

ORDINANCE NO. 2019-07

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.

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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	
P = PERMITTED / S = SPECIAL USE (§6.7) / * = GROUP OF USES (§3.4.1)													

....

PUBLIC, CIVIC AND INSTITUTIONAL USES

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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
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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

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J. Telecommunications facilities

1. Purpose and intent

(a) General

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

(b) Collocation

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

- (1) Locate necessary antennas and equipment on existing structures;
 - (2) Share facility locations on the same property with other service providers;
 - (3) Share items such as structural attachments, cable shrouds, equipment shelters, and equipment cabinet pads with other service providers;
 - (4) Coordinate with other service providers in the fulfillment of any screening, landscaping, access and utility requirements; and
 - (5) Coordinate with other service providers in the digging of trenches or underground conduits for the placement of any cables or other equipment under or through any street or right-of-way.
- (c) Compatibility with nearby land uses
- (1) ~~The~~ The city will attempt to ensure compatibility of telecommunications facilities with nearby land uses by assuring, when possible, that ~~the~~ providers of telecommunications services:
- (1) ~~Locate~~ Locate telecommunications facilities in the following areas in descending order of preference:
 - (i) On property that is already developed with a public utility structure that is at least 90 percent of the height of the proposed telecommunications facility;
 - (ii) On property that is already developed with any structure that is at least 90 percent of the height of the proposed telecommunications facility;
 - (iii) In industrial districts;
 - (iv) In low visibility areas of commercial districts;
 - (v) In properly buffered and screened residential districts where a clear need for such facility has been established and no industrial or commercial land is available nearby that is technically suitable to support the facility;
 - (2) Locate each antenna that is to be attached to an existing building or to an existing public utility structure in such a manner as to provide the least visual impact of the facilities on the surrounding public and residential areas;
 - (3) Locate each antenna that is to be attached to a new freestanding structure (including a monopole) or to an existing or reconstructed tower to minimize its height and visibility. Provide a setback for the entire structure from all lot lines and on-site buildings, customer parking lots, and other areas designated for active use. The setback should be a horizontal distance equal to the height of the top of the antenna above average elevation of the ground around the structure;
 - (4) Locate all transmitting, receiving, switching, power and other supporting equipment entirely within existing buildings, where possible;
 - (5) Meet the setback requirements of the zone for any new buildings that are found necessary to house supporting telecommunications equipment;

- (6) Establish a community liaison with all adjacent civic associations prior to the construction of the facility and continue the liaison throughout the period of use of the facility;
- (7) Comply with FCC regulations relating to radio frequency emissions and FAA regulations on lighting; and
- (8) Provide for access, removal of all defunct equipment within six months of discontinuance of use, and bonding of construction and removal.

(d) Siting and design

The City will attempt to mitigate the negative impacts of telecommunications facilities by requiring, when possible, that providers of telecommunications services:

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

- (13) Comply with FCC regulations relating to radio frequency emissions;
and
- ~~(14) Establish a community liaison with all adjacent civic associations prior to the construction of the facility and continue the liaison throughout the period of use of the facility.~~

2. Applicability

(a) General

- (1) These regulations govern the siting of telecommunications towers and facilities, ~~except as specifically, below for those identified in §3.5.2.J.2.B, which are not subject to the provisions of §3.5.2.J.4 through §3.5.2.J.8, and §3.5.2.J.2.C, which are not subject to the provisions of §3.5.2.J.4 through §3.5.2.J.10.~~
- (2) Routine maintenance or 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 shall not require approval by the zoning administrator.

(b) Existing structures and towers

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

- (1) Does not add more than 10 feet in height to the existing structure; and
- (2) Meets all applicable standards of the Virginia Uniform Statewide Building Code (USBC) and this chapter.

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

- (1) The installation of a new structure for an administrative review-eligible project as defined in the Code of Virginia, §15.2-2316.3, may be approved administratively by the zoning administrator provided that:
 - (i) A new structure with attached wireless facilities is no more than 50 feet in height as measured in accordance with §1.5.11.C;
 - (ii) A new structure with attached wireless facilities is located within an existing line of utility poles and is not more than 10 feet above the tallest existing utility pole in that line located within 500 feet of the new structure;
 - (iii) A new structure with attached wireless facilities is designed to support small cell facilities;
 - (iv) A new structure with attached wireless facilities shall not be located on a site currently or previously subject to the utility undergrounding provisions of §4.11 of this chapter;
 - (v) The number of new structures with attached wireless facilities on a site shall not exceed the number of existing utility poles on the site within

the existing line of utilities poles to which the new structures would be added; and

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

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

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

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

3. Review by the board of architectural review

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

4. Location and construction

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

- (a) New telecommunications facility site shall not be permitted unless the applicant demonstrates to the reasonable satisfaction of the city that existing telecommunications facilities or alternative telecommunications structures cannot accommodate the applicant's proposed antenna.
- (b) Telecommunications towers shall either maintain a galvanized steel finish or subject to any applicable standards of the Federal Aviation Administration (FAA), with no logos.
- (c) The design of buildings and related structures used in conjunction with telecommunications facilities shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the telecommunications facilities with the natural setting and the built environment.
- (d) A telecommunications facility or telecommunications tower shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the city may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
- (e) No advertising of any type may be placed on the telecommunications facility, or other structures associated with the telecommunications facility, except that a sign shall be required displaying the name, registration number and emergency contact number of the tower owner. The sign shall not exceed four square feet in size and shall be located on the security fence or other approved location.

5. Required yards (setbacks) and separation

Notwithstanding other provisions of this chapter, the following setbacks and separation requirements shall apply to all telecommunications facilities except alternative telecommunications structures:

- (a) Telecommunications towers shall be setback a minimum of 110 percent of the height of the telecommunications tower from any off-site structures used for human habitation, provided this provision shall not apply to monopole towers certified by a structural engineer. Such monopole towers shall comply with the setbacks of the underlying zoning district for principal structures.
 - (b) Security fencing, equipment and accessory facilities must comply with setback requirements applicable to primary structures.
6. Height
Maximum freestanding telecommunications tower height shall be as approved by city council.
7. Security
Telecommunications towers and facilities shall be enclosed by security fencing not less than six feet or more than eight feet in height unless otherwise approved by the zoning administrator.
8. Perimeter buffer
A transitional yard TY4 shall be provided around the perimeter of telecommunications towers and facilities (§4.5.5), unless otherwise approved by the zoning administrator.
9. Co-location
- (a) Approval for a new telecommunications tower within a radius of 10,000 feet of an existing tower or other suitable structure shall not be granted unless the applicant certifies that the existing towers or structures do not meet applicant's structural specifications or technical design requirements, or that a co-location agreement could not be obtained at a reasonable market rate and in a timely manner.
 - (b) The following order of preference in siting ~~wireless communications~~ telecommunications antennas and towers shall apply:
 - (1) Co-location of antennas on, or replacement of, existing towers and, in the process, adding additional co-locaters to the tower;
 - (2) On existing structures such as buildings, communications towers, water towers, smokestacks, and athletic, street or traffic light standards;
 - (3) Using stealth designs involving mounting antennas within existing buildings or structures in the form of bell towers, clock towers, or other architectural modification of buildings, or by mounting antennas on artificial trees; and
 - (4) In locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.
10. Local government access
Owners of towers shall provide the city with co-location opportunities as a community benefit to improve radio communication for city departments and emergency services provided it does not conflict with the co-location requirements of this chapter.
11. Federal requirements
All telecommunications towers and antennas must comply with or exceed current standards and regulations of the FAA, the FCC and any other agency of the federal

government with the authority to regulate such facilities. If such standards and regulations are changed, the owners of telecommunications towers and antennas governed by this chapter shall bring such towers and antennas into compliance with such revised standards as required. Failure to bring telecommunications towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the telecommunications towers and antennas at the owner's expense.

12. Removal of defective or abandoned telecommunications facilities

- (a) Any antenna, telecommunications tower or facility that is not operated for a continuous period of 24 months shall be considered abandoned. Where removal of a telecommunications antenna, tower or facility is required, the owner shall remove such telecommunications antenna, tower or facility within 90 days of receipt of notice from the city notifying the owner of such removal requirement. Removal includes the removal of the antennas, telecommunications towers, and telecommunications facilities, fence footers, underground cables and support buildings. The buildings and foundation may remain (with land owner's approval). Where there are two or more users of a single telecommunications facility or telecommunications tower, this provision shall not become effective until all users cease using the antennas and telecommunications tower.
- (b) If the antenna, telecommunications tower and telecommunications facility are not removed as herein required, the city may either seek court enforcement of such removal or the city may, at its discretion, remove the antenna, telecommunications tower and facility at the expense of the owner.

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

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

- (a) Any use of city-owned property for telecommunication facilities will require execution by the applicant of a lease agreement with the city acceptable to the city council.
- (b) Lease and license agreements for telecommunications facilities will address issues including, but not limited to, access for maintenance, removal on cessation of use, bonding, availability and charges for shared use, compensation to the city for the use of public property, and reimbursement of cost incurred by the city; and
- (c) The city may require compensation from telecommunications service providers for the use of city-owned property and facilities.

14. Performance bond

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

15. Removal of abandoned wireless facilities

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

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

§9.3.1. General terms

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

....

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

....

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

....

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

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

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This ordinance shall become effective upon adoption.

PLANNING COMMISSION PUBLIC HEARING: June 10, 2019

CITY COUNCIL PUBLIC HEARING: June 25, 2019

ENACTED: June 25, 2019

Wes E Meyer
Mayor

Date: July 25, 2019

ATTEST:

Melinda R. Cramer
City Clerk

Vote

Councilmember DeMarco	Aye
Councilmember Lim	Aye
Councilmember Miller	Aye
Councilmember Passey	Aye
Councilmember Stehle	Aye
Councilmember Yi	Recused