



City of Harrisonburg, Virginia

Department of Planning & Community Development

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Building Inspections
Engineering
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To: Eric Campbell, City Manager
From: Adam Fletcher, Director – Department of Planning and Community Development
Date: May 8, 2018
Re: Proposed Wireless Telecommunications Facilities Ordinance Amendments as Required by Amendments to the Virginia Code from the 2017 General Assembly Article 7.2 Zoning for Wireless Communications Infrastructure and other Minor Amendments.

Summary:

Public hearing to consider multiple Zoning Ordinance amendments related to wireless telecommunications facilities as required by amendments to the Virginia Code from the 2017 General Assembly within Article 7.2, Zoning for Wireless Communications Infrastructure. Other minor amendments are also proposed to the regulations for clarity. The regulations of Article CC only address wireless communications on privately and publicly owned parcels and do not address wireless communication facilities within public street or alley right-of-way. The proposed amendments include: amending the existing definitions of “Industrial Microcell,” “Macrocell,” and “Wireless Telecommunications Facility;” adding definitions for “micro-wireless facilities” and “small cell facilities;” and adding small cell facilities as a use permitted by-right within the R-1, R-2, both R-3s, R-4, R-5, R-6, R-7, MX-U, B-1, B-2, and U-R zoning districts. Although no amendments are proposed for the M-1 district, this district already recognizes that any wireless telecommunications facility is permitted by right. Additional amendments include modifications to Article CC. Wireless Telecommunications Facilities and consist of: adding exemptions for micro-wireless facilities that are suspended on cables or lines in specific situations; adding collocation, height, camouflaging, and other regulations associated with “Small Cell Facilities” for residential districts and the MX-U; adding “Small Cell Facilities” to the list of regulated facilities for B-1 and B-2 zoned properties; amending costs associated with wireless telecommunications facilities applications and adding “Small Cell Facilities” to the list of facilities requiring application submittal fees; and adding a clarifying statement to Section 10-3-200 regarding the reporting of wireless telecommunications facilities that facilities deemed “eligible facilities” in existence prior to the original enactment of Article CC are not required to submit an annual report to the Zoning Administrator. The Zoning Ordinance Sections to be modified include: 10-3-24, 10-3-33, 10-3-39, 10-3-45, 10-3-48.3, 10-3-51, 10-3-55.3, 10-3-56.3, 10-3-57.3, 10-3-58.3, 10-3-84, 10-3-90, 10-3-179, 10-3-195, 10-3-196, 10-3-197, 10-3-199, and 10-3-200.

Background:

Article 7.2 of the Virginia Code, Zoning for Wireless Communications Infrastructure, was updated during the 2017 Session of the Virginia General Assembly with requirements regarding how small cell facilities are defined and considered within the wireless communications infrastructure. Changes include, but are not limited to, the following:

- Defining small cell facility and micro-wireless facility (which includes small cell facility).
- Identifying that a locality shall not require a special exception, special use permit, or variance be obtained for any small cell facility installed by a wireless services provider or wireless infrastructure provided 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 and (ii) notifies the locality in which the permitting process occurs.

- Allowing localities to 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.
- Requiring localities to allow applicants to submit up to 35 permit requests on a single application.
- Allowing localities to charge a reasonable fee for processing the application.
- Requiring that localities allow exemptions for micro-wireless facilities that are suspended on cables or lines in specific situations.
- Setting parameters for a locality to disapprove a proposed location or installation of a small cell facility.

Key Issues:

City staff is proposing amendments to multiple sections of the Zoning Ordinance to incorporate recent changes to the Code of Virginia regarding wireless telecommunications facilities. These regulations only address wireless communications on privately and publicly owned parcels and do not address wireless communications within the public street and alley right-of-way.

Within Section 10-3-24, Definitions, staff is proposing to add the following two definitions:

- *Micro-wireless facility:* A small cell facility that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, not longer than eleven (11) inches.
- *Small cell facility:* 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.

As well, the existing definitions of “Industrial Microcell,” “Macrocell,” and “Wireless Telecommunications Facility” are proposed to be amended to include “small cell facilities.”

To be in conformity with the requirements of the Code of Virginia, staff proposes that within the R-1, R-2, both R-3s, R-4, R-5, R-6, R-7, MX-U, B-1, B-2, and U-R zoning districts that small cell facilities be added as a use permitted by-right. No amendments are proposed for the M-1 district as this district already recognizes that any wireless telecommunications facility is permitted by right.

Within Article CC. Wireless Telecommunication Facilities, staff is adding the clarification that the City cannot impose permitting requirements and fees for the installation, placement, maintenance, or replacement of equipment meeting the specifications to be considered micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes, and so long as permission is granted by the owners of the cables or lines on which the facilities are located. This exemption is being added as it is required by the Code of Virginia.

Changes are also proposed within Section 10-3-196, Wireless telecommunications facilities within residential districts and the MX-U, Mixed Use Planned Community District, by removing the existing language that states “*there are no wireless telecommunications facilities allowed by right within any residential district or the MX-U district.*” That language will be replaced with collocation requirements, height restrictions, camouflaging requirements, screening requirements, and other regulations associated with the required by-right use for “Small Cell Facilities” in all residential districts and the MX-U district.

In Section 10-3-199, Submittal requirements and other application requirements, staff is suggesting amendments be made for the fees for applications for wireless telecommunications facilities, including small cell facilities, be accompanied with one hundred dollars (\$100.00) for each facility up to the first five (5) facilities, and fifty dollars (\$50.00) for each additional facility on the same application. Applicants will be allowed to submit up to thirty-five (35) facilities on one application. This fee structure would replace the \$175.00 flat application fee.

Lastly, staff is proposing to add language to better clarify that within Section 10-3-200, reporting of wireless telecommunications facilities, that facilities deemed “eligible facilities” in existence prior to the original enactment of Article CC are not required to submit an annual report to the Zoning Administrator. Note that this amendment is not required by changes in the Code of Virginia.

Staff believes these amendments capture all the requirements of the updated State regulations. Staff recommends approval of the proposed wireless telecommunications facilities amendments.

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

N/A

Alternatives:

- (a) Recommend approval of the ordinance amendments as proposed;
- (b) Recommend denial of the ordinance amendments.

Community Engagement:

As required, the request was published in the local newspaper twice advertising for Planning Commission’s public hearing and twice for City Council’s public hearing for the ordinance amendments. The advertisement was published as shown below:

Zoning Ordinance Amendments – Wireless Telecommunications Facilities (Small Cell Facilities and Other Amendments)

Public hearing to consider multiple Zoning Ordinance amendments related to wireless telecommunications facilities as required by amendments to the Virginia Code from the 2017 General Assembly within Article 7.2, Zoning for Wireless Communications Infrastructure. Other minor amendments are also proposed to the regulations for clarity. The regulations of Article CC only address wireless communications on privately and publicly owned parcels and do not address wireless communication facilities within public street or alley right-of-way. The

proposed amendments include: amending the existing definitions of “Industrial Microcell,” “Macrocell,” and “Wireless Telecommunications Facility;” adding definitions for “micro-wireless facilities” and “small cell facilities;” and adding small cell facilities as a use permitted by-right within the R-1, R-2, both R-3s, R-4, R-5, R-6, R-7, MX-U, B-1, B-2, and U-R zoning districts. Although no amendments are proposed for the M-1 district, this district already recognizes that any wireless telecommunications facility is permitted by right. Additional amendments include modifications to Article CC. Wireless Telecommunications Facilities and consist of: adding exemptions for micro-wireless facilities that are suspended on cables or lines in specific situations; adding collocation, height, camouflaging, and other regulations associated with “Small Cell Facilities” for residential districts and the MX-U; adding “Small Cell Facilities” to the list of regulated facilities for B-1 and B-2 zoned properties; amending costs associated with wireless telecommunications facilities applications and adding “Small Cell Facilities” to the list of facilities requiring application submittal fees; and adding a clarifying statement to Section 10-3-200 regarding the reporting of wireless telecommunications facilities that facilities deemed “eligible facilities” in existence prior to the original enactment of Article CC are not required to submit and annual report to the Zoning Administrator. The Zoning Ordinance Sections to be modified include: 10-3-24, 10-3-33, 10-3-39, 10-3-45, 10-3-48.3, 10-3-51, 10-3-55.3, 10-3-56.3, 10-3-57.3, 10-3-58.3, 10-3-84, 10-3-90, 10-3-179, 10-3-195, 10-3-196, 10-3-197, 10-3-199, and 10-3-200.

In addition, adjoining property owners were notified of the public hearing; the property was posted with signage advertising the request; and a notice was provided on the City’s website at <https://www.harrisonburgva.gov/public-hearings>.

Recommendation:

Staff recommends alternative (a) to approve the ordinance amendments as proposed.

Attachments:

1. Extract (5 pages)
2. Proposed Wireless Telecommunications Facilities Ordinance Amendments as Required by Amendments to the Virginia Code from the 2017 General Assembly Article 7.2 Zoning for Wireless Communications Infrastructure and other Minor Amendments. (20 pages)

Review:

Planning Commission recommended to approve (5-1) the Wireless Telecommunication Facilities Zoning Ordinance Amendments as presented by staff.