



# City of Harrisonburg, Virginia

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

### **EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: September 11, 2013**

#### ***Considering Amendments for Telecommunications Regulations***

Chair Fitzgerald read the agenda item and asked staff to review.

Mr. Fletcher said first I would like to point out the two documents placed before you. A citizen brought these in today for your information. This is a conversation she has communicated to the City Manager; it reaches back to December 2010 and February 2011 and some of staff recalls speaking to the person previously. She could not be present this evening, but she did want to make certain that you all receive this information and her concerns were spoken, even if it does regard public infrastructure and public property.

As we move forward on this report my intent is to be brief. I am not going to review all the different ideas from all the localities; I intend to just go over the basics. This is not a formal presentation, so feel free to interrupt me.

The report, research, and recommendation are to try and help answer the question of: “to what extent, if any, should the City Code be amended to address telecommunication facilities?” Hopefully, the report helps answer the question and helps you decide whether or not you want to move forward into drafting telecommunications regulations.

Mr. Fletcher proceeded to briefly review the report discussing how telecommunications are currently allowed throughout the City. The regulatory authority that gives the City the right to regulate telecommunications is outlined within the Telecommunications Act of 1996. The written report outlines the limits of state and local government and describes what we can do, what we can regulate, and specifically what the technology is. Also provided are five guidelines that a state or local government must abide by. This Act was predominantly the regulatory act until last year when President Obama signed the Middle Class Tax Relief and Job Creation Act of 2012. This Act really describes facility modifications. What this Act says is that a state or local government may not deny and shall approve any eligible facility requests so long as it does not substantially change the physical dimensions of that facility. This Act is complicated to understand and is still being interpreted.

What we typically see throughout the City are what is referred to as macrocells, the tall structures that have a lot of equipment attached. Typical regulations governing macrocells are – limited to specific zoning districts, height limitations, setback minimums, foundation landscaping or screening,

abandonment requirements, administrative approval opportunities, application submission requirements, and in some areas, concealed technology. For years providers requested to erect towers, macrocells, because the coverage could stretch a radius of miles; however, there was always a gap in between structures. This is no longer true, as in most populated areas there is wall-to-wall cells site coverage. This works well for voice transfer; but data and video overwhelm the system and necessitates the installation of microcells. These smaller microcells work in unison with the macrocell and can be in the form of boxes or an antenna on utility poles or a building.

Then we get into the more costly and sophisticated equipment of the Distributed Antenna System (DAS) which is comprised of three components: 1) the remote communication nodes; 2) the transportation medium; 3) a hub. This operates as another form of a microcell. There is also a newer technology term being used by the industry, which is the heterogeneous network, or the HetNet. This is the understanding that we are no longer just relying on macrocells; they are being bounced-off of many different types of equipment.

Although ultimately more provisions would be included in the ordinance and other discussions still must be had, at this time staff recommends some form of the following provisions be incorporated in an ordinance for the City to adopt: 1) To allow telecommunications within more zoning districts; 2) To create opportunities for administrative review and approval; 3) To allow telecommunications in public street right-of-way, other public right-of-way, and on publicly owned properties; 4) To require more information and details be submitted upon application; 5) To require all telecommunication facilities, not on alternative structures, be setback 110 percent the height of the tower; 6) To require landscaping or other material that effectively screens the view of the support buildings from adjacent properties; 7) To require freestanding telecommunications facilities to be designed to accommodate at least three providers or more depending upon the height of the facility; 8) To prohibit artificial lighting unless required by the FCC; 9) To require a form of surety to secure the cost to remove the tower and equipment and return the site to its original condition to the extent reasonably possible; 10) To allow at the discretion of the Director of Planning and Community Development, or their designated agent, to contract with experts to assist with the review of telecommunications facilities at an expense of the applicant not to exceed a specified amount; and 11) To incentivize microcell and DAS technology.

Mr. Fletcher said lastly comments from Industry Representatives were generally positive to the recommendations, but noted:

- Understand that requiring telecommunication towers be setback 110% the height of the tower could be too strict for an urban environment.
- Understand that small cells/microcells can only work where macrocells already exist.
- Understand that the implementation of requiring more collocations requires having taller towers to make it feasible.

And comments from City Departments:

- At this time, the Department of Public Works is not interested in allowing equipment on traffic control devices.
- At this time, HEC is open to discussing allowing collocations on transmission towers but not on distribution poles.

Mr. Fletcher said this concludes my presentation.

Dr. Dilts said I believe I read somewhere in the industry comments about other types of wireless devices that were not part of telecommunications. I believe the implication was that perhaps our scope needs to be larger.

Chair Fitzgerald asked if the comment was implying that we were too narrow in scope.

Dr. Dilts said she will get back to the comment.

Mr. Fletcher said what staff is looking for tonight from you is — do you agree with our recommendation that it should be amended; if so, staff will continue moving forward.

Mr. Way asked are we talking about amending the Zoning Ordinance.

Mr. Fletcher said it would be amending the Zoning Ordinance as well as a combination of working with HEC, Public Utilities, or Public Works to get administration policies in place. There may be multiple City Code amendments.

Mr. Way said much of this seems very similar to signage regulations, where it has a zoning component, yet it goes beyond the zoning ordinance.

Mr. Colman said would the City have revenue from renting space.

Mr. Fletcher replied yes, we currently have revenue from co-locations within the City on public property.

Mr. Colman said the HEC transmission lines are generally in an easement, but this co-location would also depend on what zoning they are located in.

Mr. Fletcher said yes. I have talked with the General Manager of HEC, Brian O'Dell about some easements being public, others are private, or within right-of-way. Of course we would have the City Attorney involved regarding the interpretations of the easement language.

Mr. Jefferson said I certainly feel this is definitely worth moving forward with. It appears to be something that needs to be re-evaluated, as the technology is always changing.

Chair Fitzgerald said I am definitely on board with moving forward too. I do have some questions regarding the specific eleven recommendations. Number 4, requiring more information and details upon application, I feel is a bit tricky. It feels as if it could get expensive very quickly, and I know you did some comments back from industry representatives regarding expense. I would be real interested in seeing how we could write that in a way that gave us information, but was not too onerous for the applicant.

We already discussed number 5, the 110% setback. I do not think that a single industry or City representatives responded that this was a good idea. Jim Junkins had some comments about the screening and what seemed to work well from the City's experiences.

Lastly, number 11, I do not quite understand why we have that one in there. Why specifically are we recommending that the City incentivize that particular technology?

Mr. Fletcher replied maybe incentivize was somewhat misleading in a revenue term. It is not a revenue intent; it is more to reduce the complications of our requirements to the industry and push them more to use microcell technology rather than macrocells – such as administrative approval for certain facilities.

Chair Fitzgerald said the idea is to cut road blocks for that particular technology as much as possible and control and regulate the big towers which are more obtrusive.

Mr. Fletcher said yes.

Dr. Dilts said how do you keep up with the rapidly changing technology as the regulations are being written?

Mr. Fletcher said technology was changing as I wrote this report; therefore I do not believe there is a way it could be done.

Dr. Dilts said I do agree with Chair Fitzgerald, I believe we need to move forward with this. I was struck by the balloon-test process for the Blue Ridge Parkway and wondered if, given our location, having sight line type of items within our regulations really should be important to us.

Chair Fitzgerald said are we reading the two pieces we had in front of us tonight, the letter with multiple signatures, as re-enforcing the community's interest in aesthetics, which has been brought up previously.

Mr. Fletcher replied that was my interpretation of what this citizen wished to get across to us. They even said to me that there were times of the day, given the direction of the wind, that the trees open up and one can see the water tanks and the apparatuses holding the equipment. There becomes a point where if you are going to allow towers, you cannot hide all the towers.

Mr. Colman asked if we had a map that showed the existing coverage of the macro towers within the City. At some point there is going to be a saturation that says we have enough towers to cover the entire City.

Mr. Da'Mes said it is not a coverage issue; it is a data capacity issue.

Mr. Colman said I understand the data coverage issue, but now we are discussing the smaller of the transmitters that would fill in those capacity gaps. So at some point we would have enough big towers to send signals from one to another; but at the same time understand that the smaller ones are meeting the demand.

Mr. Da'Mes said that is where administrative review to incentivize that type of technology instead of having to go through a SUP.

Mr. Colman said hopefully that would avoid having to erect any more large towers. In some ways the setbacks do help to discourage location of towers.

Mr. Fletcher said yes, there is that take on the extra setback for towers; however, we do not currently require it.

Mr. Da'Mes said some of these industry responses spelled out some rather poignant threats in terms of restrictions and what the City cannot do.

Mr. Colman asked if we were interested in seeing this type of facility going into residential neighborhoods.

Mr. Fletcher replied I do not know that we are at the point of being prepared to discuss that right now. As we begin to write the ordinance and we continue to look at the effects and hear feedback, we will be more prepared for that conversation. We need to get the question out there of "does the public want to start allowing them in residential areas".

Mr. Way said what is the "is" – a large tower in a neighborhood or a smaller microcell on a light pole.

Mr. Da'Mes said the idea that HEC is willing to allow these on certain poles opens up an entire area. Maybe we need to know where all these poles are currently located.

Chair Fitzgerald agreed and said that may eliminate having the need to consider putting them in residential areas.

Mr. Fletcher said you must consider the fact that Harrisonburg is not huge, and we have a lot of telecommunications towers currently, so what is the answer to "not being in my residential

neighborhood?” People who live in Reherd Acres can clearly see the tower on Reservoir Street: is that in their neighborhood area?

Mr. Way said it seems as what you want to achieve in the ordinance is a certain level of regulatory dexterity, so that you have some type of light-footedness built in to it so that you can respond to these new challenges and new things that happen.

Mr. Da’Mes said the JMU student population accounts for a huge percentage of the usage of cell phones. Can we find out what JMU’s rational is or what they are open to in terms of technology on the campus?

Mr. Fletcher said I can contact the Real Property Office at JMU to inquire. However, if we want to allow or entertain having more of these type facilities around the area we need to take into consideration having these in residential areas.

Dr. Dilts said I want to ask about the fiber optic use. I know that fios requires fiber optic cable; is that always below ground or can it be above ground too?

Mr. Fletcher said from what I understand we already have some fiber optic cable that runs on some of the utility poles and it is aerial.

Chair Fitzgerald said the sense of Planning Commission is to move forward with the next step.

There was consensus among the Commissioners to begin work on a Telecommunications Ordinance.

Respectfully Submitted,

Alison Banks  
Planner