



City of Fairfax, Virginia  
City Council Regular Meeting

Agenda Item # 8c

City Council Meeting 6/25/2019

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TO: Honorable Mayor and Members of City Council

FROM: Robert A. Stalzer, City Manager *RA Stalzer*

SUBJECT: Public hearing and Council action on proposed amendments to the Code of the City of Fairfax, Chapter 110 (Zoning) to amend portions of articles and sections contained therein pertaining to Telecommunications Facilities and the types and standards associated therewith.

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ISSUE(S): To conduct a public hearing and consider adoption of proposed amendments to the Code of the City of Fairfax, Chapter 110 (Zoning) to amend portions of articles and sections contained therein pertaining to Telecommunications Facilities and the types and standards associated therewith.

SUMMARY: The Virginia General Assembly enacted legislation during the 2017 and 2018 sessions that modified local zoning authority for certain types of telecommunications facilities (Code of Virginia §15.2-2316.3 through §15.2-2316.5). The Code of Virginia now defines certain types of telecommunications facilities and specifies how local jurisdictions may regulate and process such facilities for permit. This legislation requires that the specified telecommunications facilities be permitted administratively. These changes to the state's enabling legislation facilitate the need to consider amendments to the City of Fairfax Zoning Ordinance. The City Council held work sessions on October 23, 2018 and May 14, 2019 to discuss the legislation and potential amendments.

FISCAL IMPACT: None at this time.

RECOMMENDATION: Adopt the proposed amendments.

ALTERNATIVE COURSE OF ACTION: Further amend, defer action, or do not adopt the proposed amendments.

RESPONSIBLE STAFF/  
POC: Community Development & Planning

COORDINATION: City Attorney, Public Works

ATTACHMENTS: Staff Memo  
Ordinance  
Sample Motion

# MEMORANDUM

**To:** Honorable Mayor and Members of the City Council

**From:** Brooke Hardin, Director of Community Development & Planning

**Subject:** Proposed amendments to the Code of the City of Fairfax, Chapter 110 (Zoning) to amend portions of articles and sections contained therein pertaining to Telecommunications Facilities and the types and standards associated therewith.



## Meeting

**Date:** June 25, 2019

### Background

The Virginia General Assembly enacted legislation during the 2017 and 2018 sessions that modified local zoning authority for certain types of telecommunications facilities (Code of Virginia §15.2-2316.3 through §15.2-2316.5). The Code of Virginia now defines certain types of telecommunications facilities and specifies how local jurisdictions may regulate and process such facilities for permit. This legislation requires that the specified telecommunications facilities be permitted administratively. These changes to the state's enabling legislation facilitate the need to consider amendments to the City of Fairfax Zoning Ordinance.

In response to the legislative changes from the state, as well as updated rules pertaining to the deployment of wireless services and infrastructure from the Federal Communications Commission, the City of Fairfax modified the licensure and permitting process for telecommunications in the City's rights-of-way. Those modifications were adopted by the City Council on June 11, 2019.

On May 20, 2019, the Planning Commission adopted a motion to initiate amendments to the Zoning Ordinance pertaining to Telecommunications Facilities and the types and standards associated therewith and to schedule a public hearing. Approval of that motion did not signify approval of any amendments, but authorized staff to prepare the amendments for City Council and Planning Commission consideration following public hearings. The Planning Commission held a public hearing on the proposed amendments on June 10, 2019 and recommended approval of the amendments to the City Council.

### **Proposed Zoning Ordinance Amendments**

The proposed Zoning Ordinance amendments pertain to telecommunications facilities and the types and standards associated with those facilities. The sections of the Zoning Ordinance that include the proposed amendments and summaries of the proposed amendments within each of those sections are described below:

- §3.3.1.B Principal Uses – The principal use table lists all of the permitted use types by zoning district and identifies whether the use is permitted by-right (administratively) or by special use permit. The proposed amendments would modify the principal use table to allow small cell facilities on existing structures and administrative review-eligible projects as permitted by-right in all of the zoning districts.
- §3.5.2.J Telecommunications Facilities Use Standards – The use standards section provides specific regulations for various use types. The proposed amendments to the use standards for telecommunications facilities would: incorporate specifications for small cell facilities and administrative review-eligible projects, modify the requirements associated with performance bond and removal of equipment, and include new provisions for maintenance and replacement.
- §9.3 Defined Terms – The defined terms section provides definitions for terms used in the Zoning Ordinance. The proposed amendments would add new definitions and references to Code of Virginia for new terms associated with telecommunications facilities.

### **Recommendation**

Following the public hearing, staff recommends that the City Council approve the ordinance to amend portions of articles and sections contained in the Code of the City of Fairfax, Chapter 110 (Zoning) pertaining to Telecommunications Facilities and the types and standards associated therewith.

**AN ORDINANCE AMENDING CHAPTER 110 (ZONING) TO AMEND PORTIONS OF ARTICLES AND SECTIONS CONTAINED THEREIN PERTAINING TO TELECOMMUNICATIONS FACILITIES AND THE REVIEW AND APPROVAL PROCEDURES ASSOCIATED THEREWITH.**

**BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 3, §3.3.1, of the Code of the City of Fairfax, Virginia, is hereby amended as follows:**

§3.3.1. Principal use table

The principal use table is subject to the explanation as set forth below.

....

B. Principal uses

The following table lists the principal uses permitted by this chapter for general use districts. For overlay districts, see §3.7; for planned development districts, see §3.8; for accessory uses, see §3.5.5; for temporary uses, see §3.5.6; and for large format retail, see §4.9.

USE TYPES/USE GROUPS*	RESIDENTIAL						NONRESIDENTIAL						SPECIFIC USE STANDARDS	
	R L	R M	R H	RT -6	R T	R MF	C L	C O	C R	C U	C G	I L		I H
P = PERMITTED / S = SPECIAL USE (§6.7) / * = GROUP OF USES (§3.4.1)														
PUBLIC, CIVIC AND INSTITUTIONAL USES														
Telecommunications antenna and small cell facilities on existing structures and towers and administrative review-eligible projects	P	P	P	P	P	P	P	P	P	P	P	P	P	§3.5.2.J

**BE IT FURTHER ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 3, §3.5.2, of the Code of the City of Fairfax, Virginia, is hereby amended as follows:**

§3.5.2. Public, civic and institutional use standards

....

1 J. Telecommunications facilities

2 1. Purpose and intent

3 (a) General

4 The intent of these regulations is to minimize the negative impact of  
5 telecommunications facilities, establish a fair and efficient process for review of  
6 applications, assure an integrated, comprehensive review of environmental  
7 impacts of such facilities, and protect the health, safety and welfare of the city.

8 (b) Collocation

9 The city will seek to minimize the impact of telecommunication facilities by  
10 requiring, where possible, that providers of telecommunication services:

11 (1) Locate necessary antennas and equipment on existing structures;

12 (2) Share facility locations on the same property with other service providers;

13 (3) Share items such as structural attachments, cable shrouds, equipment shelters,  
14 and equipment cabinet pads with other service providers;

15 (4) Coordinate with other service providers in the fulfillment of any screening,  
16 landscaping, access and utility requirements; and

17 (5) Coordinate with other service providers in the digging of trenches or  
18 underground conduits for the placement of any cables or other equipment  
19 under or through any street or right-of-way.

20 (c) Compatibility with nearby land uses

21 ~~(4)~~The city will attempt to ensure compatibility of telecommunications facilities  
22 with nearby land uses by assuring, when possible, that ~~the~~ providers of  
23 telecommunications services;

24  
25 (1) Locate ~~locate~~ telecommunications facilities in the following areas in  
26 descending order of preference:

27 (i) On property that is already developed with a public utility structure that is  
28 at least 90 percent of the height of the proposed telecommunications  
29 facility;

30 (ii) On property that is already developed with any structure that is at least 90  
31 percent of the height of the proposed telecommunications facility;

- 1 (iii) In industrial districts;
- 2 (iv) In low visibility areas of commercial districts;
- 3 (v) In properly buffered and screened residential districts where a clear need  
4 for such facility has been established and no industrial or commercial land  
5 is available nearby that is technically suitable to support the facility;
- 6 (2) Locate each antenna that is to be attached to an existing building or to an  
7 existing public utility structure in such a manner as to provide the least visual  
8 impact of the facilities on the surrounding public and residential areas;
- 9 (3) Locate each antenna that is to be attached to a new freestanding structure  
10 (including a monopole) or to an existing or reconstructed tower to minimize  
11 its height and visibility. Provide a setback for the entire structure from all lot  
12 lines and on-site buildings, customer parking lots, and other areas designated  
13 for active use. The setback should be a horizontal distance equal to the height  
14 of the top of the antenna above average elevation of the ground around the  
15 structure;
- 16 (4) Locate all transmitting, receiving, switching, power and other supporting  
17 equipment entirely within existing buildings, where possible;
- 18 (5) Meet the setback requirements of the zone for any new buildings that are  
19 found necessary to house supporting telecommunications equipment;
- 20 (6) Establish a community liaison with all adjacent civic associations prior to the  
21 construction of the facility and continue the liaison throughout the period of  
22 use of the facility;
- 23 (7) Comply with FCC regulations relating to radio frequency emissions and FAA  
24 regulations on lighting; and
- 25 (8) Provide for access, removal of all defunct equipment within six months of  
26 discontinuance of use, and bonding of construction and removal.
- 27 (d) Siting and design  
28 The City will attempt to mitigate the negative impacts of telecommunications  
29 facilities by requiring, when possible, that providers of telecommunications  
30 services:

- 1 (1) Choose locations for proposed new telecommunication facilities for least  
2 impact on surrounding neighborhoods while providing adequate service for  
3 the area to be served by the proposed facilities;
- 4 (2) Provide detailed plans and cross-sections of the proposed facilities adequate  
5 for determining their impact on nearby neighborhoods;
- 6 (3) Design all facilities to be aesthetically and architecturally compatible with the  
7 surrounding environment to the maximum extent possible;
- 8 (4) Design all facilities to assure that the telecommunications facilities are not the  
9 most prominent visual feature of the site;
- 10 (5) Use construction materials and color schemes appropriate to the zoning  
11 district and to any existing nearby developed properties;
- 12 (6) Design any necessary utility buildings to be compatible with the character of  
13 the surrounding neighborhood;
- 14 (7) Minimize the number of buildings and equipment cabinets necessary for each  
15 location;
- 16 (8) Screen any ground-level equipment or structure bases using a transitional yard  
17 TY4 (§4.5.5);
- 18 (9) Construct antenna facilities no higher above adjacent ground elevation than is  
19 reasonably necessary to achieve desired coverage and to permit collocation;
- 20 (10) Do not illuminate structures or antenna facilities unless required by the  
21 Federal Aviation Administration or FCC. If illumination is required, it should  
22 be effectively shielded from neighboring residential properties to the extent  
23 possible;
- 24 (11) Demonstrate that the proposed facility will be safe and structurally sound;
- 25 (12) Provide to the city a letter of intent committing the provider and all  
26 successors in interest to allow shared use of the facility subject to reasonable  
27 terms and conditions for collocation;
- 28 (13) Comply with FCC regulations relating to radio frequency emissions; and

1                   (14) ~~Establish a community liaison with all adjacent civic associations prior to~~  
2                   ~~the construction of the facility and continue the liaison throughout the period~~  
3                   ~~of use of the facility.~~

4                   2. Applicability

5                   (a) General

6                   (1) These regulations govern the siting of telecommunications towers and  
7                   facilities, ~~except as specifically, below for those identified in §3.5.2.J.2.B,~~  
8                   which are not subject to the provisions of §3.5.2.J.4 through §3.5.2.J.8, and  
9                   §3.5.2.J.2.C, which are not subject to the provisions of §3.5.2.J.4 through  
10                   §3.5.2.J.10.

11                   (2) Routine maintenance or the replacement of wireless facilities or wireless  
12                   support structures within a six-foot perimeter with wireless facilities or  
13                   wireless support structures that are substantially similar or the same size or  
14                   smaller shall not require approval by the zoning administrator.  
15

16                   (b) Existing structures and towers

17                   The placement of a telecommunication antenna or wireless facility on existing  
18                   structures and towers, such as existing roofs, walls, water tanks, steeples and  
19                   towers, may be approved administratively by the zoning administrator provided  
20                   the antenna or wireless facility:

21                   (1) Does not add more than 10 feet in height to the existing structure; and

22                   (2) Meets all applicable standards of the Virginia Uniform Statewide Building  
23                   Code (USBC) and this chapter.

24                   (c) Administrative review-eligible projects and small cell facilities

25                   (1) The installation of a new structure for an administrative review-eligible  
26                   project as defined in the Code of Virginia, §15.2-2316.3, may be approved  
27                   administratively by the zoning administrator provided that:

28                   (i) A new structure with attached wireless facilities is no more than 50 feet in  
29                   height as measured in accordance with §1.5.11.C;

30                   (ii) A new structure with attached wireless facilities is located within an  
31                   existing line of utility poles and is not more than 10 feet above the tallest



1 existing utility pole in that line located within 500 feet of the new  
2 structure;

3 (iii) A new structure with attached wireless facilities is designed to support  
4 small cell facilities;

5 (iv) A new structure with attached wireless facilities shall not be located on a  
6 site currently or previously subject to the utility undergrounding  
7 provisions of §4.11 of this chapter;

8 (v) The number of new structures with attached wireless facilities on a site  
9 shall not exceed the number of existing utility poles on the site within the  
10 existing line of utilities poles to which the new structures would be added;  
11 and

12 (vi) The new structure with attached wireless facilities is not located within the  
13 boundaries of a historic overlay district (§3.7.2), or a state or federal  
14 historic district.

15 (2) The placement of a small cell facility as defined in the Code of Virginia,  
16 §15.2-2316.3, on an existing structure may be approved administratively by  
17 the zoning administrator provided that:

18 (i) No more than one small cell facility shall be placed on an existing  
19 structure; and

20 (ii) The small cell facility is not located within the boundaries of a historic  
21 overlay district (§3.7.2).

22 3. Review by the board of architectural review

23 All telecommunications towers and facilities are subject to the board of architectural  
24 review and recommendation prior to approval.

25 4. Location and construction

26 The requirements for the location and construction of all new telecommunications  
27 facilities regulated by this chapter shall include the following:

28 (a) New telecommunications facility site shall not be permitted unless the applicant  
29 demonstrates to the reasonable satisfaction of the city that existing  
30 telecommunications facilities or alternative telecommunications structures cannot  
31 accommodate the applicant's proposed antenna.

1 (b) Telecommunications towers shall either maintain a galvanized steel finish or  
2 subject to any applicable standards of the Federal Aviation Administration (FAA),  
3 with no logos.

4 (c) The design of buildings and related structures used in conjunction with  
5 telecommunications facilities shall, to the extent possible, use materials, colors,  
6 textures, screening, and landscaping that will blend the telecommunications  
7 facilities with the natural setting and the built environment.

8 (d) A telecommunications facility or telecommunications tower shall not be  
9 artificially lighted, unless required by the FAA or other applicable authority. If  
10 lighting is required, the city may review the available lighting alternatives and  
11 approve the design that would cause the least disturbance to the surrounding  
12 views.

13 (e) No advertising of any type may be placed on the telecommunications facility, or  
14 other structures associated with the telecommunications facility, except that a sign  
15 shall be required displaying the name, registration number and emergency contact  
16 number of the tower owner. The sign shall not exceed four square feet in size and  
17 shall be located on the security fence or other approved location.

18 5. Required yards (setbacks) and separation  
19 Notwithstanding other provisions of this chapter, the following setbacks and  
20 separation requirements shall apply to all telecommunications facilities except  
21 alternative telecommunications structures:

22 (a) Telecommunications towers shall be setback a minimum of 110 percent of the  
23 height of the telecommunications tower from any off-site structures used for  
24 human habitation, provided this provision shall not apply to monopole towers  
25 certified by a structural engineer. Such monopole towers shall comply with the  
26 setbacks of the underlying zoning district for principal structures.

27 (b) Security fencing, equipment and accessory facilities must comply with setback  
28 requirements applicable to primary structures.

29 6. Height  
30 Maximum freestanding telecommunications tower height shall be as approved by city  
31 council.

32 7. Security  
33 Telecommunications towers and facilities shall be enclosed by security fencing not  
34 less than six feet or more than eight feet in height unless otherwise approved by the  
35 zoning administrator.

- 1           8. Perimeter buffer  
2           A transitional yard TY4 shall be provided around the perimeter of  
3           telecommunications towers and facilities (§4.5.5), unless otherwise approved by the  
4           zoning administrator.
- 5           9. Co-location
- 6           (a) Approval for a new telecommunications tower within a radius of 10,000 feet of an  
7           existing tower or other suitable structure shall not be granted unless the applicant  
8           certifies that the existing towers or structures do not meet applicant's structural  
9           specifications or technical design requirements, or that a co-location agreement  
10          could not be obtained at a reasonable market rate and in a timely manner.
- 11          (b) The following order of preference in siting ~~wireless communications~~  
12          telecommunications antennas and towers shall apply:
- 13           (1) Co-location of antennas on, or replacement of, existing towers and, in the  
14           process, adding additional co-locaters to the tower;
- 15           (2) On existing structures such as buildings, communications towers, water  
16           towers, smokestacks, and athletic, street or traffic light standards;
- 17           (3) Using stealth designs involving mounting antennas within existing buildings  
18           or structures in the form of bell towers, clock towers, or other architectural  
19           modification of buildings, or by mounting antennas on artificial trees; and
- 20           (4) In locations where the existing topography, vegetation, buildings, or other  
21           structures provide the greatest amount of screening.
- 22          10. Local government access  
23          Owners of towers shall provide the city with co-location opportunities as a  
24          community benefit to improve radio communication for city departments and  
25          emergency services provided it does not conflict with the co-location requirements of  
26          this chapter.
- 27          11. Federal requirements  
28          All telecommunications towers and antennas must comply with or exceed current  
29          standards and regulations of the FAA, the FCC and any other agency of the federal  
30          government with the authority to regulate such facilities. If such standards and  
31          regulations are changed, the owners of telecommunications towers and antennas  
32          governed by this chapter shall bring such towers and antennas into compliance with  
33          such revised standards as required. Failure to bring telecommunications towers and

1 antennas into compliance with such revised standards and regulations shall constitute  
2 grounds for the removal of the telecommunications towers and antennas at the  
3 owner's expense.

4 12. Removal of defective or abandoned telecommunications facilities

5 (a) Any antenna, telecommunications tower or facility that is not operated for a  
6 continuous period of 24 months shall be considered abandoned. Where removal of  
7 a telecommunications antenna, tower or facility is required, the owner shall  
8 remove such telecommunications antenna, tower or facility within 90 days of  
9 receipt of notice from the city notifying the owner of such removal requirement.  
10 Removal includes the removal of the antennas, telecommunications towers, and  
11 telecommunications facilities, fence footers, underground cables and support  
12 buildings. The buildings and foundation may remain (with land owner's  
13 approval). Where there are two or more users of a single telecommunications  
14 facility or telecommunications tower, this provision shall not become effective  
15 until all users cease using the antennas and telecommunications tower.

16 (b) If the antenna, telecommunications tower and telecommunications facility are not  
17 removed as herein required, the city may either seek court enforcement of such  
18 removal or the city may, at its discretion, remove the antenna,  
19 telecommunications tower and facility at the expense of the owner.

20 13. Additional guidelines for use of city property ~~and right-of-way~~

21 The following additional guidelines will apply to the use of city-owned property ~~and~~  
22 ~~rights-of-way~~:

23 (a) Any use of city-owned property for telecommunication facilities will require  
24 execution by the applicant of a lease agreement with the city acceptable to the city  
25 council.

26 (b) Lease and license agreements for telecommunications facilities will address issues  
27 including, but not limited to, access for maintenance, removal on cessation of use,  
28 bonding, availability and charges for shared use, compensation to the city for the  
29 use of public property, and reimbursement of cost incurred by the city; and

30 (c) The city may require compensation from telecommunications service providers  
31 for the use of city-owned property and facilities.

32 14. Performance bond

33 Prior to approval of any permit for a telecommunications tower or wireless support  
34 structure, the applicant shall be required to submit a reasonable performance bond  
35 with surety, cash escrow, letter of credit, any combination thereof, or such other legal

1 arrangement acceptable to the city attorney, to ensure that measures could be taken by  
2 the city of Fairfax at the applicant's expense should he fail to remove an abandoned  
3 telecommunications tower or wireless support structure or comply with other permit  
4 conditions. If the city of Fairfax takes such action upon such failure by the applicant,  
5 the city may collect from the applicant for the difference should the amount of the  
6 reasonable cost of such action exceed the amount of the security held, if any. Within  
7 60 days of the completion of the requirements of the permit conditions, such bond,  
8 cash escrow, letter of credit or other legal arrangement, or the unexpended or  
9 unobligated portion thereof, shall be refunded to the applicant or terminated.

10 15. Removal of abandoned wireless facilities

11 Wireless facilities no longer use in an active communications network shall be  
12 deemed abandoned and must be removed by the provider or property owner.

13 **BE IT FURTHER ORDAINED, by the City Council of the City of Fairfax, Virginia,**  
14 **that Chapter 110, Article 9, §9.3.1, of the Code of the City of Fairfax, Virginia, is hereby**  
15 **amended as follows:**

16 §9.3.1. General terms

17 ....

18  
19 ADMINISTRATIVE REVIEW-ELIGIBLE PROJECT: A structure and wireless facility as  
20 defined in the Code of Virginia, § 15.2-2316.3.

21 ....

22  
23 SMALL CELL FACILITY: A wireless facility as defined in the Code of Virginia, § 15.2-  
24 2316.3.

25 ....

26  
27 UTILITY POLE: A structure owned, operated, or owned and operated by a public utility,  
28 local government, or the Commonwealth of Virginia that is designed specifically to carry  
29 lines, cables, or wires for communications, cable television, or electricity.

30 ....

31  
32 WIRELESS FACILITY: Equipment as defined in the Code of Virginia, § 15.2-2316.3.

33 ....

34

1 WIRELESS SUPPORT STRUCTURE: A structure as defined in the Code of Virginia, §  
2 15.2-2316.3.

3 ....

4 This ordinance shall become effective upon adoption.

5

6 PLANNING COMMISSION PUBLIC HEARING: June 10, 2019

7 CITY COUNCIL PUBLIC HEARING: \_\_\_\_\_

8 ENACTED: \_\_\_\_\_

9

10

11

\_\_\_\_\_  
Mayor

12

13

Date: \_\_\_\_\_

14

15 ATTEST:

16

17

\_\_\_\_\_  
City Clerk

18

19

20 Vote

21 Councilmember DeMarco \_\_\_\_\_

22 Councilmember Lim \_\_\_\_\_

23 Councilmember Miller \_\_\_\_\_

24 Councilmember Passey \_\_\_\_\_

25 Councilmember Stehle \_\_\_\_\_

26 Councilmember Yi \_\_\_\_\_

**SAMPLE MOTION**

**“I MOVE TO APPROVE AN ORDINANCE AMENDING CHAPTER 110 (ZONING) TO AMEND PORTIONS OF ARTICLES AND SECTIONS CONTAINED THEREIN PERTAINING TO TELECOMMUNICATIONS FACILITIES AND THE TYPES AND STANDARDS ASSOCIATED THEREWITH.”**