



# City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT

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## **TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA**

**SUBJECT:** Public hearing to consider a comprehensive Zoning Ordinance amendment associated with wireless telecommunications facilities. The amendments include modifying multiple existing sections and to add a new article to the Code. Changes to the existing Code include those needed in the Definitions section and then proceeding through the code sections of most of the zoning districts and specifying the different types of wireless telecommunications facilities that will be permitted and whether they would be allowed by right or by special use permit. The new article includes the specifics of how wireless telecommunications facilities would be permitted within all residential districts and the MX-U district, the B-1 and B-2 districts, and the M-1 district. There are submittal and application requirements, rules for submitting annual reports for each facility, maintenance and enforcement regulations, stipulations regarding the removal of defective and abandoned facilities, and finally specifics regarding how property owners can take advantage of Section 6409 of the Spectrum Act. The Zoning Ordinance Sections to be modified include: 10-3-24, 10-3-34, 10-3-35, 10-3-40, 10-3-41, 10-3-46, 10-3-47, 10-3-48.4, 10-3-48.5, 10-3-52, 10-3-53, 10-3-55.4, 10-3-55.5, 10-3-56.4, 10-3-56.5, 10-3-57.4, 10-3-57.5, 10-3-58.4, 10-3-58.5, 10-3-84, 10-3-85, 10-3-86, 10-3-90, 10-3-91, 10-3-92, 10-3-96, 10-3-97, 10-3-98, 10-3-129, 10-3-180, and 10-3-181. The proposed new article is titled Article CC. Wireless Telecommunication Facilities with new Sections 10-3-195 through 10-3-203. In addition to the modifications associated with wireless telecommunications facilities, the Zoning Ordinance Section 10-3-84 Uses Permitted By Right within the B-1, Central Business District would also be modified by adding "radio and television stations and studios or recording studios" as an additional set of uses permitted by right, where all antennas and satellites and associated equipment shall be screened.

## **EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: June 10, 2015**

Chair Fitzgerald read the next request and asked staff to review.

Mr. Fletcher said the comprehensive Zoning Ordinance (ZO) amendment associated with wireless telecommunications facilities is complete and, if desired, ready for adoption. In brief, the proposed amendments would allow for particular wireless facilities to be administratively reviewed and approved in the commercial and industrial districts, which will expedite the process for wireless infrastructure installation. The new regulations also create the opportunity for facilities to be located in 13 of the City's zoning districts as opposed to the current provisions, which only allows them in three.

This ordinance project began in November/December 2011 when a special use permit (SUP) was requested to construct a telecommunications tower along Reservoir Street. In short, opinions differed

regarding whether the SUP should be approved as staff recommended denial and both Planning Commission (PC) and City Council (CC) had split votes through the process that ended with the SUP being approved with conditions. During this review members of both PC and CC questioned whether new or more provisions were necessary for telecommunications, which ultimately led to this considerable undertaking.

Throughout the process a few reports were completed to aid in the creation of the proposed regulations. After the Reservoir Street SUP was approved, in January 2012 staff prepared a report for PC that explained the City's zoning provisions associated with wireless telecommunications facilities. At this meeting, staff was advised to investigate the options involving updating those regulations. As staff began to explore different approaches, a second document was generated that included an inventory of the existing properties with such facilities. Eventually, both of the previously described documents became appendices to a detailed research document titled "Considering Amendments for Telecommunications" that was provided to PC in August 2013. This report was a thorough evaluation of the topic including: why the City was investigating telecommunications regulations; what authority the City had in regulating telecommunications; a section describing example regulations; and information about recent and future telecommunication practices to help understand the issues if new regulations were to be drafted. The report also included staff's recommendations for moving forward. Prior to presenting this information to PC, staff provided the document to other City departments and the other groups on the monthly development review team to receive their feedback. Moreover, staff reached out to the wireless industry (i.e. AT&T, NTelos, Shentel, Verizon Wireless, and others) to receive feedback on our understanding of not only the technology but where the industry was heading. The roles of the individuals from the wireless industry were diverse and included: the regional general attorney or other attorneys of major carriers, real estate manager, site acquisition manager, remote access network (RAN) engineer/strategic planner, leasing coordinator, and private contractor. Overall, the industry representatives provided positive feedback about staff's thoughts and recommendations.

The research document's main objective was to question and help answer to what extent, if any, should the City Code be updated and amended to further address land use issues involving wireless telecommunications facilities. After having a month to review the report, PC discussed the issue at the September 2013 regular meeting, where there was consensus among them for staff to officially begin drafting updated wireless telecommunications regulations.

After many months of additional research and writing, in February 2015, staff presented to PC a complete draft of all the ZO amendments that would be needed to implement the new proposed regulations. PC consented to these amendments and requested staff obtain feedback on the proposed code changes from the wireless industry and the normal monthly development review team. After considering the comments and suggestions those groups submitted, staff made final revisions to the proposed regulations and presented them to PC in May 2015. At the May regular meeting, PC decided to move forward with a public hearing. As with previous versions, staff sent the final draft of the proposed ordinance amendments to the wireless industry and the normal monthly development review team. Included at the end of the staff report documents herein are the final thoughts on the proposed amendments from AT&T and Verizon Wireless.

In all, the amendments include modifying multiple existing sections and adding a new article to the ZO. Changes to the existing code include those needed in the Definitions section and then proceeding through code sections of the R-1, R-2, both R-3s, R-4, R-5, R-6, R-7, MX-U, B-1, B-2, M-1, and U-R zoning districts and specifying the different types of wireless telecommunications facilities that would be permitted and whether they would be allowed by right or by SUP. The proposed new article includes the specifics of how wireless telecommunications facilities would be permitted within all residential

districts, the MX-U district, the B-1 and B-2 districts, and the M-1 district. There are submittal and application requirements, rules for submitting annual reports for each facility, maintenance and enforcement regulations, stipulations regarding the removal of defective and abandoned facilities, and specifics regarding how property owners can take advantage of Section 6409 of the Spectrum Act.

All facilities that require a SUP would, just like all other SUPs, pay the \$375 plus \$30 per acre application fee and proceed through the public hearing process with PC and CC reviews. For all facilities that are permitted to be reviewed and approved administratively, staff suggests applicants pay a \$175 review fee. I would suggest that the fee be added to the ordinance so that it officially becomes part of the ordinance. At this time I suggest we add the fees to Section 10-3-199, Application and Submittal Requirements. I do not know the exact sub-section which we would add it to; but if the Planning Commission is recommending adoption of the ordinance, please do so with the provision that this be added into the Article and Section.

In addition to the modifications associated with wireless telecommunications facilities, the ZO Section 10-3-84 Uses Permitted By Right within the B-1, Central Business District would also be modified by adding “radio and television stations and studios or recording studios” as an additional set of uses permitted by right, where all antennas and satellites and associated equipment with those uses shall be screened. Although completely unrelated to the wireless telecommunications regulations, while reviewing the ZO to make way for the updated wireless provisions, it came to our attention that the B-1 district—the zoning district in which the WHSV property at 50 North Main Street is part of—does not explicitly list “radio and television stations and studios or recording studios” as a use permitted in that zoning district as it does in other districts. As comparison, the B-2, General Business District lists those uses as permitted by right while the M-1, General Industrial District allows them by special use permit.

To rectify this situation, staff is proposing to add “radio and television stations and studios or recording studios” as a use permitted by right within the B-1 district. However, unlike in the B-2 and M-1 zoning districts, staff believes it would be good planning and zoning practice for such uses in the City’s downtown to be further required to ensure that “all antennas and satellites and associated equipment shall be screened.” If the amendment is approved as proposed, what this means for the WHSV property is that the current arrangement of the satellite dishes and other communications equipment would be considered non-conforming because the existing equipment is not screened. The same amendment though would clearly state that television stations are legally permitted by right in the B-1 district.

Before moving forward with this amendment, staff discussed this matter with WHSV and informed them that they would not be required to screen the existing equipment and it may remain in its current configuration, but that if they desired to install additional equipment or erect a similar standalone structure that houses satellite dishes like currently exists to the rear of their property, the new antennas and satellites dishes would have to be screened. We also explained that any new radio, television, or recording studios that wanted to locate in the City’s downtown B-1 district would also be held to the same standard. After answering questions about how such facilities would need to be screened and in understanding that no action was needed by the television station, they had no further comments.

Staff recommends approving all ZO amendments associated with wireless telecommunication facilities and the amendment to add radio and television stations and studios or recording studios as described in the B-1 district.

Chair Fitzgerald asked if there were any questions.

Mr. Way said going back in time to the Reservoir Street cell tower that was constructed within the B-2 zoning – hypothetically, how would that tower have been impacted if these changes were in place?

Mr. Fletcher replied by-right the applicant would have been able to collocate the equipment on an existing facility in the area, a building or a HEC power pole; the height would have been allowed up to five feet above the facility it was collocated on; and it would have to be colored, or camouflaged, the same as whatever support structure it was attached to. If they wanted to do a tower such as what is there today, they would still have to do a special use permit.

Mr. Way asked how tall the tower is.

Chair Fitzgerald said that tower is 124-feet.

Mr. Colman said if the facility is an abandoned water tank, or something of that nature, and is not currently being used as a telecommunications facility, how does that play in to the regulations if it is in a residential area?

Mr. Fletcher said that is a good hypothetical. We do not have that currently. We do have a water tower property that looks like it is within residential, but it is actually zoned M-1. It is a decommissioned water tower and for our purposes it is now a structure that is for telecommunications.

Mr. Colman said I am thinking of the water tower that will be abandoned when the new water tank is constructed at EMU. Is that property residential?

Mr. Fletcher said it is residential. I guess the opportunity exists for someone to use it for telecommunications; but, I believe the City is planning to demolish it.

Mr. Colman said unless someone wants to purchase the tower and property.

Mr. Fletcher said I suppose that is an option. Nothing could be located more than five-feet above the existing tower, it would need to be camouflaged, and would require a special use permit.

Chair Fitzgerald asked if there were any further questions. Hearing none, she opened the public hearing and asked if there was anyone wanting to speak regarding the ordinance amendments.

Lori Schweller said she is an attorney with LeClair Ryan and represents Verizon Wireless. I thought this might be a little more contentious than it is, but I am here to express on behalf of Verizon Wireless our support of this proposed ordinance. I think it is well done and I commend the job that all of you have done. I really appreciate your listening to input from the industry. We have seen our comments are incorporated and we really appreciate that.

I did want to raise one short comment that you might want to consider in the future; I certainly do not want to slow down the adoption of this ordinance. In the future you may want to consider more provisions for temporary wireless facilities. I am encountering this more and more where we need, very quickly, to erect some sort of tower to serve a special event. Because of the large number of people who come to some special events you need a tremendous amount of wireless capacity; we are not talking about just a cell-on-wheels (COW) or a cell-on-light-truck (COLT), but some installation that is basically the same as a permanent installation. These temporary facilities require a lot of preparation and construction time, set-up, and integration into the network. Taking something like this down takes time as well. This is just something for you to think about for the future, and I do not know whether this is going to be important for the City or not, but given your vibrant art scene in the community and the University it could become important. You might find in the future a text amendment would be useful – perhaps something like 90 days and up to 125-feet tall, within a business or industrial district. That is the only additional comment I have and I do thank you for reaching out to us for questions and comments.

Mr. Way said the notion of the temporary towers I think might be an interesting one; given what we heard last night about Plan Our Park and other things going on downtown. I believe it may be an important point for the future.

Chair Fitzgerald asked if anyone else would like to speak regarding the ordinance amendments. Hearing none, she closed the public hearing and asked if there was any discussion, comments, or possibly a motion.

Mr. Colman said I move to recommend approval of the ordinance amendments for Wireless Telecommunications Facilities and to add Radio and Television Stations and Studios or Recording Studios in B-1 and to include the associated fees as presented by staff.

Mr. Heatwole seconded the motion.

Chair Fitzgerald asked if there was any further discussion on this. Hearing none, she called for a voice vote on the motion to recommend approval.

All voted in favor (6-0).

Chair Fitzgerald said City Council will get this on July 14<sup>th</sup>.

Respectfully Submitted,

Alison Banks  
Planner