ORDINANCE AMENDMENT

Action:

PLANNING COMMISSION: November 6, 2019	Recommended Approval
BOARD OF SUPERVISORS: December 11, 2019	Adopted

AN ORDINANCE AMENDING
THE FREDERICK COUNTY CODE
CHAPTER 165 ZONING

ARTICLE I
GENERAL PROVISIONS; AMENDMENTS; AND CONDITIONAL USE PERMITS
PART 101 – GENERAL PROVISIONS
§165-101.02. DEFINITIONS AND WORD USAGE

ARTICLE II
SUPPLEMENTARY USE REGULATIONS; PARKING; BUFFERS; AND REGULATIONS FOR SPECIFIC USES
PART 204 – ADDITIONAL REGULATIONS FOR SPECIFIC USES
§165-204.19. TELECOMMUNICATION FACILITIES, COMMERCIAL

ARTICLE VI
BUSINESS AND INDUSTRIAL ZONING DISTRICTS
PART 605 – OM OFFICE-MANUFACTURING PARK DISTRICT
§165-605.02. PERMITTED USES
PART 609 – HE HIGHER EDUCATION DISTRICT
§165-609.02. PERMITTED USES

WHEREAS, an ordinance to amend Chapter 165, Zoning to enable smaller commercial telecommunication facilities in certain zoning districts by-right in order to enable better internet service to underserved areas of the County; and

WHEREAS, the proposed changes codify changes to the *Code of Virginia,* which created a two-track process for approval of telecommunication facilities:

- Defined small scale facilities as "administrative review-eligible projects" that a locality must permit in any zoning district, without the requirement of a Conditional Use Permit, enabling "small cell facilities", structures under 50-feet (FT) in height, or co-location of a wireless facility on an existing structure to be sited administratively.

- For larger projects (such as telecommunication monopoles), what it calls "standard process projects". The types of facilities would continue to be permitted through the County's Conditional Use Permit (CUP) process.

- Enable telecommunication towers as "allowed uses" i.e. by-right in the OM (Office-Manufacturing Park) and HE (Higher Education) Zoning Districts, consistent with the allowed uses for the B3 (Industrial Transition) and MS (Medical Support) Zoning Districts.

WHEREAS, the Planning Commission held a public hearing on this ordinance amendment on November 6, 2019; and

WHEREAS, the Board of Supervisors held a public hearing on this ordinance amendment on December 11, 2019; and

WHEREAS, the Frederick County Board of Supervisors finds that the adoption of this ordinance to be in the best interest of the public health, safety, welfare and in good zoning practice; and

NOW, THEREFORE, BE IT ORDAINED by the Frederick County Board of Supervisors that **Chapter 165 Zoning, is amended to** create a two-track process for the approval of telecommunications facilities**,** enabling "administrative review eligible" **small-scale** commercial telecommunications facilities by-right and continuing to allow large-scale projects as "standard process projects" permitted though he County's Conditional Use Permit (CUP) process~~;~~**,** and **to** allow communication facilities in the OM (Office-Manufacturing Park) and HE (Higher Education) Zoning Districts.

Passed this 11th day of December 2019 by the following recorded vote:

Charles S. DeHaven, Jr., Chairman	Absent	Gary A. Lofton	Aye
J. Douglas McCarthy	Aye	Blaine P. Dunn	Aye
Shawnee Supervisor	(Vacant)	Robert W. Wells	Aye
Judith McCann-Slaughter	Aye		

A COPY ATTEST

Kris C. Tierney
Frederick County Administrator

BOS #038-19

ARTICLE I
General Provisions; Amendments; and Conditional Use Permits

Part 101
General Provisions

§ 165-101.02 Definitions and word usage.

~~*COMMERCIAL*~~ TELECOMMUNICATION FACILITY, *COMMERCIAL*

~~*A structure*~~ *Infrastructure*, including ~~*the*~~ tower*s*, antennas, panels, microwave dishes, receiving dishes, equipment building, other transmitting and receiving components and other accessory structures, used for the wireless electromagnetic transmission of information, excluding structures utilized as satellite earth stations and structures utilized for amateur or recreational purposes such as ham radio or citizen band radio.

~~*TELECOMMUNICATIONS TOWERS*~~

~~*A structure, including the tower, antennas, panels, microwave dishes, receiving dishes, equipment building, other transmitting and receiving components and other accessory structures, used for the wireless electromagnetic transmission of information, excluding structures utilized as satellite earth stations and structures utilized for amateur or recreational purposes such as ham radio or citizen band radio.*~~ [Term effectively superseded by definitions in Va. Code § 15.2-2316.3]

ARTICLE II
Supplementary Use Regulations; Parking; Buffers; and Regulations for Specific Uses

Part 204
Additional Regulations for Specific Uses

§ 165-204.19. Telecommunication facilities, commercial.

A. *Definitions. The terms used in this section shall have the same meanings as set out in Virginia Code Section 15.2-2316.3, unless the context requires a different meaning.*

B. *Administrative review-eligible projects.*

1. *Notwithstanding any other provision of this Chapter, but subject to the requirements of this subsection, the following shall be permitted in all zoning districts:*

   a. *any small cell facility [Va. Code § 15.2-2316.4];*
   b. *any 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 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; and (iii) designed to support small cell facilities [Va. Code §§ 15.2-2316.3 & 15.2-2316.4:1(A)]; or*
   c. *co-location of a wireless facility on the existing structure of a wireless facility that is not a small cell facility [Va. Code §§ 15.2-2316.3 & 15.2-2316.4:1(A)].*

2. *Any person seeking to install a facility or structure identified in paragraph 1 of this subsection shall make application to the Zoning Administrator, accompanied by payment of a fee of $100 each for up to five facilities or structures on the same application and $50 each for each additional facility or structure on the same application. [Va. Code § 15.2-2316.4(B)(2)] The application shall be subject to consideration as follows:*

   a. *The Zoning Administrator 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 Zoning Administrator shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. 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 Zoning Administrator in writing for a period not to exceed an additional 30 days. The application shall be deemed approved if the Zoning Administrator fails to act within the initial 60 days or an extended 30-day period. [Va. Code § 15.2-2316.4(B)(1)]*

   b. *The Zoning Administrator shall only deny approval for the facility or structure on account of: (i) 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, or (ii) the public safety or other critical public service needs. Otherwise, the Zoning Administrator shall approve the facility or structure and the facility or structure*

does not require approval from the Planning Commission or the Board of Supervisors. [Va. Code § 15.2-2316.4(B)(4)]

c. *The applicant may voluntarily submit, and the Zoning Administrator may accept, conditions that address potential visual or aesthetic effects resulting from the placement, pursuant to this subsection, of a facility or structure. [Va. Code § 15.2-2316.4(B)(5)]*

C. *Standard process projects.*

1. *Except as provided in subsection B, no wireless facility or wireless support structure shall be sited, constructed, or operated except pursuant to a conditional use permit issued through the process defined in Part 103 of Article I of this Chapter. The issuance of a conditional use permit for the siting, construction, and operation of a wireless facility is permitted within the zoning districts specified in this Chapter, provided that, pursuant to Virginia Code § 15.2-2232(A), the general location or approximate location, character, and extent of such facilities are substantially in accord with the adopted Comprehensive Plan or part thereof and that adjoining properties, surrounding residential properties, land use patterns, scenic areas, and properties of significant historic value are not negatively impacted. [based on current intro to County Code § 165-204.19]*

2. *Any person seeking to install a facility or structure pursuant to this subsection shall make application to the Zoning Administrator, accompanied by payment of a fee of $7,000. [Va. Code § 15.2-2316.4:1(B)(2) ("the fee shall not exceed the actual direct costs to process the application, including permits and inspection")] The application shall be subject to consideration as follows and include the indicated information:*

   a. *The Board of Supervisors shall approve or disapprove the application within 150 days of receipt of the complete application by the Zoning Administrator or such shorter period as required by federal law, unless the applicant and the Board agree to a longer period for approval or disapproval of the application. Within 10 days after receipt of an application and a valid electronic mail address for the applicant, the Zoning Administrator shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. [Va. Code § 15.2-2316.4:1(C)]*

   b. *Information to be included with application:*
      i. *A map depicting the search area used in siting the proposed facility or structure [Va. Code § 15.2-2316.4:2(D); based on current 165-204.19(A)(2)];*
      ii. *Identification of all service providers and commercial telecommunications facility infrastructure within the search area [Va. Code § 15.2-2316.4:2(D); based on current 165-204.19(A)(3)];*
      iii. *Confirmation that attempts to co-locate on existing structures have been made and, if such attempts were unsuccessful, the reasons so [Va. Code § 15.2-2316.4:2(D); based on current 165-204.19(A)(3)];*
      iv. *Documentation issued by the Federal Communications Commission indicating that the proposed facility is in compliance with the Federal Communications Commission's established ANSI/IEEE standards for electromagnetic field levels and radio frequency radiation [based on current 165-204.19(A)(4)];*
      v. *An affidavit signed by the landowner and by the owner of the facility or structure stating that they are aware that either or both of them may be held responsible for the*

removal of the facility or structure as stated in subsection E [based on current 165-204.19(A)(5)]; and

vi. *The applicant may voluntarily submit, and the Board may accept, conditions that address potential visual or aesthetic effects resulting from the placement of the facility or structure. [Va. Code § 15.2-2316.4:2(C)]*

3. *If the Board of Supervisors grants a conditional use permit under this subsection, the following standards shall then apply to any property on which a wireless facility or wireless support structure is sited, in order to promote orderly development and mitigate the negative impacts to adjoining properties, residential properties, land use patterns, scenic areas, and properties of significant historic value:*

   a. *The Board may reduce the required setback distance for the wireless facility or wireless support structure as required by § 165-201.03(B)(8) of this Code if it can be demonstrated that the location is of equal or lesser impact. When a reduced setback is requested for a distance less than the height of the tower, a certified Virginia engineer shall provide verification to the Board that the wireless facility or wireless support structure is designed, and will be constructed, in a manner that if the wireless facility or wireless support structure collapsed the wireless facility or wireless support structure will be contained in an area around the wireless facility or wireless support structure with a radius equal to or lesser than the setback, measured from the center line of the base of the wireless facility or wireless support structure. In no case shall the setback distance be reduced to less than 1/2 the distance of the height of the wireless facility or wireless support structure.*
   b. *Monopole-type construction shall be required for any new wireless facility or wireless support structure. The Board may allow lattice-type construction when existing or planned residential areas will not be impacted and when the site is not adjacent to identified historic resources.*
   c. *No more than two signs shall be permitted on any wireless facility or wireless support structure. Such signs shall be limited to 1.5 square feet in area and shall be posted no higher than 10 feet above grade.*
   d. *When lighting is required for a wireless facility or wireless support structure, dual lighting shall be utilized which provides daytime white strobe lighting and nighttime red pulsating lighting unless otherwise mandated by the Federal Aviation Administration or the Federal Communications Commission. Strobe lighting shall be shielded from ground view to mitigate illumination to neighboring properties. Equipment buildings and other accessory structures operated in conjunction with the wireless facility or wireless support structure shall utilize infrared lighting and motion-detector lighting to prevent continuous illumination.*
   e. *Every wireless facility and wireless support structure shall be constructed with materials of a galvanized finish or be of a non-contrasting blue or gray unless otherwise mandated by the Federal Aviation Administration or the Federal Communications Commission.*
   f. *Every wireless facility and wireless support structure shall be adequately enclosed to prevent access by persons other than employees of the service provider. Appropriate landscaping and opaque screening shall be provided to ensure that equipment buildings and other accessory structures are not visible from adjoining properties, roads, or other rights-of-way.*

   [the entirety of the above subsection C(3) is based on current 165-204.19(B)]

4. *If the Board of Supervisors denies a conditional use permit under this subsection, the Board*

shall:

a. *Provide applicant with a written statement of the reasons for the denial [Va. Code § 15.2-2316.4:1(E)(1)];*
b. *Identify any modifications of which the County is aware that would permit it to approve the conditional use permit [Va. Code § 15.2-2316.4:1(E)(2)]; and*
c. *Have supporting substantial record evidence in a written record publicly released within 30 days of denial [Va. Code § 15.2-2316.4:1(F)(2)].*

D. *Maintenance of existing facilities and/or structures and replacement of existing facilities and/or structures within a 6-foot perimeter with substantially similar or same size or smaller facilities and/or structures is exempt from fees and permitting requirements under this section. [Va. Code § 15.2-2316.4:3(A)]*

E. *Any facility or structure permitted by this section that is not operated or used for a continuous period of 12 months shall be considered abandoned, and the owner of such facility or structure shall remove same within 90 days of receipt of notice from the Frederick County Department of Planning and Development. If the facility or structure is not removed within the ninety-day period, the County may remove the facility and a lien may be placed to recover expenses. [Va. Code § 15.2-2316.4(B)(6); based on current County Code § 165-204.19(B)(7)]*

~~*The intent of this section is to ensure that the siting of commercial telecommunication facilities occurs through the conditional use permit public hearing process defined in Article I, Part 103 of this chapter. Commercial telecommunication facilities that locate on existing structures and towers shall be exempt from the conditional use permit requirement. The siting of commercial telecommunication facilities is permitted within the zoning districts specified in this chapter, provided that residential properties, land use patterns, scenic areas and properties of significant historic value are not negatively impacted.*~~

~~*A. Information required as part of the conditional use permit application shall include, but not be limited to, the following:*~~

~~*(1) A map depicting the search area used in siting each proposed commercial communications facility.*~~

~~*(2) Identification of all service providers and commercial telecommunication facility infrastructure within a proposed search area. The applicant shall provide confirmation that an attempt to collocate on an existing telecommunication facility has been made.*~~

~~*(3) Information demonstrating that the commercial telecommunication facility is in compliance with the Federal Communication Commissions established ANSI/IEEE standards for electromagnetic field levels and radio frequency radiation.*~~

~~*(4) An affidavit signed by the landowner stating that he/she is aware that he/she may be held responsible for the removal of the commercial telecommunications facility as stated in § 165-204.19B(7).*~~

~~*B. The following standards shall apply to any property in which a commercial telecommunication facility is sited, in order to promote orderly development and mitigate the negative impacts to adjoining properties:*~~

~~*(1) The Board of Supervisors may reduce the required setback distance for commercial telecommunication facilities as required by § 165-201.03B(8) of this chapter if it can be demonstrated that the location is of equal or lesser impact. When a reduced setback is requested for a distance less than the height of the tower, a certified Virginia engineer shall provide verification to the Board of Supervisors that the tower is designed, and will be constructed, in a manner that if the tower collapses for any reason the collapsed tower will be contained in an area around the tower with a radius equal to or lesser than the setback, measured from the center line of the base of the tower. In no case shall the setback distance be reduced to less than 1/2 the distance of the tower height. Commercial telecommunication facilities affixed to existing structures shall be exempt from setback requirements, provided that they are located no closer to the adjoining property line than the existing structure.*~~

~~*(2) Monopole-type construction shall be required for new commercial telecommunication towers. The Board of Supervisors may allow lattice-type construction for new telecommunication towers when existing or planned residential areas will not be impacted and when the site is not adjacent to identified historical resources.*~~

~~*(3) Advertising shall be prohibited on commercial telecommunication facilities except for signage providing ownership identification and emergency information. No more than two signs shall be permitted. Such signs shall be limited to 1.5 square feet in area and shall be posted no higher than 10 feet above grade.*~~

~~*(4) When lighting is required on commercial telecommunication facility towers, dual lighting shall be utilized which provides daytime white strobe lighting and nighttime red pulsating lighting unless otherwise mandated by the Federal Aviation Administration or the Federal Communications Commission. Strobe lighting, shall be shielded from ground view to mitigate illumination to neighboring properties. Equipment buildings and other accessory structures operated in conjunction with commercial telecommunication facility towers shall utilize infrared lighting and motion-detector lighting to prevent continuous illumination.*~~

~~*(5) Commercial telecommunication facilities shall be constructed with materials of a galvanized finish or painted a noncontrasting blue or gray unless otherwise mandated by the Federal Aviation Administration or the Federal Communication Commission.*~~

~~*(6) Commercial telecommunication facilities shall be adequately enclosed to prevent access by persons other than employees of the service provider. Appropriate landscaping and opaque screening shall be provided to ensure that equipment buildings and other accessory structures are not visible from adjoining properties, roads or other rights-of-way.*~~

~~*(7) Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such tower shall remove same within 90 days of receipt of notice from the Frederick County Department of Planning and Development. Removal includes the removal of the tower, all tower and fence footers, underground cables and support buildings. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower. If the tower is not removed within the ninety-day period, the County will remove the facility and a lien may be placed to recover expenses.*~~

ARTICLE VI
Business and Industrial Zoning Districts

Part 605
OM Office-Manufacturing Park District

§ 165-605.02. Permitted uses.

Permitted Uses	Standard Industrial Classification (SIC)
Communication facilities and offices, including telephone, telegraph, radio, television and other communications.	***48***

Part 609
HE Higher Education District

§ 165-609.02. Permitted uses.

Structures to be erected or land to be used shall be for one or more of the following uses:

H. Communication facilities and offices, including telephone, telegraph, radio, television and other communications.

COUNTY of FREDERICK

Department of Planning and Development
540/ 665-5651
Fax: 540/ 665-6395

MEMORANDUM

TO: Frederick County Board of Supervisors

FROM: M. Tyler Klein, AICP, Senior Planner

SUBJECT: Ordinance Amendment – Telecommunications Facilities, Commercial – Public Hearing

DATE: December 3, 2019

Following changes in state law in 2017 and 2018 regarding zoning rules for wireless infrastructure and following Board member requests for ordinance amendments to enable better provision of internet services in underserved areas of the County. Staff has prepared a revision to the Zoning Ordinance provisions regarding telecommunications facilities.

Staff notes the proposed revision includes changes to two (2) definitions and changes *Additional Regulations for Specific Uses* outlined in §165-204.19. With respect to §165-204.19, the changes are *wholesale*, though some of the existing section language is carried over to the revision. Because much of the revised language does result from state law provisions, state law references are included, for informational purposes, in brackets, throughout the revision.

The proposed changes enable smaller commercial telecommunications facilities in certain zoning districts by-right in order to enable better internet service to underserved areas of the County (such as Shawneeland). Further, the proposed changes codify changes to the *Code of Virginia*, which created a two-track process for approval of telecommunication facilities. The legislation (attached) treats certain, defined small scale facilities as "administrative review-eligible projects" that a locality must permit in any zoning district, without the requirement of a Conditional Use Permit. This would enable "small cell facilities," structures under 50-feet (FT) in height, or co-location of a wireless facility on an existing structure to be sited administratively. The legislation also revamps the rules for larger projects (i.e. telecommunication monopoles over 50-FT in height), what it calls "standard process projects". These types of facilities would continue to be permitted through the County's Conditional Use Permit (CUP) process. The proposed text amendment addresses the above legislation. Finally, the proposed changes would enable telecommunications towers as "allowed uses" i.e. by-right in the OM (Office-Manufacturing Park) and HE (Higher Education) Zoning Districts, consistent with the allowed uses for the B3 (Industrial Transition) and MS (Medical Support) Zoning Districts.

Staff notes that for "administrative review eligible" projects, commercial telecommunication towers up to 50-FT would be permitted by-right in all zoning districts, and that the 50-foot

maximum included in the proposed ordinance amendment is *verbatim* from the Code of Virginia. However, Staff would further note that other Virginia localities have allowed telecommunication facilities greater than 50-feet by-right; a comparison of other localities is provided below as reference:

Locality	By-Right Telecommunication Facilities (Height/Feet)
Fauquier County	Up to 50'
Clarke County	Up to 100'
Loudoun County	Up to 60'
Spotsylvania County	Up to 80'
Stafford County	Up to 80'
Albemarle County	No more than 10' taller than tallest tree within 25-FT of the proposed monopole

**There is some variability within the maximum height allowed for certain localities; specific height may be conditioned if certain telecommunication facility parameters are met.*

This item was proposed by the County Attorney and discussed by the DRRC at their September 26th regular meeting. The DRRC agreed with the proposed changes and the item was forwarded to the Planning Commission for discussion. The Planning Commission discussed this item on October 2nd, and the Board of Supervisors discussed this item on October 9th. The Board sent the item, as presented, forward to public hearing.

The Planning Commission held a public hearing on November 6th. Twenty-eight (28) members of the public spoke. Speakers noted a need for expanded internet service in rural areas of the County to improve internet access for education, telecommuting, emergency services and healthcare. The primary concern raised by those who spoke at the public hearing concerned the by-right tower height recommended in the proposed ordinance amendment, or a maximum of 50-feet. Speakers noted that 50-foot towers were *insufficient* to provide reliable service in the western areas of County where topography, ridgelines and height of trees may require greater heights for commercial telecommunication infrastructure to deliver *reliable* service. Winchester Wireless, a local broadband internet service provider, recommended up to 125-FT as the height limit for administrative review eligible (or by-right) towers. Additionally, local service providers noted that the fee's for telecommunication facilities Conditional Use Permits (CUP) were too high for smaller, local companies and having a by-right option with enough height for new towers would be beneficial to improved service.

Following the public hearing, Planning Commissioners reiterated that 50-feet was only the maximum height allowed for new *by-right* towers, and that any internet service provider could apply for a CUP to allow for the siting of towers greater than 50-feet. Staff was asked to clarify that other by-right options for telecommunication providers included in the proposed ordinance amendment included defined small-cell facilities and/or co-location on existing tall structures, including existing structures over 50-feet. The Planning Commission stated further that the by-right option for towers was a change from the CUP-only route currently available for all

telecommunication towers and that the ordinance amendment was drafted to provide more *options* to expand broadband access. It was also noted that CUPs for towers in excess of 50-FT would allow for neighboring properties to provide public comment to decision-makers about the appropriateness of tower location and tower height in relation to surrounding uses. Additionally, the Planning Commission stated that in previously considering applications for CUP for telecommunication towers there were instances of public opposition to new towers, citing concerns of height and the impact to viewsheds and rural character and that opportunity to public input for taller structures was important. Finally, the Planning Commission in their discussion commented that the Board of Supervisors may consider revising the CUP fee (currently $7,000) for telecommunication facilities if they deemed it to be appropriate. The Planning Commission voted 5-4-2 (Commissioners Ambrogi, Manuel, Molden & Dawson – no; Commissioners Unger & Marston – absent) to forward the item to the Board of Supervisors with a recommendation of approval.

The attached document shows the existing ordinance with the proposed changes (with bold italic for text added). **This proposed amendment is being presented to the Board of Supervisors as a public hearing item. A decision by the Board of Supervisors, on this proposed Zoning Ordinance text amendment is sought.** Please contact Staff if you have any questions.

Attachments:

1. **Revised ordinance with additions shown in bold underlined italics**
2. **Code of Virginia, Article 7.2**
3. **Resolution**

MTK/pd

8/30/2019

Code of Virginia
Title 15.2. Counties, Cities and Towns

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.

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.

§ 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.

The chapters of the acts of assembly referenced in the historical citation at the end of these sections may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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