

**A G E N D A**  
**JAMES CITY COUNTY POLICY COMMITTEE**  
**REGULAR MEETING**  
**Building A Large Conference Room**  
**101 Mounts Bay Road, Williamsburg, VA 23185**  
**May 9, 2019**  
**4:00 PM**

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**A. CALL TO ORDER**

**B. ROLL CALL**

**C. MINUTES**

1. April 11, 2019 Meeting Minutes

**D. OLD BUSINESS**

1. Proposed Ordinance Amendments to Address Code of Virginia Changes Regarding Wireless Communication Facilities, Stage I

**E. NEW BUSINESS**

1. ORD-19-0001. Proposed Zoning Ordinance Amendment to Section 24-16, Proffer of Conditions
2. Proposed Zoning Ordinance Amendment to Section 24-111, Temporary Offices

**F. ADJOURNMENT**

**ITEM SUMMARY**

DATE: 5/9/2019  
TO: The Policy Committee  
FROM: Paul D. Holt, III, Secretary  
SUBJECT: April 11, 2019 Meeting Minutes

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**ATTACHMENTS:**

	Description	Type
☐	Minutes of the April 11, 2019 Meeting	Minutes

**REVIEWERS:**

Department	Reviewer	Action	Date
Policy	Rosario, Tammy	Approved	5/3/2019 - 9:18 AM
Policy	Holt, Paul	Approved	5/3/2019 - 11:11 AM
Publication Management	Daniel, Martha	Approved	5/3/2019 - 11:15 AM
Policy Secretary	Secretary, Policy	Approved	5/3/2019 - 11:39 AM

**MINUTES**  
**JAMES CITY COUNTY POLICY COMMITTEE**  
**REGULAR MEETING**  
**Building A Large Conference Room**  
**101 Mounts Bay Road, Williamsburg, VA 23185**  
**April 11, 2019**  
**4:00 PM**

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**A. CALL TO ORDER**

Mr. Jack Haldeman called the meeting to order at approximately 4:00 p.m.

**B. ROLL CALL**

Present:

Julia Leverenz, Chair (arrived 4:35 p.m.)

Rich Krapf

Jack Haldeman

Absent:

Tim O'Connor

Staff:

Paul Holt, Director of Community Development and Planning

Ellen Cook, Principal Planner

Thomas Wysong, Senior Planner

John Risinger, Community Development Assistant

Max Hlavin, Deputy County Attorney

Darryl Cook, Assistant Director of Stormwater and Resource Protection

Michael Woolson, Senior Watershed Planner

**C. MINUTES**

1. March 7, 2019 Meeting Minutes

Mr. Rich Krapf made a motion to approve the February 14, 2019, meeting minutes.

The motion passed 3-0.

Editor's Note: The minutes were considered by the Committee following the discussion of item D.1, when a quorum of the Committee was present.

**D. OLD BUSINESS**

1. Proposed Ordinance Amendments to Address Protections for the Public Water Supply and Areas of Public Health and Water Quality Sensitivity, Stage I

Mr. Thomas Wysong presented the proposed Ordinance amendments. He stated that the Board of Supervisors (BOS) expressed interest in examining and discussing regulations to protect the drinking water supply and areas of public health and water quality sensitivity. He stated that the BOS adopted an initiating resolution on November 13, 2018, and on November 27, 2018, the BOS directed the Planning Commission and staff to develop the regulations in the Special Regulations section of the Zoning Ordinance. He stated that the County had worked to establish a reservoir in the 1980s by damming Ware Creek and that the County adopted a reservoir protection overlay district for the project. He stated that the

overlay district was removed from the Zoning Ordinance when the project was dropped. He stated that the County does not currently have any regulations specifically protecting reservoirs. He stated that the Chesapeake Bay Preservation Ordinance has regulations that help protect reservoirs. He stated that creating a new Ordinance in the Special Regulations section would allow the County to regulate land uses near reservoirs. He stated that staff reviewed regulations adopted by the City of Newport News.

Mr. Haldeman asked if staff had considered creating an overlay district for the regulations.

Ms. Ellen Cook stated that the BOS had directed staff to create the draft Ordinance in the Special Regulations section.

Mr. Krapf stated that the spreadsheet comparing regulations implemented by adjacent localities was helpful.

Mr. Haldeman stated that the City of Newport News' regulations included land disturbing activity and grading in its definition of "Development". He stated that York County's definition of "Hazardous Material" included a reference to the Environmental Protection Agency's Superfund program and the Code of Federal Regulations (CFR). He stated that the draft language for James City County referenced "Any waste regulated by state or federal law...". He asked if including a reference to the Superfund program would be too specific.

Mr. Max Hlavin stated that if the Ordinance referenced specific CFRs, changes to the CFRs would require the County to amend the Ordinance.

Mr. Haldeman stated that encroachment by roads was an exception listed in the draft language. He asked if this was intended to allow public roads to cross reservoirs when needed. He stated that allowing roads could lead to additional development near reservoirs.

Mr. Krapf stated that private roads encroaching on the reservoirs could be a bigger issue than public roads.

Ms. Cook asked if the Commissioners were more comfortable with only public roads listed as an exception.

Mr. Haldeman stated that he would prefer to not have any roads encroach on reservoirs. He stated that some encroachment might be necessary for major transportation routes.

Mr. Wysong asked if the Commissioners would want the Ordinance to have a distinction for roads that are necessary.

Mr. Haldeman stated that a throughway would be acceptable.

Mr. Hlavin stated that they could distinguish between them with definitions from the Virginia Department of Transportation.

Mr. Haldeman invited Mr. Darryl Cook and Mr. Michael Woolson to provide input from the Stormwater and Resource Protection Division (SRP).

Mr. Woolson stated that, in the draft language, encroachments into the reservoir buffer require Planning Director approval. He asked if the Planning Director's approval would supersede the Chesapeake Bay Board's approval.

Mr. Hlavin stated that the proposed reservoir buffer would be in addition to the Chesapeake Bay Preservation Ordinance. He stated that the approval processes would be separate.

Mr. Michael Woolson stated that the proposed definition of “Intermittent Streams” is different from the definition used in the Chesapeake Bay Preservation Ordinance.

Mr. Haldeman asked if SRP had a preference for how it would be written.

Mr. Woolson stated that it could use the same definition used in the Chesapeake Bay Preservation Ordinance.

Mr. Cook asked if the proposed buffer of 100 feet from the edge of tributary streams included intermittent and perennial streams.

Mr. Wysong confirmed. He asked if the SRP Division was comfortable with providing a definition for the edge of reservoirs.

Mr. Woolson confirmed. He stated that the edge of reservoirs would be either the edge of the wetland system or the mean high water level, whichever was further landward.

Mr. Haldeman asked if there were any further questions.

There were none.

Mr. Paul Holt asked if the Committee would like to enter a recess.

The Committee agreed to enter a recess. The Committee recessed at approximately 4:20 p.m.

The Committee reconvened at approximately 4:35 p.m.

Ms. Julia Leverenz joined the meeting at this time.

2. ORD-18-0013. Proposed Zoning Ordinance Amendments Regarding Master Plan Consistency Determinations

Mr. Holt stated that a draft Ordinance had been created to capture the intent of the initiation resolution passed by the BOS. He stated that the Committee could vote on the draft Ordinance or suggest edits to the draft.

Mr. Haldeman asked if a significant change affecting the community impact statement would require an amendment to the master plan.

Mr. Krapf stated that the criteria used to determine if a significant change occurs should capture scenarios where there is a significant impact to the community impact statement.

Mr. Holt stated that the Planning Director reviews master plan consistency determinations in the full scope of the original master plan. He stated that they could edit the draft Ordinance to add a submittal requirement for an updated community impact statement when appealing the Planning Director’s determination. He stated that many master plan consistency determinations are of a small enough nature that it may be excessive to require an updated community impact statement.

Ms. Leverenz asked the other Commissioners if they would like to add any comments with the recommendation.

Mr. Krapf stated that the comments could be forwarded with the Planning Commission’s recommendation.

Ms. Leverenz stated the draft Ordinance should be consistent with the language used in Section 24-516.

Mr. Holt stated that the Committee could decide how it would like to proceed with the Ordinance. He stated that they could vote to recommend the Ordinance or they could vote to forward the Ordinance with no recommendation.

Mr. Haldeman made a motion to forward the Ordinance with the proposed amendments to the Planning Commission for consideration.

The motion passed 3-0.

**E. NEW BUSINESS**

There was no new business.

**F. ADJOURNMENT**

Ms. Leverenz made a motion to Adjourn. The motion passed 3-0.

Ms. Leverenz adjourned the meeting at approximately 5:00 p.m.

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Ms. Julia Leverenz, Chair

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Mr. Paul Holt, Secretary

**ITEM SUMMARY**

DATE: 5/9/2019

TO: The Policy Committee

FROM: Tom Leininger, Planner

SUBJECT: Proposed Ordinance Amendments to Address Code of Virginia Changes Regarding Wireless Communication Facilities, Stage I

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**ATTACHMENTS:**

	Description	Type
☐	Memorandum	Cover Memo
☐	Existing Zoning Ordinance Language	Backup Material
☐	Wireless Communication Facilities Va. Code §§ 15.2-2316.3 to -2316.5	Backup Material

**REVIEWERS:**

Department	Reviewer	Action	Date
Policy	Rosario, Tammy	Approved	5/1/2019 - 2:51 PM
Policy	Holt, Paul	Approved	5/1/2019 - 4:01 PM
Publication Management	Daniel, Martha	Approved	5/1/2019 - 4:29 PM
Policy Secretary	Secretary, Policy	Approved	5/1/2019 - 4:46 PM

## MEMORANDUM

DATE: May 9, 2018

TO: The Policy Committee

FROM: Tom Leininger, Planner

SUBJECT: Proposed Ordinance Amendments to Address Code of Virginia Changes Regarding Wireless Communication Facilities, Stage I

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In 2017 and 2018, the General Assembly passed legislation requiring changes to how local Zoning Ordinances may treat applications for wireless communications facilities. Those State Code changes, combined with recent Federal Communications Commission decisions regarding facilities intended to support the deployment of 5G technology, continue to effectively erode local zoning authority. As in 2016, James City County will need to once again update its Zoning Ordinance to be consistent with state and federal requirements. In Stage I (the subject of this staff memorandum), staff will identify issues and possible directions for the proposed amendments. Later, in Stage II, staff will provide the Policy Committee with a proposed draft ordinance for discussion. Lastly, in Stage III, staff will draft the final Ordinance accounting for any Policy Committee comments.

The 2035 Comprehensive Plan lends support to these possible ordinance amendments through goals, strategies and actions in the Community Character Section. CC 7.1 states that the County should “update the Wireless Communications Division of the Zoning Ordinance as necessary to accommodate the use of new and emerging wireless communications services.”

At the December 13, 2018 Policy Committee meeting, staff introduced a brief summary of the new legislation to the Policy Committee. This memorandum seeks to provide the Committee with additional information about the regulations including the types and categorization of facilities covered in the new regulations, and the implications of the provisions included in the regulation for the County’s own Zoning Ordinance standards and requirements.

### **I. Types and Categorization of Facilities**

#### **Small Cell Facilities**

One focus of the new legislation is regulations that pertain to the deployment of “small cell facilities.” Small cell facilities are low-powered antennas that provide cellular and data coverage to supplement a provider’s cellular network. Typically, the facilities include the antenna and equipment cabinets, as well as other associated equipment. The legislation specifically defines them as follows:

*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.*

Small cell facilities can be either located on a new support structure, or co-located on an existing structure, such as a utility pole. In the pictures below, the second image from the left appears to be a new structure, while several of the others appear to use existing structures. In several of the pictures, both the antenna and the equipment cabinet can be seen (see images third and fourth from the left).



Source: City of Edmonds, Washington

The new state legislation covers both of these scenarios (small cell on new structures and small cell on existing structures), classifying them in the following ways:

- ***Administrative Review Eligible Projects (AREP)***

The new legislation classes certain projects as “Administrative Review Eligible Projects” (AREP). In the definition, there are two criteria for AREPs. The second of the criteria will be in the next section as it does not pertain to Small Cell Facilities. The first criterion is:

**AREP-Criteria 1.** *The installation or construction of a **new structure** that is not more than 50 feet above ground level, provided that the structure with attached wireless facilities is (i) not more than 10 feet above the tallest existing utility pole located within 500 feet of the new structure within the same public right-of-way or within the existing line of utility poles; (ii) not located within the boundaries of a local, state, or federal historic district; (iii) not located inside the jurisdictional boundaries of a locality having expended a total amount equal to or greater than 35 percent of its general fund operating revenue, as shown in the most recent*

*comprehensive annual financial report, on undergrounding projects since 1980; and (iv) designed to support **small cell facilities**;*

- **Small Cell Facility (SCF)** - The new legislation defines a Small Cell Facility as the following:

*Placement of any small cell facility installed by a wireless services provider or wireless infrastructure provider **on an existing structure**, provided (i) the provider has permission from the owner of the structure to co-locate the equipment on that structure and (ii) notifies the locality in which the permitting process occurs.*

In summary, both AREP-Criteria 1 and Small Cell Facilities are types of projects that pertain to the placement of Small Cell Facilities, either on a new structure (subject to the language listed in Criteria 1) or on an existing structure, respectively.

### **Other Non-Small Cell Projects**

The legislation also restricts regulation for all other types of non-Small Cell projects, with the following categories:

- **Administrative Review Eligible Projects-Criteria 2**

**AREP-Criteria 2** is not linked specifically to the use of Small Cell Facilities. This criterion basically covers the co-location of any non-Small Cell wireless facility on an existing structure, and would therefore cover all co-locations of normal antennas on existing towers (standard or camouflaged) or on alternative mounting structures such as buildings.

- **Standard Process Projects**

A “Standard process project” is defined as any project other than an administrative review-eligible project. It appears that this term would cover all other types of facilities, including new towers (standard or camouflaged).

- **Maintenance/Replacement**

This section of the new legislation pertains to (i) routine maintenance or (ii) 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.

## **II. Implications for James City County**

Having discussed the types and categorization of facilities covered in the new regulations, this section will now discuss the implications of the provisions included in the regulation for the County’s own Zoning Ordinance standards and requirements. The implications vary by categorization of facilities, so they have been divided into several separate discussions. The memo provides the restrictions in the new regulations, followed by a discussion of the implications for the County’s Zoning Ordinance or application processes *in italics*. Sections of the Zoning Ordinance are attached (Attachment No. 2).

### **Implications for the Regulation of Small Cell Facilities (AREP Criteria-1 and Small Cell Facilities), and AREP Criteria-2**

- Per the legislation, the County **may not require** a Special Use Permit (SUP), special exception, or variance for any application that meets one of the two criteria for AREP (AREP-Criteria 1 or AREP-Criteria 2), or for a Small Cell Facility (SCF). The County may require a site plan or acknowledge that a zoning approval is not required.

*The Ordinance can no longer require a SUP for these types of applications. Currently, the Ordinance requires SUPs in some districts and/or over certain heights for towers, camouflaged towers, and multi-antenna systems. For the Ordinance's alternative mounting structures category, no SUPs are currently required, but it is the opinion of the County Attorney's Office that the Ordinance can no longer require approval of height limitation waivers by the Board of Supervisors as is the case in certain situations for alternative mounting CATS. (See Section 24-122.)*

*To address this:*

- A) Each of these categories in the Zoning Ordinance would need to be updated to exclude Small Cell Facilities and AREP Category-2, or*
- B) A separate category would need to be developed to address these types of applications, or*
- C) Staff would need to use a combination of these approaches. Based on initial analysis, staff recommends a combination, by*
  - 1. Creating a new separate category to address AREP Criteria-1 and Small Cell Facilities that would otherwise fall in the tower or camouflaged tower categories, but*
  - 2. Only modifying the alternative mounting CATS category to remove the requirement for height limitation waivers and make other appropriate adjustments to address the AREP Criteria-2 and Small Cell Facility (co-location on an existing structure) requirements.*
  - 3. Staff also recommends considering either:*
    - i. Eliminating or*
    - ii. Substantially combining the new separate category with the existing multi-antenna systems category in the Ordinance, after further research on the likelihood of the industry continuing to use multi-antenna systems in the future.*

*There are likely two other major implications as well. First, staff will need to re-examine and possibly revise the way that CATS are listed in the use list of all the Zoning Ordinance Districts. Second, staff will need to re-examine the changes that were made in 2016 to break out the provisions for "eligible facilities requests" to determine how this type of project overlaps with any of the new legislation's categories. As a reminder, per the SPECTRUM Act:*

- "Eligible facility" requests are requests for modifications of an existing tower or existing base station that does not **substantially change** the physical dimensions of such tower or base station, involving collocation, removal or replacement of transmission equipment.*
- The Ordinance defines **substantial change** as modification to an eligible support structure that meets certain specified criteria including modifications that increase the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.*

- The fees that can be charged are limited to specific amounts stated in the legislation. For Small Cell Facilities, the locality must also allow up to 35 permit requests on a single application (i.e., on installations up to 35 different structures/locations).

*It is likely that staff will need to prepare an alternative fee schedule and application form.*

- The review process must conform to the specifications in the legislation. In summary, for all three types, the locality has 10 days to assess completeness, and a locality has a set time period to approve or disapprove an application (150 days for AREP Criteria-1, 90 days for AREP Criteria-2, 60 days for Small Cell Facilities). Some provisions are included in the legislation for extended time. If the locality does not approve or disapprove within the allotted days (or permitted extending time), the application will be deemed approved.

*The Ordinance currently specifies certain review process timings that had previously been included to address provisions of the SPECTRUM Act; these are currently found in Section 24-128.1(c) for all new CATS and modifications other than eligible facility requests and in Section 24-128 (e) for all eligible facility requests. Staff will need to re-assess the review processes and update them to match the new legislation.*

- For the Small Cell Facilities category (co-location of Small Cell Facilities on existing structure), the new legislation contains the following specific provisions:
  - If the locality is going to disapprove, the disapproval needs to be in writing and accompanied by an explanation for the disapproval. The disapproval must be for one of the following reasons specifically called out in the legislation.
  - An applicant can voluntarily submit, and a locality can accept, any conditions that otherwise address potential visual or aesthetic effects resulting from the placement of small cell facilities.
  - Micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes shall be exempt from locality-imposed permitting requirements and fees.

*If a separate category is created in the Ordinance to address Small Cell projects, staff recommends considering including some language to address these provisions.*

- The locality cannot disapprove an application on the basis of certain considerations, or require certain provisions or pieces of information.

*Since this component of the new legislation also applies to Standard Process Projects, a discussion of the implications is included in the “Implications for the Regulation of Standard Process Projects” discussion below*

## **Implications for the Regulation of Standard Process Projects**

- The new legislation does not appear to restrict a locality from requiring a Special Use Permit, special exception or variance for Standard Process Projects. It also appears that site plans can continue to be required.

*As discussed above, if other types of applications are dealt with separately, then the SUP requirements for some districts in the existing tower and camouflaged tower categories could likely stay substantially as they are now. (See Section 24-122.)*

- The fees that can be charged are limited to an amount that shall not exceed the actual direct costs to process the application, including permits and inspection.

*Staff will examine the existing fee structure for conformance with this restriction.*

- The review process must conform to the specifications in the legislation. The locality has 10 days to assess completeness, and a locality has a set time period to approve or disapprove an application (150 days for a new structure). Some provisions are included in the legislation for extended time. If the locality does not approve or disapprove within the allotted days (or permitted extending time), the application will be deemed approved.

*As discussed above, the Ordinance currently specifies certain review process timeframes that had previously been included to address provisions of the SPECTRUM Act; these are currently found in Section 24-128.1(c) for all new CATS and modifications other than eligible facility requests and in Section 24-128 (e) for all eligible facility requests. Staff will need to re-assess the review processes and update them to match the new legislation.*

- The locality cannot disapprove an application on the basis of certain considerations, or require certain provisions or pieces of information as discussed below.
  - Disapprove based on certain aspects such as “the applicant’s business decision with respect to its designed service, customer demand for service, or quality of its service to or from a particular site” or “the wireless facility technology selected for use at the project.”

*Based on staff’s initial analysis, it does not appear that any existing Ordinance language directly conflicts with this restriction, but staff will continue to evaluate the Ordinance language.*

- Require an applicant to provide proprietary, confidential or business information including propagation maps.

*Section 24-128.1(b) currently has certain submittal requirements for CATS that require a Special Use Permit, including several requirements for the provision of propagation maps. Staff will re-examine these requirements in further detail, but it appears that the new legislation may require them to be removed.*

- Require the removal of existing wireless support structures or wireless facilities as a condition for approval of an application. A locality may adopt reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities.

*The Ordinance does not require the removal of existing wireless support structures or facilities. The Ordinance does not currently have rules with respect to the removal of abandoned wireless support structures or facilities, other than the surety requirement discussed below. Should the Ordinance no longer be able to include a surety requirement, staff recommends investigating and considering the inclusion of other possible rules/mechanisms to address abandoned facilities.*

- Impose surety requirements to ensure that abandoned or unused wireless facilities be removed unless the locality imposes similar requirements on other permits for other types of similar commercial development.

*In Section 24-127, the Ordinance requires that applicants post guarantees sufficient to fund removal of abandoned or unused CATS prior to final site plan approval. Based on initial analysis, it appears that this requirement would need to be removed, as the Ordinance does not require surety to be posted for other types of similar commercial development.*

- Discriminate or create a preference on the basis of ownership, including ownership by the locality, of any property, structure, base station or wireless support structure, when promulgating rules or procedures for siting wireless facilities or for evaluating applications.

*Based on initial analysis, staff does not find any requirements in the existing Ordinance that would need to be changed.*

- Impose any unreasonable requirements or obligations regarding the presentation or appearance of a project including those relating to the kinds of materials used or the arranging, screening or landscaping or wireless facilities or wireless structures.

*The existing Ordinance does contain certain requirements for the landscaping, screening and use of materials. The language of the Ordinance has been carefully developed over the years in accordance with many considerations, including consistency with the Community Character goals, strategies and actions in the County's Comprehensive Plan. Staff finds the existing requirements reasonable, and staff does not find any requirements in the existing Ordinance that would need to be changed.*

- Impose any requirement that an applicant purchase, subscribe to, or employ facilities, networks, or services owned, provided or operated by a locality, in whole or in part, or by any entity in which a locality has a competitive, economic, financial, governance, or other interest.

*Based on initial analysis, staff does not find any requirements in the existing Ordinance that would need to be changed.*

- Condition or require the approval of an application solely on the basis of the applicant's agreement to allow any wireless facilities provided or operated, in whole or in part, by a locality or by any other entity, to be placed at or co-located with the applicant's project.

*Sections 24-126 and 24-128.1 both contain requirements for applicants to communicate with public safety agencies regarding vacant antenna locations. At this time, staff is*

*continuing to analyze whether the existing Ordinance language is encompassed within this prohibition. Even if the existing language does not wholly conflict, some clarification adjustments to the language may be prudent.*

- Impose a setback or fall zone requirement for a project that is larger than the setback or fall zone area that is imposed on other types of similar structures of a similar size, including utility poles

*Section 24-123(a), which applies to all CATS, except for eligible facility requests, includes setback provisions including: (a) 400 feet from any off-site existing residential structure, occupied school or daycare and (b) set back from all property lines a minimum of 110 percent of the documented collapse radius. Based on initial analysis, it appears that these requirement would need to be removed, as the Ordinance does not have these requirements for other types of similar structures.*

- Limit the duration of the approval of an application, except a locality may require that construction of the approved project shall commence within two years of final approval and be diligently pursued to completion.

*The Ordinance states that the terms of validity for a site plan to five years, and SUP conditions typically include a commencement clause that is not less than two years. Based on initial analysis, staff does not find any requirements in the existing Ordinance that would need to be changed.*

- Require an applicant to perform services unrelated to the project described in the application, including any restoration work on any surface not disturbed by the applicant's project.

*Section 24-127 does require site restoration after a CATS facility is removed, but this appears to be directly related to the project. Based on initial analysis, staff does not find any requirements in the existing Ordinance that would need to be changed.*

### **Implications for the Regulation of Maintenance/Replacement**

- Per the new legislation, the County **may not require** zoning approval for projects that fall within the maintenance/replacement provisions (see provisions described above).

*Currently the Ordinance would require a site plan amendment for replacements. It appears that some language may need to be modified to address this category of project and set forth a process for verifying that a project meets the provisions other than an actual zoning approval.*

### **Other Implications**

In addition to the implications outlined above, staff anticipates the following additional implications:

- Staff will also need to re-examine and likely update the Definitions section of the Ordinance.
- Staff will re-examine the Board's adopted Policy for CATS requiring Special Use Permits titled "Performance Standards for Communication Facilities, Antennas, Towers and Support Structures (CATS) That Require a Special Use Permit" against the new legislation.

- Staff will continue to evaluate the provisions in the new legislation that allow localities some discretion to disapprove applications in an area where all cable and public utility facilities are required to be placed underground. The County currently has several areas designated by the Board for underground utilities, which could potentially be incorporated into the Ordinance. However, the provisions in the new legislation for this discretion are complex and staff will need to work to determine whether incorporating anything in the Ordinance would be permitted and/or beneficial.

### **III. Conclusion**

For the Committee's reference, staff has attached the full text of Code of Virginia sections 15.2-2316.3 to -2316.5. Staff is seeking Policy Committee guidance on the above recommendations and discussion regarding implications of the new legislation to the County's review of CATS facilities. Based on input received at this meeting, staff will begin drafting revisions to the Ordinance and provide the draft for review at a future Policy Committee.

TL/nb  
OrdAmdsWlessFac-mem

#### Attachments:

1. Wireless Communication Facilities Va. Code §§ 15.2-2316.3 to -2316.5
2. Existing Zoning Ordinance language



DIVISION 6. - COMMUNICATIONS FACILITIES

Sec. 24-121. - Statement of intent.

The purpose of this article is to provide guidance for the deployment and usage of communications facilities, antennas, towers and/or support structures (CATS).

- (a) The goals for the placement of CATS are to:
  - 1. Protect viewsheds and the scenic beauty of James City County.
  - 2. Deploy CATS in a manner that will not adversely impact property values.
- (b) The objectives for the CATS are to:
  - 1. Ensure that the deployment of CATS will accommodate existing and future technologies by providing sufficient height and facility expansion capabilities to accommodate the needs of the current and future residential, commercial, and industrial marketplace.
  - 2. Ensure all antenna deployments provide substantial coverage area.
  - 3. Promote the use of camouflaged, alternatively mounted and low-rise CATS.

(Ord. No. 31A-176, 5-26-98; Ord. No. 31A-259, 1-10-12; Ord. No. [31A-311](#), 11-8-16)

Sec. 24-122. - Antenna mounting.

- (a) Antenna mounting categories.

There are five categories of antenna mounting:

- 1. Tower. Requirements for this mounting category are found in section 24-122(b)(1).
- 2. Alternative Mounting CATS. Requirements for this mounting category are found in section 24-122(b)(2).
- 3. Camouflaged CATS. Requirements for this mounting category are found in section 24-122(b)(3).
- 4. Multi-Antenna System. Requirements for this mounting category are found in section 24-122(b)(4).
- 5. Portable Transmission Facility (PTF). Requirements for this mounting category are found in section 24-122(5).

- (b) Communications facilities, antennas, towers and/or support structures.

- 1. Tower-mounted communications facility. Tower-mounted communications facilities shall be allowed as shown on Table 1.

**Table 1: Tower mounted communications facilities**

Zoning District	Maximum By Right Tower Height	SUP Required
General Agricultural, A-1	Not Permitted	All Towers

Rural Residential, R-8	Not Permitted	All Towers
Limited Residential, R-1	Not Permitted	Not Permitted
General Residential, R-2	Not Permitted	Not Permitted
Residential Redevelopment, R-3	Not Permitted	Not Permitted
Residential Planned Community, R-4 with a designation other than residential on a Board adopted master plan	Not Permitted	All Towers
Residential Planned Community, R-4 with a residential designation on a Board adopted master plan	Not Permitted	Not Permitted
Multifamily Residential, R-5	Not Permitted	Not Permitted
Low-Density Residential, R-6	Not Permitted	Not Permitted
Limited Business, LB	Not Permitted	All Towers
General Business, B-1	≤40'	>40'
Limited Business/Industrial, M-1	≤40'	>40'
General Industrial, M-2	≤40'	>40'
Planned Unit Development, PUD	Not Permitted	All Towers
Mixed Use, MU	Not Permitted	All Towers
Economic Opportunity, EO	Not Permitted	All Towers
Public Lands, PL	≤40'	>40'
Research and Technology District, RT	≤40'	>40'

- a. Tower-mounted communications facilities shall meet the requirements in Table 1 above and the requirements in sections 24-123 through 24-128.1.
2. Alternative mounting structure - CATS. CATS determined by the planning director to be utilizing alternative mounting structures as a concealment element as defined by this ordinance shall be permitted in all zoning districts and shall conform to the following criteria:
  - a. The principal use of the structure to be used for the placement of the antenna shall be for a use not associated with the communications facility as determined by the planning director.
  - b. The principal structure shall be permitted in accordance with the height limitations of the underlying zoning district. Height limitation waivers for CATS may be issued by the board of supervisors upon finding that the proposal is in accordance with the criteria identified in the height limitation section of the underlying zoning district. CATS utilizing alternative mounting structures shall conform to the following height requirements:
    - (1) On alternative mounting structures without a height limitation waiver. CATS utilizing alternative mounting structures may be erected to a total height of 60 feet from grade. CATS utilizing alternative mounting structures in excess of 60 feet, but not to exceed 100 feet, from grade may be permitted by issuance of a height limitation waiver from the board of supervisors.
    - (2) On alternative mounting structures with height limitation waiver. CATS utilizing alternative mounting structures may be erected to a total height of 60 feet from grade. Antennas may be erected in excess of 60 feet from grade on structures that have received a height limitation waiver from the board of supervisors. Such antennas shall be permitted by-right provided that the antenna does not exceed the maximum approved height of the structure to which it is mounted. An antenna may be permitted to exceed the maximum approved height of the structure upon issuance of a separate height limitation waiver from the board of supervisors, but shall not exceed a total height of 100 feet from grade.
  - c. The antennas mounted on alternative mounting structures shall also conform to the following requirements:
    - (1) All panel antenna shall be no more than five feet measured to the outermost point of the panel antenna from any surface of the existing structure at the point of attachment.
    - (2) All whip antenna shall be no more than ten feet measured to the tip of the whip antenna above the mounting surface of the existing structure at the point of attachment.
    - (3) All parabolic or dish antenna shall be no more than five feet measured to the outermost point of the dish from any surface of the existing structure at the point of attachment.
    - (4) Building-mounted antennas shall be mounted in a manner that is architecturally compatible with the structure on which they are located as determined by the planning director. Building-mounted antennas (excluding whip antennas under five feet in height) shall be completely screened or camouflaged from view from residentially zoned areas or adjacent roadways.
    - (5) Equipment enclosures shall be camouflaged or screened from view by landscaping or a wall or fence.
    - (6) CATS shall meet the requirements in sections 24-123 through 24-128.1.
3. Camouflaged communications facility. Camouflaged CATS as defined by this ordinance shall be permitted pursuant to Table 1.1 below.

**Table 1.1 Camouflaged CATS Determinations**

Zoning District	Planning Director	SUP Required
General Agricultural, A-1	✓	
Rural Residential, R-8		✓
Limited Residential, R-1		✓
General Residential, R-2		✓
Residential Redevelopment, R-3		✓
Residential Planned Community, R-4		✓
Multifamily Residential, R-5		✓
Low-Density Residential, R-6		✓
Limited Business, LB	✓	
General Business, B-1	✓	
Limited Business/Industrial, M-1	✓	
General Industrial, M-2	✓	
Planned Unit Development - Residential, PUD-R*		✓
Planned Unit Development - Commercial, PUD-C*	✓	
Mixed Use, MU	✓	
Economic Opportunity, EO	✓	
Public Lands, PL	✓	

Research and Technology District, RT	✓	
* or similar use designation on a Board adopted master plan zoned PUD		

Upon application for a special use permit for a camouflaged CATS in a residential district, the board of supervisors shall make a determination pursuant to section 24-122(b)(3) whether a proposed tower is camouflaged. Upon application for a by-right camouflaged CATS, the planning director shall make a determination pursuant to section 24-122(b)(3) whether a proposed tower is camouflaged. An appeal of a planning director determination shall be made to the development review committee which shall forward a recommendation to the planning commission. Written notice of the appeal must be received by the planning division within 30 days of the date of the planning director's determination.

4. Applicants may apply for any of the three categories of camouflaged CATS as defined below:
  - a. *Architecturally compatible.* The CATS has the appearance, scale and height of other structures that are generally permitted in the district in which it is to be located. When an architecturally compatible CATS is proposed the following requirements shall be met:
    - (1) The CATS shall use materials best suited to camouflage as determined by the planning director to create the appearance, scale and height of other structures that are generally permitted in the district in which it is to be located;
    - (2) The architecturally compatible CATS shall be placed in the vicinity of another structure that the proposed CATS intends to replicate and be unnoticeable to the casual observer that the primary use of the structure is for a CATS;
    - (3) The architecturally compatible CATS should be no taller than twice the permitted height of the replicated structure up to 70 feet;
    - (4) Professional design requirements:
      - i. All CATS shall include a detailed landscaping plan with plan and profile views encompassing native tree buffer, native vegetation, correct ratio to proportion of existing tree buffers or structures, and view of the proposed CATS in profile;
      - ii. The landscape architect providing the landscape plan shall be professionally licensed in the Commonwealth of Virginia;
    - (5) Meet the requirements in sections 24-123 through 24-128.1;
    - (6) Reserved.
  - b. *Native vegetation.* The structure has the appearance of vegetation native to eastern Virginia. Where a native vegetation CATS is proposed the following requirements shall be met:
    - (1) Should the CATS be taller than nearby trees, it shall be buffered with existing mature trees in a manner such that it will not appear out of scale with existing natural vegetation from an off-site view.
    - (2) The CATS shall include a detailed landscaping plan with plan and profile views encompassing native tree buffer, native vegetation, correct ratio in proportion to existing tree buffers or structures, and artistic view of the proposed facility in profile.
    - (3) The landscape architect providing the landscape plan shall be professionally licensed in the Commonwealth of Virginia.

- (4) The CATS shall use materials best suited to camouflage as determined by the planning director to appear as native vegetation and be unnoticeable to the casual observer that the function of structure is for a CATS.
  - (5) Access drives shall be designed and located in a manner that obscures views of the CATS base or related facilities from the road point of ingress.
  - (6) Meet the requirements in sections 24-123 through 24-128.1.
  - (7) Shall not exceed 120 feet in height.
- c. *Buffered.* The structure is well buffered by tall vegetation and/or other structures. Where a buffered CATS is proposed, the following requirements shall be met:
- (1) A minimum of a 100-foot, undisturbed buffer of mature trees, or a buffer consisting of other elements such as evergreen trees, buildings, or topography that provide at least the equivalent visual effect of a 100-foot undisturbed buffer of mature deciduous trees, that in combination with the design and color of the structure renders the CATS generally unnoticeable to the off-site casual observer as determined by the planning director.
  - (2) Shall be set back from any off-site existing residential structure no less than 400 feet.
  - (3) The buffer shall remain undisturbed except for any access drives and utilities necessary for the CATS and other improvements or timbering activities that do not alter the visual effect of the buffer as determined by the planning director. The buffer shall be located in an on-site or off-site area that:
    - i. The planning director determines is not likely to be altered such that the visual effect of the buffer would be diminished while the CATS would be in existence, such as lands protected by the Chesapeake Bay Ordinance or other environmental regulations or conservation areas or community character corridors or property depicted as conservation area on the Comprehensive Plan; or
    - ii. Such areas where the CATS owner has guaranteed the buffer will remain undisturbed while the CATS is in existence by way of lease agreement, recorded easement or other means acceptable to the planning director. Such leases and easements shall be in effect until such time as the CATS is removed.
  - (4) Professional design requirements:
    - i. CATS shall include a detailed landscaping plan with plan and profile views encompassing native tree buffer, native vegetation, correct ratio in proportion of existing tree buffers or structures, and artistic view of the proposed facility in profile.
    - ii. The landscape architect preparing the landscape plan shall be professionally licensed in the Commonwealth of Virginia.
    - iii. Access drives shall be designed and located in a manner that obscures view of the CATS base or related facilities from the point of ingress.
  - (5) Meet the requirements in sections 24-123 through 24-128.1.
  - (6) Shall not exceed 120 feet in height.
4. *Multi-antenna system.* A multi-antenna system such as Distributed Antenna System (DAS) or others as determined by the zoning administrator shall utilize concealment elements and be permitted as shown on Table 2.

**Table 2: Multi-antenna system.** Antennas shall be mounted no higher than stated below unless approved by the board of supervisors. Multi-antenna systems are permitted in the following zoning districts:

<b>Zoning District</b>	<b>Maximum By-Right Antenna Mounting Height</b>	<b>SUP Required</b>
General Agricultural, A-1	≤35'	>35'
Rural Residential, R-8	≤35'	>35'
Limited Residential, R-1	Not Permitted	All Applications
General Residential, R-2	Not Permitted	All Applications
Residential Redevelopment, R-3	Not Permitted	All Applications
Residential Planned Community, R-4	Not Permitted	All Applications
Multifamily Residential, R-5	Not Permitted	All Applications
Low-Density Residential, R-6	Not Permitted	All Applications
Limited Business, LB	Not Permitted	All Applications
General Business, B-1	≤60'	>60'
Limited Business/Industrial, M-1	≤60'	>60'
General Industrial, M-2	≤60'	>60'
Planned Unit Development, PUD	Not Permitted	All Applications
Mixed Use, MU	Not Permitted	All Applications
Public Lands, PL	≤60'	>60'
Economic Opportunity, EO	≤60'	>60'
Research and Technology District, RT	≤60'	>60'

Concealment requirements for antenna mounting of multi-antenna systems:

- a. To the greatest extent possible, antennas should be mounted on structures not originally associated with the communications facility as determined by the zoning administrator.
  - b. Antennas shall be generally unnoticeable to the casual observer and/or screened from view as determined by the planning director.
  - c. Equipment enclosures shall be camouflaged or screened from view by landscaping, walls or fencing.
  - d. Antenna support structures for multi-antenna systems shall be designed to appear as native vegetation or other typical features of the zoning district (such as a light/telephone pole).
  - e. Meet the requirements in sections 24-123 through 24-128.1.
5. *Portable Transmission Facility (PTF).*
- a. A PTF shall be permitted for a maximum of 90 days in any 365-day period or longer during an emergency as determined by the county administrator or his designee.
    - (1) Any applicant who is aggrieved by the time limitations for a PTF may petition the board of supervisors for an extension. If additional time is determined to be in the interest of the public, the board of supervisors may grant an extension.
  - b. The PTF shall be set back at least two times the height of the PTF from any residential or public structure.
  - c. The maximum height of the PTF shall be 120 feet.
  - d. The applicant shall submit a conceptual plan of the structure pursuant to section 24-144, an RF report and a noninterference/intermodulation study no fewer than seven business days prior to deployment stating how long the PTF will be in use and demonstrate a public health or safety need. Upon review of the application, the zoning administrator may request additional information, deny the application because of an ordinance violation, or approve the use of the PTF at the location and time duration indicated on the conceptual plan.

(Ord. No. 31A-176, 5-26-98; Ord. No. 31A-219, 8-9-05; Ord. No. 31A-259, 1-10-12; Ord. No. 31A-291, 8-13-13; Ord. No. [31A-311](#), 11-8-16)

Sec. 24-123. - General requirements.

The following requirements shall apply to all CATS, except for eligible facilities requests, to the extent noted in section 24-128.1:

- (a) *Setbacks.* In addition to meeting the requirements of the underlying zoning district, tower-mounted communications facilities (including camouflaged CATS) shall conform to the following setback requirements:
  - (1) All towers shall be set-back from any off-site existing residential structure by no less than 400 feet. All towers shall be located no closer than 400 feet from an occupied school or building used primarily for daycare.
  - (2) All towers shall meet the structural requirements set forth in standard of the "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures," or its successors as determined by the building official.
  - (3) All towers shall comply with the Virginia Uniform Statewide Building Code.
  - (4) All towers shall be set back from all property lines a minimum of 110 percent of the documented collapse radius.



- (5) All setbacks from a public right-of-way shall take into account any planned public right-of-way designated on the Six-Year Primary and Secondary Road Plans or the Comprehensive Plan.
- (b) *Appearance.* Towers, all CATS equipment enclosures, and security fences shall conform to the following requirements:
  - (1) Lighting installed at all CATS, other than low-intensity lighting installed for the purpose of site security, shall be only that required to meet the minimum requirements set forth in the Federal Aviation Administration Advisory Circular AC 70/7460-1J, or its successors. If lighting is required, the planning director shall review the available lighting alternatives and approve the lighting design. Such lighting shall minimize impacts on adjacent property and be located and designed to minimize visibility of the light source from the ground.
  - (2) Towers shall be gray in color unless otherwise approved by the planning director and in compliance with the Federal Aviation Administration Advisory Circular AC 70/7460-1J, or its successors.
  - (3) No signage of any kind shall be displayed at or on a tower that advertises a product, service or business activity or institution.
  - (4) All equipment enclosures shall be screened from public view with fencing and landscaping unless the enclosure is of a similar design and material to that used for a single-family residence and approved by the planning director.
- (c) *Security.* Except where otherwise noted, the following security requirements shall apply to all CATS:
  - (1) All CATS using alternative mounting structures, and camouflaged CATS shall be equipped with an anti-climbing device, or be designed in a manner that precludes climbing without the use of additional equipment.
  - (2) Security fencing, if used, shall conform to the following:
    - a) Security fencing shall be screened from view with landscaping.
    - b) Chain-link fences shall be of a black or green color.
    - c) No fence shall exceed six feet in height and it shall contain no barb wire or similar barrier.
  - (d) *Satellite earth station antenna.* In addition to the requirements of this section, satellite earth station antennas and other types of incidental antenna shall be provided in accordance with Section 23-34, Special requirements for antennas.
- (e) *Special requirements for certain antenna.* Installation or replacement of any antenna on a tower shall require a special use permit if all of the following conditions apply:
  - (1) The tower on which it is to be placed was constructed after the effective date of this ordinance, May 26, 1998;
  - (2) The tower on which it is to be placed is higher than the thresholds for towers requiring a special use permit identified on Table 1; and
  - (3) A special use permit does not already exist which would permit the construction of that tower or the installation of additional antenna on that tower.

(Ord. No. 31A-176, 5-26-98; Ord. No. 31A-259, 1-10-12; Ord. No. [31A-311](#), 11-8-16)

Sec. 24-124. - Performance standards.

In considering an application for a special use permit for a CATS, the planning director shall prepare a composite report identifying the extent to which the application is in compliance with the "Performance Standards for Communications Facilities, Antennas, Towers and Support Structures (CATS) That Require a Special Use Permit," dated November 8, 2016, and endorsed by the board of supervisors. Such report shall be submitted to the planning commission and board of supervisors prior to the date of the public

hearing on the special use permit application. In general, it is expected that all facilities shall substantially meet the provisions of the above performance standards.

(Ord. No. 31A-176, 5-26-98; Ord. No. 31A-259, 1-10-12; Ord. No. [31A-311](#), 11-8-16)

Sec. 24-125. - Radio frequency standards.

- (a) *Federal communications commission emissions standards.* The CATS shall comply with Federal Communications Commission (FCC) standards for all electromagnetic emissions.
- (b) *Noninterference/intermodulation with local broadcasts.* The applicant shall ensure that the CATS will not cause localized interference/intermodulation with the transmittance or reception of area television or radio authorized FCC broadcasts. Prior to preliminary site plan approval of the CATS, a noninterference/intermodulation study shall be submitted to and approved by the planning director indicating that no interference with any communications equipment will take place. If such interference/intermodulation is detected at any time, and is not corrected within 60 days, the special use permit or any other permits may be modified or revoked.

(Ord. No. 31A-176, 5-26-98; Ord. No. 31A-259, 1-10-12; Ord. No. [31A-311](#), 11-8-16)

Sec. 24-126. - Public safety considerations.

- (a) *Noninterference with public safety communications.* The applicant shall ensure that the CATS will not interfere with public safety communications. If such interference is detected, and not corrected or ceased within 24 hours, operation of the CATS shall be terminated and the special use permit or any other permits may be modified or revoked.
- (b) *Antenna mountings for public safety communications.* Applicants shall be required to negotiate in good faith with public safety agencies regarding vacant antenna locations on CATS prior to making these locations available to other providers. The applicant shall provide evidence of these negotiations acceptable to the planning director prior to preliminary site plan approval. In instances where a potential need for the antenna location is identified by a public safety agency, said agency shall have the right of first refusal for said antenna location for a period of 90 days after the date of final site plan approval.
- (c) All CATS providing voice service shall be reported to the county dispatch center to ensure that all wireless E-911 calls placed within the boundaries of the county are routed to the county dispatch center.

(Ord. No. 31A-176, 5-26-98; Ord. No. 31A-259, 1-10-12; Ord. No. [31A-311](#), 11-8-16)

Sec. 24-127. - Permit limitations.

- (a) *Guarantee of removal.* Prior to final site plan approval, the owner of the property on which a CATS is located shall post a performance bond, cash surety, or letter of credit in an amount sufficient to fund removal of an abandoned or unused CATS or any disused portion thereof, and site restoration. This bond or other financial mechanism shall remain in effect throughout the life of the CATS. A CATS shall be considered abandoned or unused if it is not being utilized for the purpose of providing communications services for a period of six months. At such time the CATS shall be removed, except where the CATS is used by the county or deemed necessary by the county for placement of its communications equipment.
- (b) *Right of access.* The county shall be granted access to the CATS for the life of the facility for the purposes of inspection and, in the event a CATS is abandoned or unused, removal.

- (c) *Site restoration.* The site of a removed CATS shall be restored to its original state, except that any installed landscaping shall remain in place.

(Ord. No. 31A-176, 5-26-98; Ord. No. 31A-259, 1-10-12; Ord. No. [31A-311](#), 11-8-16)

Sec. 24-128. - Processing and submittal requirements for eligible facilities requests.

The following shall apply to eligible facilities requests, as that term is defined in section 24-2:

- (a) *Conceptual plan.* A site plan, drawn to scale, shall be submitted that depicts the location of support structure(s), equipment enclosures, landscaped/vegetative buffer areas, the potential location of additional towers on the site, fences, access, and ownership and use of adjacent properties. This plan should also include elevation or profile views.
- (b) *Evidence of eligible support structure.* The applicant shall provide evidence of prior approval letters or actions from the county authorizing the initial construction of the support structure. If no approvals were granted by the county for the structure, the applicant shall provide copies of site plan and building permit approvals as evidence that the structure was constructed lawfully.
- (c) *Evidence of eligible request.* The applicant shall provide certification by a Virginia-registered professional engineer specifying the following information in order to verify that the proposal will not result in a substantial change to the existing eligible support structure:
- (1) Location and dimensions of all existing and proposed improvements to the structure, including appurtenances, ground equipment and enclosures, landscaped/vegetative buffer areas, fences and access ways. This plan should include elevation or profile views.
  - (2) Identification of the color of the existing structure and any new appurtenances or fencing.
  - (3) Depiction of the facility illustrating the maximum height above ground and maximum width of the structure permitted without triggering a substantial change to the facility.
- (d) *Public safety.* The applicant shall provide certification by a Virginia-registered professional engineer specifying the following information in order to verify that the proposal will not adversely impact public safety:
- (1) Compliance with all structural and safety requirements of the Virginia Uniform Statewide Building Code, including the BOCA Basic Building Code and section 222(F) of the standards adopted by the Electronics Industry Association, and all amendments thereto, and the National Electrical Code.
  - (2) A radio frequency (RF) report indicating compliance with FCC standards for electromagnetic emissions.
  - (3) A noninterference/intermodulation study indicating no potential interference with public safety communications shall be provided in a manner acceptable to the planning director.
- (e) *Timing.* The county will act on eligible facilities requests within 60 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.
- (1) The timeframe for review of an eligible facilities request shall begin to run when the application is submitted, but shall be tolled if the county finds the application is incomplete and requests that the applicant submit additional information to complete the application. Such requests shall be made within 30 days of submission of the application. After submission of additional information, the county will notify the applicant within ten days of this submission if the additional information failed to complete the application.
  - (2) If the county determines that an application for modification of an existing eligible support structure does not qualify as an eligible facilities, the county will notify the applicant of that determination in writing and will process the application in accordance with section 24-128.1.

- (3) To the extent federal law and regulations provide a "deemed granted" remedy for eligible facilities requests not acted on within 60 days, no such application shall be deemed granted until the applicant provides notice to the county, in writing.
- (4) Any request that is deemed granted by operation of federal law shall be subject to the requirements of sections 24-122, 24-125, and 24-127.

(Ord. No. [31A-311](#), 11-8-16)

**Editor's note**— Ord. No. [31A-311](#), adopted November 8, 2016, renumbered § 24-128 as 24-128.1.

Sec. 24-128.1. - Processing and submittal requirements for all other new cats and modifications.

- (a) The following shall apply to applications for new CATS and/or for modifications to eligible support structures that are not eligible facilities requests:
  - (1) *Conceptual plan.* A site plan, drawn to scale, shall be submitted that depicts the location of support structure(s), equipment enclosures, landscaped/vegetative buffer areas, the potential location of additional towers on the site, fences, access, and ownership and use of adjacent properties. This plan should also include elevation or profile views.
  - (2) *Preapplication meeting.* Prior to formal application for a camouflaged CATS, multi antenna system, or a tower submittal, the prospective permittee or its representative shall attend a pre-application meeting with the planning director or his representative. The purpose of this meeting will be to discuss future service plans of the provider, the proposed CATS location, the configuration of the proposed CATS, the feasibility of co-location, the feasibility of alternative tower locations, and the feasibility of a building-mounted CATS, utilizing an alternative mounting structure or a camouflaged CATS. The planning director may request a tower simulation (balloon test) for a camouflaged determination.
  - (3) *Professional certification.* The applicant shall provide certification by a Virginia-registered engineer specifying the following information prior to preliminary site plan approval:
    - a. Antenna height, design, structure and capacity, including the number, type, and mounting elevations of antenna that could be accommodated. Applications for new CATS shall include a scaled depiction of the maximum permitted increase in the physical dimensions of the proposed project that would be permitted according to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 and FCC implementing regulations, using the proposed project as a baseline.
    - b. Compliance with all structural and safety requirements of the Virginia Uniform Statewide Building Code, including the BOCA Basic Building Code and section 222(F) of the standards adopted by the Electronics Industry Association, and all amendments thereto and the National Electrical Code.
    - c. A RF report indicating compliance with FCC standards for electromagnetic emissions.
    - d. A noninterference/intermodulation study indicating no potential interference with public safety communications shall be provided in a manner acceptable to the planning director.
- (b) In addition to meeting all other processing and submittal requirements for site plans, any application for a special use permit for the installation of CATS shall comply with the following, and the application shall not be deemed complete until accompanied by these materials, which shall be submitted six weeks prior to the planning commission meeting:
  - (1) *Search and service area mapping.* The applicant shall provide mapping, deemed suitable by the planning director, depicting the following:

- a. The search area for the proposed CATS along with underlying property lines and divisions. The map shall be of a clearly indicated scale and municipal boundaries and all primary and secondary highways within the search area shall be delineated.
  - b. The intended service area of the proposed CATS with a radio signal propagation map to include information such as building, car, and ambient coverage or other suitable graphic, depicting the level of signal coverage with and without the proposed CATS. At least one other graphic shall also be provided that shows the relationship of this coverage to that of existing and proposed CATS operated by the same provider and future service plans, within the county and within five miles of the border thereof.
- (2) *Evidence of attempts at co-location and using alternative locations, designs, and operating procedures.* The applicant shall allow other users to locate on the tower and site and shall provide the county, upon request, verifiable evidence of having made good faith efforts to allow such locations. To this end, the applicant shall execute a letter of intent prior to final site plan approval stating that the applicant will make every reasonable effort to accommodate all future requests to share space and that the applicant will negotiate in good faith with any party requesting space on the tower or site, and copies of said letters shall be sent to all communications facilities service providers licensed to serve the county and a copy of their response, if any, shall be provided to the planning director. The planning director may waive this requirement for camouflaged CATS where co-location would preclude the CATS from meeting ordinance requirements for such facilities, and for communications facilities that utilize alternative mounting structures, or are building-mounted. The applicant shall provide a copy of its co-location policy and the following evidence of attempts to co-locate and attempts to utilize alternative locations, designs, and operating procedures in a manner acceptable to the planning director:
- a. The applicant shall indicate on a map provided by the planning department all existing tower and building mounted CATS, and alternative mounting structures and buildings more than 60 feet tall within a three-mile radius of the proposed new location. The planning director may reduce the radius of this study area where the intended coverage of the proposed CATS is less than three miles.
  - b. Applicants shall provide evidence acceptable to the planning director, including radio signal propagation plottings, that all existing towers, and alternative mounting structures and buildings more than 60 feet tall within a three-mile radius of the site of a proposed CATS have been evaluated with respect to their ability to provide adequate service coverage and antenna-mounting opportunity, and evidence acceptable to the planning director that adequate service coverage cannot be provided through an increase in transmission power, or through the use of camouflaged CATS, alternative mounting structures, building-mounted CATS, or a system that uses lower antenna heights than proposed. The planning director may waive these requirements where documented evidence, satisfactory to the planning director is available that indicates alternative locations and designs are not feasible, and where the intended coverage of the proposed CATS is less than three miles.
  - c. The applicant shall provide evidence deemed suitable by the planning director that good faith negotiations have taken place to use existing CATS, and existing alternative mounting structures and buildings, including copies of letters sent to other service providers and their response, if any, on a request to co-locate on their facility.
  - d. The applicant shall provide verifiable written evidence, deemed suitable by the planning director, of the feasibility of replacing all existing CATS within a three-mile radius of the site of the proposed CATS in order to accommodate the proposed CATS.
- (3) *Public safety communications antenna requirements.* The applicant shall provide written evidence, deemed suitable by the planning director, of consultation with the relevant public safety agencies regarding their need for antenna space at any newly proposed communications facility support structure.

- (4) *Balloon test.* At least three weeks prior to the planning commission meeting, the applicant shall conduct a balloon test that simulates both the height of the proposed CATS, and the maximum increase in the physical dimensions of the proposed project permitted according to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 and FCC implementing regulations. The balloon test shall be scheduled within the first week following application submittal. The planning director may also require the balloon to be flown at other altitudes to determine impacts. The planning director shall give notice of the balloon test at least seven days prior to the day of the test in a newspaper having a general circulation in the county. The results of the balloon test providing representative photographic evidence of the views of a proposed CATS from residential areas, public rights-of-way, and other sensitive areas identified by the planning director or his representative shall be provided to the planning director at least two weeks prior to the planning commission meeting. Other scaled graphical simulations of potential views encompassing a proposed CATS may be substituted for the balloon test results or required in addition to the balloon test results at the discretion of the planning director.
- (c) *Timing.* The county will act on proposed modifications to CATS that are not eligible facilities requests within 90 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time. The county will act on new CATS within 150 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.
  - (1) The timeframe for review shall begin to run when the application is submitted, but shall be tolled if the county finds the application is incomplete and requests that the applicant submit additional information to complete the application. Such requests shall be made within 30 days of submission of the application. After submission of additional information, the county will notify the applicant within ten days of this submission if the additional information failed to complete the application.
  - (2) If the county denies an application submitted pursuant to this section, the county will notify the applicant of the denial in writing of the reasons for the denial.

(Ord. No. 31A-176, 5-26-98; Ord. No. 31A-259, 1-10-12; Ord. No. [31A-311](#), 11-8-16)

**Editor's note**— Former § 24-128. See editor's note § 24-128.

Code of Virginia

Title 15.2. Counties, Cities and Towns

Chapter 22. Planning, Subdivision of Land and Zoning

## Article 7.2. Zoning for Wireless Communications Infrastructure

### § 15.2-2316.3. Definitions.

As used in this article, unless the context requires a different meaning:

"Administrative review-eligible project" means a project that provides for:

1. The installation or construction of a new structure that is not more than 50 feet above ground level, provided that the structure with attached wireless facilities is (i) not more than 10 feet above the tallest existing utility pole located within 500 feet of the new structure within the same public right-of-way or within the existing line of utility poles; (ii) not located within the boundaries of a local, state, or federal historic district; (iii) not located inside the jurisdictional boundaries of a locality having expended a total amount equal to or greater than 35 percent of its general fund operating revenue, as shown in the most recent comprehensive annual financial report, on undergrounding projects since 1980; and (iv) designed to support small cell facilities; or

2. The co-location on any existing structure of a wireless facility that is not a small cell facility.

"Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

"Base station" means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables, or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.

"Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Co-location" has a corresponding meaning.

"Department" means the Department of Transportation.

"Existing structure" means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality or the Department of an agreement with the owner of the structure to co-locate equipment on that structure. "Existing structure" includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles, flag poles, signs, and water towers.

"Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

"New structure" means a wireless support structure that has not been installed or constructed, or approved for installation or construction, at the time a wireless services provider or wireless infrastructure provider applies to a locality for any required zoning approval.

"Project" means (i) the installation or construction by a wireless services provider or wireless

infrastructure provider of a new structure or (ii) the co-location on any existing structure of a wireless facility that is not a small cell facility. "Project" does not include the installation of a small cell facility by a wireless services provider or wireless infrastructure provider on an existing structure to which the provisions of § 15.2-2316.4 apply.

"Small cell facility" means 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.

"Standard process project" means any project other than an administrative review-eligible project.

"Utility pole" means a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.

"Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

"Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless services, such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

"Wireless infrastructure provider" means any person that builds or installs transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

"Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i); (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using wireless facilities.

"Wireless services provider" means a provider of wireless services.

"Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing structure or alternative structure designed to support or capable of supporting wireless facilities. "Wireless support structure" does not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.



**§ 15.2-2316.4. Zoning; small cell facilities.**

A. A locality shall not require that a special exception, special use permit, or variance be obtained for any small cell facility installed by a wireless services provider or wireless infrastructure provider 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 equipment on that structure and (ii) notifies the locality in which the permitting process occurs.

B. Localities may 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. Localities shall permit an applicant to submit up to 35 permit requests on a single application. In addition:

1. A locality shall approve or disapprove the application within 60 days of receipt of the complete application. Within 10 days after receipt of an application and a valid electronic mail address for the applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval. The 60-day period may be extended by the locality in writing for a period not to exceed an additional 30 days. The application shall be deemed approved if the locality fails to act within the initial 60 days or an extended 30-day period.

2. A locality may prescribe and charge a reasonable fee for processing the application not to exceed:

- a. \$100 each for up to five small cell facilities on a permit application; and
- b. \$50 for each additional small cell facility on a permit application.

3. Approval for a permit shall not be unreasonably conditioned, withheld, or delayed.

4. The locality may disapprove a proposed location or installation of a small cell facility only for the following reasons:

a. Material potential interference with other pre-existing communications facilities or with future communications facilities that have already been designed and planned for a specific location or that have been reserved for future public safety communications facilities;

b. The public safety or other critical public service needs;

c. Only in the case of an installation on or in publicly owned or publicly controlled property, excluding privately owned structures where the applicant has an agreement for attachment to the structure, aesthetic impact or the absence of all required approvals from all departments, authorities, and agencies with jurisdiction over such property; or

d. Conflict with an applicable local ordinance adopted pursuant to § 15.2-2306, or pursuant to local charter on a historic property that is not eligible for the review process established under 54 U.S.C. § 306108.

5. Nothing shall prohibit an applicant from voluntarily submitting, and the locality from accepting, any conditions that otherwise address potential visual or aesthetic effects resulting from the placement of small cell facilities.

6. Nothing in this section shall preclude a locality from adopting reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities.

C. Notwithstanding anything to the contrary in this section, the installation, placement, maintenance, or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes shall be exempt from locality-imposed permitting requirements and fees.

2017, c. 835.

**§ 15.2-2316.4:1. Zoning; other wireless facilities and wireless support structures.**

A. A locality shall not require that a special exception, special use permit, or variance be obtained for the installation or construction of an administrative review-eligible project but may require administrative review for the issuance of any zoning permit, or an acknowledgement that zoning approval is not required, for such a project.

B. A locality may charge a reasonable fee for each application submitted under subsection A or for any zoning approval required for a standard process project. The fee shall not include direct payment or reimbursement of third-party fees charged on a contingency basis or a result-based arrangement. Upon request, a locality shall provide the applicant with the cost basis for the fee. A locality shall not charge market-based or value-based fees for the processing of an application. If the application is for:

1. An administrative review-eligible project, the fee shall not exceed \$500; and
2. A standard process project, the fee shall not exceed the actual direct costs to process the application, including permits and inspection.

C. The processing of any application submitted under subsection A or for any zoning approval required for a standard process project shall be subject to the following:

1. Within 10 business days after receiving an incomplete application, the locality shall notify the applicant that the application is incomplete. The notice shall specify any additional information required to complete the application. The notice shall be sent by electronic mail to the applicant's email address provided in the application. If the locality fails to provide such notice within such 10-day period, the application shall be deemed complete.
2. Except as provided in subdivision 3, a locality shall approve or disapprove a complete application:
  - a. For a new structure within the lesser of 150 days of receipt of the completed application or the period required by federal law for such approval or disapproval; or
  - b. For the co-location of any wireless facility that is not a small cell facility within the lesser of 90 days of receipt of the completed application or the period required by federal law for such approval or disapproval, unless the application constitutes an eligible facilities request as defined in 47 U.S.C. § 1455(a).
3. Any period specified in subdivision 2 for a locality to approve or disapprove an application may be extended by mutual agreement between the applicant and the locality.

D. A complete application for a project shall be deemed approved if the locality fails to approve or disapprove the application within the applicable period specified in subdivision C 2 or any

agreed extension thereof pursuant to subdivision C 3.

E. If a locality disapproves an application submitted under subsection A or for any zoning approval required for a standard process project:

1. The locality shall provide the applicant with a written statement of the reasons for such disapproval; and
2. If the locality is aware of any modifications to the project as described in the application that if made would permit the locality to approve the proposed project, the locality shall identify them in the written statement provided under subdivision 1. The locality's subsequent disapproval of an application for a project that incorporates the modifications identified in such a statement may be used by the applicant as evidence that the locality's subsequent disapproval was arbitrary or capricious in any appeal of the locality's action.

F. A locality's action on disapproval of an application submitted under subsection A or for any zoning approval required for a standard process project shall:

1. Not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services; and
2. Be supported by substantial record evidence contained in a written record publicly released within 30 days following the disapproval.

G. An applicant adversely affected by the disapproval of an application submitted under subsection A or for any zoning approval required for a standard process project may file an appeal pursuant to subsection F of § 15.2-2285, or to § 15.2-2314 if the requested zoning approval involves a variance, within 30 days following delivery to the applicant or notice to the applicant of the record described in subdivision F 2.

2018, cc. 835, 844.

#### **§ 15.2-2316.4:2. Application reviews.**

A. In its receiving, consideration, and processing of a complete application submitted under subsection A of § 15.2-2316.4:1 or for any zoning approval required for a standard process project, a locality shall not:

1. Disapprove an application on the basis of:
  - a. The applicant's business decision with respect to its designed service, customer demand for service, or quality of its service to or from a particular site;
  - b. The applicant's specific need for the project, including the applicant's desire to provide additional wireless coverage or capacity; or
  - c. The wireless facility technology selected by the applicant for use at the project;
2. Require an applicant to provide proprietary, confidential, or other business information to justify the need for the project, including propagation maps and telecommunications traffic studies, or information reviewed by a federal agency as part of the approval process for the same structure and wireless facility, provided that a locality may require an applicant to provide a copy of any approval granted by a federal agency, including conditions imposed by that agency;

3. Require the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of an application. A locality may adopt reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities;
4. Impose surety requirements, including bonds, escrow deposits, letters of credit, or any other types of financial surety, to ensure that abandoned or unused wireless facilities can be removed, unless the locality imposes similar requirements on other permits for other types of similar commercial development. Any such instrument shall not exceed a reasonable estimate of the direct cost of the removal of the wireless facilities;
5. Discriminate or create a preference on the basis of the ownership, including ownership by the locality, of any property, structure, base station, or wireless support structure, when promulgating rules or procedures for siting wireless facilities or for evaluating applications;
6. Impose any unreasonable requirements or obligations regarding the presentation or appearance of a project, including unreasonable requirements relating to (i) the kinds of materials used or (ii) the arranging, screening, or landscaping of wireless facilities or wireless structures;
7. Impose any requirement that an applicant purchase, subscribe to, use, or employ facilities, networks, or services owned, provided, or operated by a locality, in whole or in part, or by any entity in which a locality has a competitive, economic, financial, governance, or other interest;
8. Condition or require the approval of an application solely on the basis of the applicant's agreement to allow any wireless facilities provided or operated, in whole or in part, by a locality or by any other entity, to be placed at or co-located with the applicant's project;
9. Impose a setback or fall zone requirement for a project that is larger than a setback or fall zone area that is imposed on other types of similar structures of a similar size, including utility poles;
10. Limit the duration of the approval of an application, except a locality may require that construction of the approved project shall commence within two years of final approval and be diligently pursued to completion; or
11. Require an applicant to perform services unrelated to the project described in the application, including restoration work on any surface not disturbed by the applicant's project.

B. Nothing in this article shall prohibit a locality from disapproving an application submitted under subsection A of § 15.2-2316.4:1 or for any zoning approval required for a standard process project:

1. On the basis of the fact that the proposed height of any wireless support structure, wireless facility, or wireless support structure with attached wireless facilities exceeds 50 feet above ground level, provided that the locality follows a local ordinance or regulation that does not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services; or
2. That proposes to locate a new structure, or to co-locate a wireless facility, in an area where all cable and public utility facilities are required to be placed underground by a date certain or encouraged to be undergrounded as part of a transportation improvement project or rezoning

proceeding as set forth in objectives contained in a comprehensive plan, if:

- a. The undergrounding requirement or comprehensive plan objective existed at least three months prior to the submission of the application;
- b. The locality allows the co-location of wireless facilities on existing utility poles, government-owned structures with the government's consent, existing wireless support structures, or a building within that area;
- c. The locality allows the replacement of existing utility poles and wireless support structures with poles or support structures of the same size or smaller within that area; and
- d. The disapproval of the application does not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services.

C. Nothing in this article shall prohibit an applicant from voluntarily submitting, and the locality from accepting, any conditions that otherwise address potential visual or aesthetic effects resulting from the placement of a new structure or facility.

D. Nothing in this article shall prohibit a locality from disapproving an application submitted under a standard process project on the basis of the availability of existing wireless support structures within a reasonable distance that could be used for co-location at reasonable terms and conditions without imposing technical limitations on the applicant.

2018, cc. [835](#), [844](#).

**§ 15.2-2316.4:3. Additional provisions.**

A. A locality shall not require zoning approval for (i) routine maintenance or (ii) 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. However, a locality may require a permit to work within the right-of-way for the activities described in clause (i) or (ii), if applicable.

B. Nothing in this article shall prohibit a locality from limiting the number of new structures or the number of wireless facilities that can be installed in a specific location.

2018, cc. [835](#), [844](#).

**§ 15.2-2316.5. Moratorium prohibited.**

A locality shall not adopt a moratorium on considering zoning applications submitted by wireless services providers or wireless infrastructure providers.

2017, c. [835](#).

**ITEM SUMMARY**

DATE: 5/9/2019

TO: The Policy Committee

FROM: Paul D. Holt, III, Director of Community Development and Planning

SUBJECT: ORD-19-0001. Proposed Zoning Ordinance Amendment to Section 24-16, Proffer of Conditions

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**ATTACHMENTS:**

	Description	Type
☐	Memorandum	Cover Memo
☐	Proposed Ordinance Revisions	Exhibit
☐	Draft Resolution reinstating various Board policies	Exhibit
☐	Adopted legislation	Backup Material

**REVIEWERS:**

Department	Reviewer	Action	Date
Policy	Rosario, Tammy	Approved	5/3/2019 - 9:30 AM
Policy	Holt, Paul	Approved	5/3/2019 - 11:11 AM
Publication Management	Daniel, Martha	Approved	5/3/2019 - 11:26 AM
Policy Secretary	Secretary, Policy	Approved	5/3/2019 - 11:39 AM

## MEMORANDUM

DATE: May 9, 2019

TO: The Policy Committee

FROM: Paul D. Holt, III, Director of Community Development and Planning

SUBJECT: ORD-19-0001. Proposed Zoning Ordinance Amendment to Section 24-16, Proffer of Conditions

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On September 13, 2016, the Board of Supervisors adopted ZO-0008-2016 (Ordinance 31A-304) which amended the Zoning Ordinance to state that the County would no longer accept proffers for applications for any portion of a rezoning application that included a residential component. This was in reaction to State Bill 549 which was passed and approved during the 2016 General Assembly session.

On March 5, 2019, changes to Section 15.2-2303.4 of the Code of Virginia by the General Assembly were approved by the Governor of Virginia and enacted as Chapter 245 of the Acts of Assembly (“Chapter 245”). Upon review, the adopted changes in State Code appear to address many of the concerns stated by the Board when it adopted Ordinance No. 31A-304.

Accordingly, on April 9, 2019, the Board of Supervisors adopted an Initiating Resolution directing staff to more thoroughly consider the effects of Chapter 245 and recommend any warranted changes to James City County Code Section 24-16 to accept proffers associated with any new residential rezoning or zoning map amendment, or any new residential component of a multiuse district rezoning or zoning map amendment (<https://jamescity.novusagenda.com/AgendaPublic/CoverSheet.aspx?ItemID=4535&MeetingID=878>).

As such, attached is a proposed amendment to the Zoning Ordinance which reverses the code amendment passed by the Board of Supervisors in 2016. In anticipation of being able to use proffers as a tool again, staff anticipates advertising this code amendment for a public hearing with the Planning Commission at its June meeting and with the Board of Supervisors at its July meeting.

Staff looks forward to having a discussion with the Policy Committee on this item.

As an informational item, also attached is a draft Resolution for the Board of Supervisors which would reinstate two of the six policies that were rescinded in 2016. The following proffer policies are still under review and may still not be feasible under §15-2.2303 (or may be possible with edits and revisions):

- Route 5 Road Improvement Proffer Policy, adopted on May 28, 1996
- Cash Proffer Policy for Schools, adopted on July 27, 1999
- Residential Redevelopment Policy, adopted on November 27, 2012
- Housing Opportunities Policy, adopted on November 27, 2012

PDH/md  
ORD19-1PropZOA-Sect24-16-mem

Attachments:

1. Proposed edits to Section 24-16
2. Draft resolution reinstating various Board policies
3. Adopted legislation

ORDINANCE NO.

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 24-16, PROFFER OF CONDITIONS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Article I, In General, Section 24-16, Proffer of conditions.

**Chapter 24. Zoning**

**Article I. In General**

**Sec. 24-16. Proffer of conditions.**

The owner or owners of property making application for a change in zoning or amendment to a zoning map, as part of their application, may voluntarily proffer in writing reasonable conditions, prior to a public hearing before the board of supervisors, which shall be in addition to the regulations provided for in the zoning district or zone sought in the rezoning petition. The conditions shall be proffered as a part of the requested rezoning or amendment to the county's zoning map. ~~No proffers shall be submitted or accepted for any new residential rezoning or zoning map amendment, or any new residential component of a multi-use district rezoning or zoning map amendment field after July 1, 2016.~~

BE IT FURTHER ORDAINED by the Board of Supervisors of the County of James City, Virginia, that

1. this ordinance shall be effective as to any pending rezoning application in which the applicant elects to proceed hereunder by amendment of that pending application; and,
2. an applicant with a pending application for a rezoning or proffer condition amendment that was filed prior to July 1, 2016, may continue to proceed under the law as it existed prior to that date.



## RESOLUTION

### A RESOLUTION TO TAKE ACTION IN RESPONSE TO CHAPTER 245 OF THE

### 2019 VIRGINIA ACTS OF ASSEMBLY RELATING TO CONDITIONAL ZONING

#### FOR RESIDENTIAL REZONINGS AND PROFFER AMENDMENTS

WHEREAS, SB 549, which was passed by the General Assembly, approved by the Governor, and incorporated as Chapter 322 of the 2016 Virginia Acts of Assembly (“Chapter 322”), added Section 15.2-2303.4 to the Code of Virginia and fundamentally changed conditional zoning law in the Commonwealth; and

WHEREAS, the Board of Supervisors (the “Board”) strongly opposed Chapter 322 due to its significant negative impacts on the County and other localities, including the creation of a cause of action against localities for requiring, requesting, accepting or even *suggesting* an “unreasonable proffer” as defined by Chapter 322; and

WHEREAS, Chapter 322 became effective on July 1, 2016, and applied to any residential rezoning and proffer amendment applications filed on or after July 1, 2016; and

WHEREAS, the Board previously adopted various policies and guidelines to assist developers with the creation of voluntary proffers, all of which were rescinded by the Board on June 28, 2016 in response to Chapter 322; and

WHEREAS, on September 13, 2016, the Board, adopted Ordinance No. 31A-304 which amended the Zoning Ordinance to state that the County would no longer accept proffers for any portion of a new rezoning application that included a residential component; and

WHEREAS, on March 5, 2019, changes to Section 15.2-2303.4 of the Code of Virginia passed by the General Assembly were approved by the Governor of Virginia and enacted as Chapter 245 of the 2019 Virginia Acts of Assembly (“Chapter 245”); and

WHEREAS, upon review of Chapter 245, the adopted changes appear to address many of the concerns stated by the Board when it adopted Ordinance No. 31A-304; and

WHEREAS, on April 9, 2019, the Board adopted an Initiating Resolution directing staff to review the acceptance of proffers associated with any new residential rezoning or zoning map amendment, or any new residential component of a multi-use district rezoning or zoning map amendment, and further directing staff to review and prepare any recommended revisions to current or rescinded proffer policies.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the Outstanding Specimen Tree Option Guidelines adopted on November 22, 2011 and the Natural Resources Policy adopted on May 28, 1996 are hereby reinstated as it applies to new applications for residential rezonings filed on or after July 1, 2019.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby recognizes that since 2016, a Workforce Housing Task Force was convened, conducted significant work over a fourteen month period and made significant findings and recommendations to the Board in February 2019. In recognition of such, the Board further directs staff to make recommendations for any needed updates to the Housing Opportunities Policy and to initiate a review of an affordable dwelling unit ordinance under 15.2-2305.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby recognizes that since 2016, a significant update to the Parks and Recreation Master Plan was completed and adopted and, as part of those updates, references to cash-in-lieu of developers providing parks and recreational amenities were removed from the Master Plan. As such, the Board further directs staff to make recommendations for any needed updates to the Development Guidelines portion of Parks and Recreation Master Plan to allow for cash-in-lieu options, as applicable and appropriate.

\_\_\_\_\_  
Jim Icenhour  
Chairman, Board of Supervisors

ATTEST:

VOTES  
AYE    NAY    ABSTAIN

MCGLENNON	_____	_____	_____
LARSON	_____	_____	_____
ICENHOUR	_____	_____	_____
SADLER	_____	_____	_____
HIPPLE	_____	_____	_____

\_\_\_\_\_  
Teresa Fellows  
Deputy Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of July, 2019.

## 2019 SESSION

### CHAPTER 129

*An Act to amend and reenact § 15.2-2303.4 of the Code of Virginia and to repeal the third enactment of Chapter 322 of the Acts of Assembly of 2016, relating to conditional rezoning proffers.*

[S 1373]

Approved February 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2303.4 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2303.4. Provisions applicable to certain conditional rezoning proffers.

A. For purposes of this section, unless the context requires a different meaning:

"New residential development" means any construction or building expansion on residentially zoned property, including a residential component of a mixed-use development, that results in either one or more additional residential dwelling units or, otherwise, fewer residential dwelling units, beyond what may be permitted by right under the then-existing zoning of the property, when such new residential development requires a rezoning or proffer condition amendment.

"New residential use" means any use of residentially zoned property that requires a rezoning or that requires a proffer condition amendment to allow for new residential development.

"Offsite proffer" means a proffer addressing an impact outside the boundaries of the property to be developed and shall include all cash proffers.

"Onsite proffer" means a proffer addressing an impact within the boundaries of the property to be developed and shall not include any cash proffers.

"Proffer condition amendment" means an amendment to an existing proffer statement applicable to a property or properties.

"Public facilities" means public transportation facilities, public safety facilities, public school facilities, or public parks.

"Public facility improvement" means an offsite public transportation facility improvement, a public safety facility improvement, a public school facility improvement, or an improvement to or construction of a public park. No public facility improvement shall include any operating expense of an existing public facility, such as ordinary maintenance or repair, or any capital improvement to an existing public facility, such as a renovation or technology upgrade, that does not expand the capacity of such facility. For purposes of this section, the term "public park" shall include playgrounds and other recreational facilities.

"Public safety facility improvement" means construction of new law-enforcement, fire, emergency medical, and rescue facilities or expansion of existing public safety facilities, to include all buildings, structures, parking, and other costs directly related thereto.

"Public school facility improvement" means construction of new primary and secondary public schools or expansion of existing primary and secondary public schools, to include all buildings, structures, parking, and other costs directly related thereto.

"Public transportation facility improvement" means (i) construction of new roads; (ii) improvement or expansion of existing roads and related appurtenances as required by applicable standards of the Virginia Department of Transportation, or the applicable standards of a locality; and (iii) construction, improvement, or expansion of buildings, structures, parking, and other facilities directly related to transit.

"Residentially zoned property" means property zoned or proposed to be zoned for either single-family or multifamily housing.

"Small area comprehensive plan" means that portion of a comprehensive plan adopted pursuant to § 15.2-2223 that is specifically applicable to a delineated area within a locality rather than the locality as a whole.

B. Notwithstanding any other provision of law, general or special, no ~~locality~~ *local governing body* shall (i) ~~request or accept~~ *require* any unreasonable proffer, as described in subsection C, in connection with a rezoning or a proffer condition amendment as a condition of approval of a new residential development or new residential use or (ii) deny any rezoning application or proffer condition amendment for a new residential development or new residential use where such denial is based in whole or in part on an applicant's failure or refusal to submit an unreasonable proffer or proffer condition amendment.

C. Notwithstanding any other provision of law, general or special, ~~(i)~~ as used in this chapter, a proffer, or proffer condition amendment, whether onsite or offsite, offered voluntarily pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1, shall be deemed unreasonable unless ~~it~~:

1. *It addresses an impact that is specifically attributable to a proposed new residential development or other new residential use applied for; and* ~~(ii) an offsite proffer shall be deemed unreasonable pursuant to subdivision (i) unless~~

2. *If an offsite proffer, it addresses an impact to an offsite public facility, such that* ~~(a)~~ *(i) the new residential development or new residential use creates a need, or an identifiable portion of a need, for one or more public facility improvements in excess of existing public facility capacity at the time of the rezoning or proffer condition amendment and* ~~(b)~~ *(ii) each such new residential development or new residential use applied for receives a direct and material benefit from a proffer made with respect to any such public facility improvements. For the purposes of this section, a* ~~A~~ *locality may base its assessment of public facility capacity on the projected impacts specifically attributable to the new residential development or new residential use.*

D. *Notwithstanding the provisions of subsection C:*

1. *An applicant or owner may, at the time of filing an application pursuant to this section or during the development review process, submit any onsite or offsite proffer that the owner and applicant deem reasonable and appropriate, as conclusively evidenced by the signed proffers.*

2. *Failure to submit proffers as set forth in subdivision 1 shall not be a basis for the denial of any rezoning or proffer condition amendment application.*

E. Notwithstanding any other provision of law, general or special:

1. Actions brought to contest the action of a ~~locality~~ *local governing body* in violation of this section shall be brought only by the aggrieved applicant or the owner of the property subject to a rezoning or proffer condition amendment pursuant to subsection F of § 15.2-2285, *provided that the applicant objected in writing to the governing body regarding a proposed condition prior to the governing body's grant or denial of the rezoning application.*

2. In any action in which a ~~locality~~ *local governing body* has denied a rezoning or an amendment to an existing proffer and the aggrieved applicant proves by a preponderance of the evidence that it refused or failed to submit an unreasonable proffer or proffer condition amendment that ~~it has proven~~ *was suggested, requested, or required* ~~in writing by the locality local governing body in violation of this section,~~ the court shall presume, absent clear and convincing evidence to the contrary, that such refusal or failure was the controlling basis for the denial.

3. In any successful action brought pursuant to this section contesting an action of a ~~locality~~ *local governing body* in violation of this section, the applicant may be entitled to an award of reasonable attorney fees and costs and to an order remanding the matter to the governing body with a direction to approve the rezoning or proffer condition amendment without the inclusion of any unreasonable proffer *or to amend the proffer to bring it into compliance with this section.* If the ~~locality~~ *local governing body* fails or refuses to approve the rezoning or proffer condition amendment, *or fails or refuses to amend the proffer to bring it into compliance with this section,* within a reasonable time not to exceed 90 days from the date of the court's order to do so, the court shall enjoin the ~~locality~~ *local governing body* from interfering with the use of the property as applied for without the unreasonable proffer. Upon remand to the local governing body pursuant to this subsection, the requirements of § 15.2-2204 shall not apply.

~~E-F.~~ The provisions of this section shall not apply to any new residential development or new residential use occurring within any of the following areas: (i) an approved small area comprehensive plan in which the delineated area is designated as a revitalization area, encompasses mass transit as defined in § 33.2-100, includes mixed use development, and allows a density of at least 3.0 floor area ratio in a portion thereof; (ii) an approved small area comprehensive plan that encompasses an existing or planned Metrorail station, or is adjacent to a Metrorail station located in a neighboring locality, and allows additional density within the vicinity of such existing or planned station; or (iii) an approved service district created pursuant to § 15.2-2400 that encompasses an existing or planned Metrorail station.

~~F-G.~~ This section shall be construed as supplementary to any existing provisions limiting or curtailing proffers or proffer condition amendments for new residential development or new residential use that are consistent with its terms and shall be construed to supersede any existing statutory provision with respect to proffers or proffer condition amendments for new residential development or new residential use that are inconsistent with its terms.

*H. Notwithstanding any provision in this section to the contrary, nothing contained herein shall be deemed or interpreted to prohibit or to require communications between an applicant or owner and the locality. The applicant, owner, and locality may engage in pre-filing and post-filing discussions regarding the potential impacts of a proposed new residential development or new residential use on public facilities as defined in subsection A and on other public facilities of the locality, and potential voluntary onsite or offsite proffers, permitted under subsections C and D, that might address those impacts. Such verbal discussions shall not be used as the basis that an unreasonable proffer or proffer condition amendment was required by the locality. Furthermore, notwithstanding any provision in this section to the contrary, nothing contained herein shall be deemed or interpreted to prohibit or to require presentation, analysis, or discussion of the potential impacts of new residential development or new residential use on the locality's public facilities.*

2. That the third enactment of Chapter 322 of the Acts of Assembly of 2016 is repealed.

3. That this act shall be effective as to any application for a rezoning filed on or after July 1, 2019, or for a proffer condition amendment amending a rezoning that was filed on or after July 1, 2019, or to any then-pending rezoning application in which the applicant elects to proceed hereunder, by amendment of that pending application.

4. That an applicant with a pending application for a rezoning or proffer condition amendment that was filed prior to July 1, 2016, may continue to proceed under the law as it existed prior to that date, and an applicant with a pending rezoning application filed on or after July 1, 2016, but before July 1, 2019, or proffer condition amendment application amending a rezoning for which the application was filed on or after July 1, 2016, but before July 1, 2019, may continue to proceed under the law as it existed during that period.

**ITEM SUMMARY**

DATE: 5/9/2019

TO: The Policy Committee

FROM: Paul D. Holt, III, Director of Community Development and Planning

SUBJECT: Proposed Zoning Ordinance Amendment to Section 24-111, Temporary Offices

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**ATTACHMENTS:**

	Description	Type
☐	Memorandum	Cover Memo
☐	Proposed Ordinance Revisions	Exhibit

**REVIEWERS:**

Department	Reviewer	Action	Date
Policy	Rosario, Tammy	Approved	5/3/2019 - 11:33 AM
Policy	Holt, Paul	Approved	5/3/2019 - 11:46 AM
Publication Management	Daniel, Martha	Approved	5/3/2019 - 12:01 PM
Policy Secretary	Secretary, Policy	Approved	5/3/2019 - 1:31 PM

## MEMORANDUM

DATE: May 9, 2019

TO: The Policy Committee

FROM: Paul D. Holt, III, Director of Community Development and Planning

SUBJECT: Proposed Zoning Ordinance Amendment to Section 24-111, Temporary Offices

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In 2018, the Development Review Committee and Planning Commission considered an applicant's request to waive the requirements of the Zoning Ordinance found in Section 24-200, Public Utilities, as it applied to a temporary construction office. At a subsequent meeting of the Policy Committee, a committee member asked staff for a potential amendment to the Ordinance to make future requests easier for applicants.

Per that request, a proposed Ordinance amendment is attached. Staff does not recommend creating an exception for all structures, generally. The attached Ordinance language, however, would be applicable to structures used as temporary offices. Staff notes that this is the only section of the Zoning Ordinance that defines and permits temporary structures, and sets forth time limitations for the removal of such structures.

No other section of the Zoning Ordinance allows staff to attach a time limit to the placement/construction of structures that are otherwise allowed by-right.

Staff looks forward to having a discussion with the Policy Committee on this item. Should the Policy Committee concur with moving this item forward, next steps would include staff drafting an Initiating Resolution for consideration by the Planning Commission and incorporation of any needed changes into the draft Ordinance amendment.

PDH/md  
PropZOA-Sect24-111-mem

Attachments:

1. Proposed edits to Section 24-111

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE II, SPECIAL REGULATIONS, DIVISION 5, MANUFACTURED HOMES AND TEMPORARY STRUCTURES, SECTION 24-111, TEMPORARY OFFICES.

BE IT ORDAINED by the Board of Supervisors of James City County, Virginia that Chapter 24, Zoning, is hereby amended and reordained by amending Article II, Special Regulations, Division 5, Manufactured Homes and Temporary Structures, Section 24-111, Temporary offices.

Sec. 24-111. - Temporary offices.

Trailers and portable buildings may be used as temporary offices in any zoning district by issuance of a certificate of occupancy by the zoning administrator, subject to the following conditions:

- (1) The location of a temporary building or structure shall be necessary for use as a business office during the construction of any commercial structure or structures or for the sale or rental of on-site property by a developer.
- (2) The location of a temporary building or structure shall be necessary for use in conjunction with a temporary special event such as a golf tournament or music festival.
- (3) The temporary building or structure shall not be used for residential purposes.
- (4) A minimum area of 5,000 square feet shall be provided for each structure.
- (5) The structure shall not be placed closer than 15 feet to any lot line.
- (6) The sanitary facilities shall conform to county and state health regulations.
- (7) The electrical connections shall meet the requirements of the Uniform Statewide Building Code
- (8) *If the Director of Planning finds that it is not practicable for the application to meet the requirements of Section 24-200, then such requirements shall not apply to the temporary office provided that all other provisions of this section are met.*
- ~~(8)~~(9) The temporary office shall be used for a period not to exceed one year; provided, that:
  - a. The one-year time period may be extended by written request to the zoning administrator showing reasonable cause; and
  - b. The temporary office shall be removed from the site within 60 days after the completion of construction.



Adopted by the Board of Supervisors of James City County, Virginia, this \_\_\_\_\_ day of \_\_\_\_\_,  
2019.