exceeds fifty (50) feet above ground level; provided that such denial does not unreasonably discriminate against the applicant; or
- (2) The proposed location of the new structure or co-location of a wireless facility is in an area where all cable and public utility facilities are required or encouraged to be placed underground in accordance with Virginia Code Section 15.2-2316.4:2, as amended;
- (3) The applicant did not provide written notice to adjacent landowners at least 15 days before it applies to locate a new structure, or
- (4) Existing wireless support structures are available within a reasonable distance that could be used for co-location. The applicant shall be responsible for submitting evidence proving that an existing wireless support structure is incapable of supporting co-location because of unreasonable terms, technical limitations, or other valid criteria as determined by the zoning administrator or designee.
2. Preapplication meeting required. Prior to submitting an application for a conditional use permit for a communication tower, the applicant shall meet with the director of planning to discuss the proposed location of the communication tower, the location of all existing and planned communication towers which the applicant owns or operates within the city, the feasibility of locating the communication facilities on existing towers, buildings or structures, or on municipal property and such other issues as deemed relevant by the planning director or designee. Failure to schedule or attend a preapplication meeting shall preclude the acceptance and processing of an application for a conditional use permit for a communication tower.
3. Additional information required for use permits. In addition to the information otherwise required for a conditional use permit application, any application for a conditional use permit for a communication tower shall include the following:
- a. A site plan drawn to scale specifying the location of tower(s), guy anchors (if any), transmission building and other accessory uses, parking, access, landscaped areas, fences ownership and use of adjoining properties.

- b. Certification by the manufacturer or an engineering report by a state-registered structural engineer shall be submitted indicating the communication tower or antenna height, design, structure, installation and total anticipated capacity of the structure, including number and type of antennas which could be accommodated, and demonstrating to the satisfaction of the code compliance manager that all structural requirements and safety specifications set forth in the Virginia Uniform Statewide Building Code, as supplemented and amended, will be met. In addition to the structural and safety specifications in the Virginia Uniform Statewide Building Code, the certification shall indicate that the proposed communication tower will be constructed to withstand 110 mile per hour winds.
- c. A statement from a registered engineer that the NIER (nonionizing electromagnetic radiation) emitted from the communication tower, when measured in conjunction with the emissions from all communication facilities on the tower, does not result in an exposure at any point on or outside such facility which exceeds the lowest applicable exposure standards established by any regulatory agency of the U.S. government or the American National Standards Institute.
- d. In order to assist the city council in determining whether it is feasible to locate the proposed communication facilities on existing communication towers, proposed communication towers which have received all necessary approvals for construction, suitable buildings and suitable structures, including, but not limited to, electric transmission structures, the applicant shall indicate on a map the location of all existing towers, and all buildings and structures suitable for the proposed communication facilities within a two-mile radius of the proposed communication tower site, including specific information about the location, height, and design of each tower.
- e. Verifiable evidence from the applicant, in written form deemed acceptable to the director of planning, of the lack of space on all existing towers within a two-mile radius of the proposed site, and all suitable buildings, and other structures which could accommodate the proposed antenna, and the lack of space on existing tower sites to construct an additional communication tower for the proposed antenna within the service area.
- f. Written confirmation of plans for multiple use of the proposed communication tower.
- g. A visual study depicting all areas the proposed facility would be visible from and what the appearance would be, including photo-simulations. A balloon test at the proposed site may also be required at the discretion of the planning director or designee.

After acceptance of an application as complete, the director of planning may request additional information and documentation relative to land use and safety issues,

provided that the director shall not delay processing the conditional use permit application while the provision of such information or documentation is pending. However, in the event that all requested information and documents are not submitted prior to a scheduled public hearing, the planning department will recommend to the planning commission that consideration of the application be continued until such information and documents have been submitted.

4. Multiple use of communication towers required whenever feasible.

a. In the consideration of applications for the conditional use permits for the construction of communication towers, the multiple use of existing communication towers, proposed communication towers which have received necessary approvals for construction, and suitable buildings and structures, including, but not limited to, electric transmission structures shall be required whenever feasible in order to minimize the proliferation of communication towers throughout the city, to provide for adequate light and air, to facilitate the creation of a convenient, attractive and harmonious community, to preserve the character of zoning districts, and to eliminate the potential for adverse impact on established land uses within the city. However, in no event shall it be deemed a violation of this ordinance to operate a communication tower with a single user if a conditional use permit has been issued without an express stipulation requiring multiple use.

5. Evaluation criteria for conditional use permits. In determining whether a conditional use permit application for a communication tower should be approved, the planning commission and city council shall consider the following factors, in addition to the other evaluation criteria for conditional use permits set out in Article 1 of this ordinance:

a. Whether the communication tower is consistent with the comprehensive plan as determined by the planning commission in accordance with section 15.2-2232 of the Code of Virginia.

b. Whether approval of the communication tower will contravene good planning practices or obstruct the public aims of facilitating the creation of a convenient, attractive community, providing for adequate light and air, preserving the character of zoning districts and eliminating the potential for adverse impact on established land uses within the city.

c. Whether the proposed communication tower is to be located in an area where it would be unobtrusive and would not substantially detract from aesthetics or neighborhood character, due either to location, to the nature of surrounding uses (such as industrial uses), or to lack or mitigation of visibility caused by natural growth, stealth design or other factors.

d. Whether the applicant has established that collocation on existing and proposed communication towers and suitable buildings and structures is not feasible in

accordance with subsection 420-11.5.4.B.5 above, and whether the applicant has agreed to provide collocation opportunities to other users and has specified the number and types of users that could be accommodated on the proposed communication tower.

- e. Whether the application represents a request for multiple use of a communication tower or site, or use on a site contiguous to an existing communication tower. Where the applicant proposes multiple use of the communication tower, the planning commission and the city council may consider whether the applicant has submitted written confirmation of collocation plans including, but not limited to, agreements, memoranda of agreement or completed forms for multiple use provided by the city.
- f. Whether the application contains evidence that other potential users of the proposed communication tower have been contacted, and they have no current plans, to the best of their ability to determine, that could be fulfilled by joint use of the proposed communication tower.
- g. Whether the application shows how the communication tower or site will be designed or laid out to accommodate future multiple users, and if not so designed, the reasons given for failure to do so.

C. Setback requirements

- 1. The following setback requirements shall apply to all towers and antennas for which a conditional use permit is required; provided, however, that the City may reduce the standard setback requirements if the goals of this section would be better served thereby:
 - a. Towers must be set back a distance equal to 200% of the height of the tower from any off-site residential structure and in no case less than 400 feet.
 - b. Towers, guys, and accessory facilities must satisfy the minimum zoning district setback requirements for primary structures.

D. Exceptions to conditional use permit requirement

- 1. Administrative review-eligible projects. New communication towers meeting the definition of an administrative-review eligible project, or the co-location of a wireless facility that is not a small cell facility on an existing structure, shall be considered an administrative review-eligible project. All such projects shall be reviewed pursuant to the criteria put forth in Virginia Code Section 15.2-2316.4:2, as amended, and shall be subject to the following requirements:
 - a. The wireless service provider or wireless infrastructure provider either (a) obtains the approval of the City of Lexington by virtue of a franchise agreement and right-of-way permit or lease, as required by law, if a new wireless support structure is proposed to be located in the right-of-way or on city property; or (b)

- the wireless service provider or wireless infrastructure provider: (i) either has permission from the owner of the land on which the administrative review-eligible project is proposed or has the permission from the owner of an existing pole, building or structure to co-locate equipment on that pole, building or structure and (ii) notifies and provides evidence of such permission to the locality in which the permitting process occurs; and
- b. The applicant shall submit an application which shall include: (a) photographs or accurate renderings, including correct colors and exact dimensions, of each type of proposed project; (b) a statement signed by a professional engineer licensed in the Commonwealth of Virginia stating that the proposed facilities comply with all applicable Federal Communications Commission regulations, including, without limitation, regulations pertaining to the emission of radio frequency radiation; and (c) such additional information as the planning director may reasonably require in order to determine whether the requirements of this section are met.
- c. Within ten (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. All such applications shall be approved or denied within the following specified time periods:
- (1) 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; or
 - (2) For the co-location 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.
 - (3) Any period specified above for the city to approve or disapprove an application may be extended by mutual agreement between the applicant and the city.
- d. A completed application shall be deemed approved if the director of planning fails to approve or disapprove the application within the periods specified above or any agreed extension thereof.
- e. Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval, and the locality must describe any modifications that could be made to the application which would permit the city to approve the proposed project. The director of planning's action on disapproval of an application submitted under this section 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 thirty (30) days following the disapproval.

f. The fee for processing administrative review-eligible projects shall be five hundred dollars (\$500.00) in accordance with Virginia Code Section 15.2-2316.4:1, as amended.

g. Nothing in this section shall be interpreted to prohibit the denial of an application if the proposed height of any wireless support structure, wireless facility, or wireless support structure with attached wireless facilities exceeds fifty (50) feet above ground level.

h. Nothing in this ordinance shall be interpreted to prohibit the city from limiting the number of new structures or the number of wireless facilities that can be installed within a five hundred foot (500') radius of an existing wireless support structure that could support co-location at that specific location. The applicant shall be responsible for submitting evidence proving that an existing wireless support structure is incapable of supporting co-location because of unreasonable terms, technical limitations, or other valid criteria as determined by the zoning administrator or designee.

2. Temporary portable towers. Temporary portable towers also known as cells on wheels (COWS), are permitted under the following circumstances:

a. For use when a duly authorized communication tower is undergoing maintenance that requires antennas to be disconnected or turned off. A permit shall be obtained from the zoning administrator authorizing the COW for a maximum of sixty (60) days, which period may be extended at the discretion of the zoning administrator.

b. For use in an emergency situation during the activation of the city's emergency operations center.

c. For special events not to exceed seven (7) days under a special event permit approved by the City of Lexington.

3. Small cell facility.

a. Small cell facilities installed by a wireless service provider or wireless infrastructure provider on existing structures; provided that the following requirements are met: The wireless service provider or wireless infrastructure provider either

(1) obtains the approval of the City of Lexington by virtue of a franchise agreement and right-of-way permit or lease, as required by law, if a new

small cell facility is proposed to be located in the right-of-way or on city property; or

(2) the wireless service provider or wireless infrastructure provider: (i) has permission from the owner of an existing pole, building or structure to co-locate equipment on that pole, building or structure and (ii) notifies and provides evidence of such permission to the locality in which the permitting process occurs; and

b. The applicant shall submit an application to the department of planning and development for administrative review and approval by the director of planning and the application shall include: (a) photographs or accurate renderings, including correct colors and exact dimensions, of each type of proposed small wireless facility; (b) a statement signed by a professional engineer licensed in the Commonwealth of Virginia stating that the proposed facilities comply with all applicable Federal Communications Commission regulations, including, without limitation, regulations pertaining to the emission of radio frequency radiation; and (c) such additional information as the planning director may reasonably require in order to determine whether the requirements of this section are met. An applicant may submit up to thirty-five (35) permit requests on a single application. All such completed applications, as determined by the director of planning, shall be approved or disapproved within sixty (60) days of receipt of the complete application. Within ten (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. The 60-day period may be extended by the locality in writing for a period not to exceed an additional thirty (30) days. The application shall be deemed approved if the locality fails to act within the initial sixty (60) days or an extended 30-day period. Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval. The fee for processing small cell facility applications shall be one hundred dollars (\$100.00) for each application proposing up to five (5) small cell facilities and fifty dollars (\$50.00) for each additional small cell facility proposed on a permit application. The application for the small cell facility shall be approved only if the following minimum standards are met:

(1) The small cell facility shall not have the potential to pose a material interference with other pre-existing communication facilities or with future communication facilities that have already been designed and planned for a specific location or that have been reserved for future public safety communication facilities, as determined by the city.

(2) The small cell facility does not create a public safety concern or inhibit critical public service needs.

- (3) If the communication small cell facility shall be installed on or in publicly owned or publicly controlled property, excluding privately owned structures, the communication small cell facility shall be substantially concealed from view by means of painting or tinting to match the surface of the building or other structure to which they are affixed or by other suitable method, such as by flush-mounting or integration into the design elements of the building or structure.
- (4) Further, electrical power and battery backup cabinets shall be roof-mounted or otherwise located so as not to be visible from a public street or, where not practicable as determined by the director of planning, such equipment shall be appropriately screened by landscaping or other means minimizing visibility from a public street.
- (5) Small cell facilities shall only be permitted in the Lexington Downtown Historic Preservation District or the Residential Neighborhood Conservation District if they meet the standards included in the Lexington Historic District Design Guidelines as amended and with a certificate of appropriateness approved by the Architectural Review Board.
- (6) This section shall not be construed to prohibit or limit an applicant from voluntarily submitting conditions to address visual or aesthetic effects resulting from the placement of small cell facilities on private property.
- c. At such time that the small cell ceases to be used for communications purposes for three (3) consecutive months, the applicant shall remove the small cell from the property. If the applicant fails to remove the small cell within thirty (30) days of written notice from the zoning administrator, the director of planning, through his or her own agents or employees, shall be authorized to remove the small cell facility and assess all charges incurred in such removal on the applicant or owner.
4. Micro-wireless facilities. The installation, placement, maintenance or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles shall not require any permit from the city nor shall they be subject to any fee from the city if the applicant provides the director of planning or designee with proof of compliance with all national safety codes.
5. Nothing herein shall be construed to exempt the applicant from the requirement for a grant of franchise from the city council pursuant to Section 15.2-2100 of the Code of Virginia, 1950, as amended.

4. Article XX. Definitions (*Zoning Ordinance*)

The existing zoning definition for “Broadcasting or Communication Tower” is recommended to be replaced by the Communication Tower definition from the Chesapeake, VA code.

~~BROADCASTING OR COMMUNICATION TOWER~~

~~Any unstaffed facility for the transmission and/or reception of radio, television, radar, cellular telephone, personal paging device, specialized mobile radio (SMR), and similar services. A broadcasting or communication tower usually consists of an equipment shelter or cabinet, a support tower or other structure used to achieve the necessary elevation, and the transmission or reception devices or antenna. Excluded are amateur radio towers, which are described separately. Also excluded are wireless communication antennas which fit the definition of Utility services, minor.~~

COMMUNICATION TOWER

A tower or antenna which supports communication (broadcasting and/or receiving) equipment utilized by commercial, government or other corporate, public and quasi-public users. Towers include radio, television, cellular telephone, personal communication services (PCS), microwave and other similar communications facilities, satellite earth station and building-supported. Communication towers may be self-supporting or guy-supported.

The existing zoning definition for “Utility Service, Minor” needs to be amended by removing the second sentence that mentions wireless communications antennas. The intent is to differentiate the communication tower definition from the utility service, minor definition. The utility service minor use is allowed by right in the R-1, R-2, R-LC, C-1 and C-2 zoning district. All of the communications related regulations should be consolidated to the previous (amended) section 420-11.5.4.

UTILITY SERVICE, MINOR

Service which is necessary to support development within the immediate vicinity and involve only minor structures. Included in this use type are small facilities such as transformers, relay and booster devices, and well, water and sewer pump stations. ~~Also included in this use type are wireless communication antennas which are attached to an existing building or structure, including but not limited to utility poles, signs, broadcasting or communication facilities, and water towers, and which are not greater than 20 feet in length.~~

C. Proposed Amendments to the Streets and Sidewalks Chapter (*Chapter 356*)

Section 15.2-2316.3 of the Code of Virginia requires a city to allow an application for a right of way permit to access the public right of way for the purpose of installing small cell facilities onto privately owned structures located within the public right of way. The wireless provider must have permission from the owner of the structure to co-locate and provides notice of that agreement and co-location to the locality. Proposed amendments to the Lexington Streets and Sidewalks Chapter found on the following page are intended to allow access to the public right of way for the purpose of installing small cell facilities. The following Streets and Sidewalks table of contents shows the sections proposed to be amended **highlighted** in yellow.

Chapter 356 Streets and Sidewalks Table of Contents (Code of the City of Lexington)

1. Street system
2. Public alleyways
3. Installation and repair of sidewalks, curbs and gutters
4. Driveway crossings over existing sidewalks
5. Duty of City Manager as to improvements and repairs
6. Care of City trucks and equipment used on streets
7. Tampering with structures on streets
8. Excavation permits **& Right-of-Way Occupancy Permits**
9. Wires, **and Cables, and Telecommunications**
10. Unauthorized occupation or use
11. Depositing wood, coal, lumber and other materials
12. Barriers around construction
13. Removal of permanent obstructions
14. Vegetation obstructing view at intersections
15. Removal of snow from sidewalk or footway
16. Discharge of water
17. Gutters for buildings where eaves project over sidewalk
18. Flags and flagstaffs
19. Parades and processions
20. Marking and naming of streets
21. Goods, wares and merchandise
22. Loafing and loitering

§ 356-8 Excavation Permits & Right-of-Way Occupancy Permits.

- A. ~~No person shall excavate or disturb the surface of any street~~ City's right-of-way, or occupy it in a fashion that impedes pedestrian or vehicular traffic, without first obtaining from the City Manager or his designated representative a permit from the Department of Public Works for the performance of the contemplated project. The word "person" as used in this section shall include any firm, association, cooperation and utility company.
- B. Permits shall be obtained a minimum of 72 hours in advance of right-of-way disturbance or occupancy. Emergency excavations may be made without an advance permit, but application for a permit will be submitted within 48 hours after commencement of the excavation.
- C. The permit application shall be made in writing describing the project, its location, the area of street disturbance/ occupancy necessary, the contemplated dates of commencement and completion of the project, and when required, maintenance of traffic plans. Private utility companies shall document the City franchise agreement that it is operating under.
- D. Each application for a permit shall have attached a check payable to the City Treasurer in the amount documented in the City's current fiscal year Fee Schedule ~~of \$25 to cover the permit fee, which sum shall be refunded in the event the application is denied except that in no event shall any person be required to pay an amount exceeding \$2,500 in permit fees per City fiscal year.~~
- E. ~~The~~ At the full discretion of the City Manager, any applicant, upon issuance of the permit, who is not otherwise under bond or a franchise, ~~shall~~ may be required to post a performance bond or, in lieu thereof, a certified check in such amount to be determined by the City Manager to insure as a guarantee of compliance with the restoration and repair requirements of this section, ~~†The amount of such bond shall not to exceed the bond required by other franchise utilities, which bond and shall be effective for the period of one year from the date of completion of the project.~~
- F. Any person disturbing the ~~surface of any street shall repair the same in accordance with the current specifications of the Virginia Department of Transportation (Road and Bridge Specifications, § 303.10, Backfilling of Opening, and § 303.11, Embankments) or in accordance with subsequent amendments thereto and shall be responsible for maintaining such repairs for a period of one year from the date of project completion.~~ City's right-of-way shall restore it in accordance with the City's Design and Construction Standards. Disturbances not covered by these standards shall be repaired in conformance with current Virginia Department of Transportation standards. Permit holders shall be responsible for maintaining such repairs for a period of one year from the date of project completion.
- G. ~~Upon completion of the project, the street shall be marked by the applicant in such manner and color as may be designated and assigned by the City Manager.~~

- ~~H.G.~~ Any person who fails to obtain a permit as required by this section or, upon issuance of a permit, fails to comply with the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$25 nor more than \$200. Each day's continuance thereof shall be a separate offense. Any such violation shall be deemed a nuisance and the court or trial justice trying the case shall have power to cause the nuisance to be abated and to commit the offenders and all their agents and employees engaged in such offenses in jail until such order of the court shall be obeyed.
- ~~H.~~ The fee and bond requirements of this section shall be waived as to any person performing work on behalf of the City

§ 356-9 Wires ~~and~~ Cables, and Telecommunications

- A. All wires ~~or~~ cables, strung along or over any street shall be so located as not to interfere with the convenience and safety of travel and shall be kept in safe repair at all times and telecommunication devices within the City's right-of-way shall be installed in conformance with the National Electrical Safety Code and National Electric Code, most recent amendments. In no instance shall these facilities be installed with ~~not~~ less than 14 feet above the surface of the vertical clearance from City streets and walks.
- B. Entities installing such infrastructure within the public right-of-way shall have franchise agreements, or permits, in effect per Chapter 142 of the Lexington City Code. Said entities shall additionally be liable for acquiring City Excavation Permits/ Right-of-Way Occupancy Permits per § 356-8 herein.
- C. Wires, cables, and telecommunication devices shall be installed in such a manner as to pose no threat to the health, welfare, and safety of the public. This specifically includes the occlusion of sight lines at street intersections and pedestrian crossings.
- D. Wires, cables, and telecommunication devices shall be installed in such a manner as to not interfere with accessibility of the public right-of-way.
- E. Wires, cables, and telecommunication devices shall be installed in such a manner as to not inhibit the City in the performance of its public services, such as trash and recycle collection.
- F. Wires, cables, and telecommunication devices shall be installed in such a manner as to not inhibit the City's ability to maintain the public right-of-way and associated infrastructure.
- G. Wire, cables, and telecommunication devices within the City's right-of-way which cease to be used, or which are abandoned, shall be removed from the City right-of-way within 60 days upon cessation of use or abandonment.
- H. The application, processing, and approval of the installation and maintenance of small cell facilities on existing structures and on new wireless support structures in City rights-or-way must adhere to Code of Virginia sections 56-484.26 through 56-484.32 regulating wireless communications infrastructure.