

TELECOMMUNICATIONS ORDINANCE DRAFT

**Sec. 22-81. – Purpose, Legislative Intent, and Policy Goals.**

(a) Title 15.2, Chapter 22, Article 7.2 affirmed the County's authority concerning the placement, construction, and modification of wireless telecommunications facilities. The Board of Supervisors of the County finds that wireless telecommunications facilities may cause a unique impact to the health, safety, public welfare, and environment of the County and its inhabitants. The County also recognizes that facilitating the development of wireless service technology can be an economic development asset to the County and of significant benefit to the County and its residents. In order to ensure that the placement, construction, or modification of wireless telecommunications facilities is consistent with the County's land use policies, the County is adopting a single, comprehensive, wireless telecommunications facilities application and permit process. The intent of this article is to minimize the negative impact of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety, and welfare of the County.

(b) The goals of this article are to:

1. Establish review procedures to ensure that applications for telecommunications facilities are reviewed and acted upon within a reasonable period of time;
2. To encourage the location of towers in nonresidential areas and minimize the total number of towers and tower sites throughout the community;
3. To strongly encourage the joint use of new and existing tower sites, and use of existing utility transmission rights-of-way;
4. To encourage towers located in areas where the adverse impact on the community is minimal;
5. To encourage users of towers and antennas to locate, design, and configure them in a way that minimizes their adverse visual impact, and makes them compatible with surround land uses, to the extent possible;
6. To provide adequate sites for the provision of wireless communication services with minimal negative impact on the County's resources;
7. To encourage public/private partnerships, where possible, that promote the County's communications needs, especially fire and emergency rescue services.
8. To facilitate the provision of adequate voice, text, and internet wireless services to citizens, business, and visitors of the County.

**Sec. 22-82. – Title.**

This article may be known and cited as the “Wireless Telecommunications Facilities Ordinance of Lunenburg County” or the “Telecommunications Facilities Ordinance.”

**Sec. 22-83. – Severability.**

(a) If any word, phrase, sentence, part, section, or other portion of this article or any application thereof to any person or circumstance is declared void, unconstitutional, or

invalid for any reason, then such word, phrase, sentence, part, subsection, or other portion or the proscribed application thereof, shall be severable, and the remaining provisions of this article, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect.

- (b) Any Conditional Use Permit under this article shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination of the Board of Supervisors.

#### **Sec. 22-84. Definitions.**

For purposes of this article, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

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

- (a) The installation or construction of a new structure that is not more than fifty (50) feet above ground level, provided that the structure with attached wireless facilities is (i) not more than ten (10) feet above the tallest existing utility pole located within five-hundred (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 thirty-five percent (35%) 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
- (b) 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.

"Application" means the form approved by the Board, together with all necessary and appropriate documentation that an applicant submits in order to receive a Conditional Use Permit for wireless telecommunications facilities.

"Applicant" means any person submitting an application to the County for a Conditional Use Permit for wireless telecommunications facilities.

"Board" means the Board of Supervisors of the County.

"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.

"Conditional Use Permit" means the official document or permit by which an applicant is allowed to construct and use wireless telecommunications facilities as granted or issued by the County.

"Completed Application" means an application that contains all information and/or data necessary to enable the Board to evaluate the merits of the application, and to make an informed decision with respect to the effect and impact of wireless telecommunications facilities on the County in the context of the permitted land use for the particular location requested.

"Compound" means the area within the Project area where the Telecommunications facility is located, including the security fencing.

"County" means Lunenburg County, Virginia.

"Department" means the Virginia Department of Transportation.

"EPA" means the state and/or Federal Environmental Protection Agency or its duly assigned successor agency.

"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.

"FAA" means the Federal Aviation Administration, or its duly designated and authorized successor agency.

"FCC" means the Federal Communications Commission, or its duly designated and authorized successor agency.

"Height" When referring to a tower or other structure, means the distance measured from ground level to the highest point on the tower or other structure, even if the highest point is an antenna or lightning rod.

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

"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.

"NIER" means non-ionizing electromagnetic radiation.

"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.

"Project area" means the total area of land leased or owned by the applicant where the Wireless facility is or will be located and shall include all area inside and outside of the security fencing.

"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 (6) 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 (6) cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than twenty-eight (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.

"Substantial change" means A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(i) For towers other than towers in the public rights-of-way, it increases 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 twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

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- (iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- (iv) It entails any excavation or deployment outside of the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;
- (v) It would defeat the concealment elements of the eligible support structure; or
- (vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § (i) through (iv), herein.

“Tower” Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes television transmission towers, microwave towers, common-carrier towers, wireless communications towers, alternative tower structures, and the like.

"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" or “Wireless Telecommunications Facility” or “Telecommunications Facility” means equipment at a fixed location, such as a Wireless support structure, Tower, or other structure, 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.

### **Sec 22-85. Applicability.**

This article shall apply to the development activities including installation, construction, or modification of all telecommunication facilities that exceed, as installed, fifty (50) feet in height, but excluding those used exclusively for the County's fire, police, and other dispatch telecommunications.

### **Sec. 22-86. Existing Structures and Towers.**

The placement of an antenna on or in an existing structure such as a building, sign, light pole, utility pole, utility tower, or tower, water tower, or other free-standing structure is permitted without a Conditional Use Permit so long as the addition of the antenna does not result in a substantial change, as is defined in 47 C.F.R. §1.6100, which increases the height of the tower by more than ten percent (10%) or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater, and does not require additional lighting pursuant to FAA or other applicable requirements. Additional structures equipment needed in connection with the antenna may be placed so long as it is placed within the existing structure or property. Building permits are required.

### **Sec. 22-87. Conditional Use Permit Application and Other Requirements**

- (a) All applicants for a Conditional Use Permit for wireless telecommunications facilities or any modification of such facility shall comply with the requirements set forth in this section. The Board is the officially designated agency or body of the community to whom applications for a Conditional Use Permit for wireless telecommunications facilities must be made, and that is authorized to review, analyze, evaluate, and make decisions with respect to granting or not granting, or revoking Conditional Use Permits for wireless telecommunications facilities. The Board may at its discretion delegate or designate other official agencies of the County to accept, review, analyze, evaluate, and make recommendations to the Board with respect to the granting or not granting, or revoking Conditional Use Permits for wireless telecommunications facilities.
- (b) An application for a Conditional Use Permit for wireless telecommunications facilities shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting

to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Board, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.

- (c) Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the Board pursuant to Va. Code §15.2-2316.4:1(c)(1).
- (d) *Application Requirements*: Each applicant requesting a Conditional Use Permit must submit the following:
  - 1. Unless waived by the Board, there shall be a pre-application meeting. The purpose will be to address issues which will help to expedite the review and permitting process.
  - 2. Completion of the Telecommunication Facility Application and submittal of an application fee, pursuant to the fee schedule set by the County, and as may be amended from time to time, or the maximum amount allowed pursuant to Virginia Code §15.2-2316.4:1, as may be amended. The form and fee schedule are provided by the Zoning Administrator in accordance with Lunenburg County Zoning Ordinance Sec. 3-16. The County may retain qualified third parties to review portions of a permit application that are outside the County's area of expertise. Any out-of-pocket costs incurred by the County for such review by a qualified third-party shall be paid by the applicant. The third-party reviewers and their estimated costs will be submitted to the applicant for approval before the costs are incurred. The County may, in the alternative, accept such review by qualified third-party selected, retained, and paid by the applicant. Fees for other costs incurred by the County will be paid by the applicant in accordance with fee schedules as published in the Lunenburg County Code.
  - 3. Name, address, and phone number of the person preparing the report.
  - 4. Name, address, and phone number of the property owner, operator, and Applicant, to include legal form of the applicant.
  - 5. Postal address and tax map parcel number of the property.
  - 6. Zoning district or designation in which the property is situated.
  - 7. Size of the project area stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines.
  - 8. Location of nearest residential structure.
  - 9. Location of nearest habitable structure.
  - 10. Location, size, and height of all structures on the property which is the subject of the application.
  - 11. Location, size, and height of all proposed and existing antennae and all appurtenant structures.
  - 12. Type, locations and dimensions of all proposed and existing landscaping, and fencing.
  - 13. A scaled plan, a scaled elevation view, and other supporting drawings, calculations, and documentation, signed and sealed by a state licensed professional engineer, showing the location and dimensions of the Project area and of all improvements, including information concerning topography, zoning, vegetation buffers, existing vegetation in the Project area, tower height requirements, setbacks, drives, parking,

fencing, landscaping and adjacent uses and adjacent buildings.

14. A certification from a licensed professional engineer experienced with the design and operation of towers and antennas that the emissions from the facility will not exceed the Federal Communication Commission maximum permissible exposure standard.
15. The applicant's statement agreeing to allow co-location on the proposed tower, and co-location of a second tower on the site, where appropriate, and that the lease agreement will not prohibit or discourage co-location, or, if so, the reasons therefor.
16. Applicant must provide at least two (2) actual photographs of the site that include simulated photographic images of the proposed tower. The photographs with the simulated image must illustrate how the facility will look from adjacent roadways, nearby residential areas, or public buildings such as a school, church etc. County staff reserve the right to select the location for the photographic images and require additional images.

(e) *Design.* These requirements govern telecommunication facilities:

1. Towers must either maintain a galvanized steel finish or, subject to any applicable standards of the Federal Aviation Administration, be painted a neutral color, to reduce visual obtrusiveness. Dish antennas will be of a neutral, non-reflective color with no logos.
2. At a facility site, the design of the buildings and related structures must, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the telecommunication facilities to the natural setting and surrounding structures.
3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure, so as to make the antenna and related equipment as visually unobtrusive as possible.
4. Towers cannot be artificially lighted, unless required by the Federal Aviation Administration or other applicable authority.
5. No advertising may be placed on the telecommunication facility unless as part of retrofitting an existing sign structure.
6. To permit co-location, a tower should be designed and constructed to permit extensions to a maximum height of one-hundred and ninety-nine (199) feet, except as otherwise provided in an approved Conditional Use Permit.
7. Towers must be designed to collapse, in case of structural failure, within the lot lines, and the fall zone must be located entirely on the property the tower is located on.
8. At a wireless facility, an access road, turnaround space, and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation-cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

(f) *Additional Application Requirements.*

1. All towers and antennas must meet or exceed current standards and regulations of the Federal Aviation Administration, the Federal Communications Commission,



- and any other agency of the federal government with the authority to regulate towers and antennas. This requirement includes meeting all Federal Communications Commission regulatory emission standards.
2. The applicant shall conduct a “balloon test” prior to the public hearing in which the applicant shall raise a balloon of a color or material that provides maximum visibility and no less than three (3) feet in diameter at the maximum height of the proposed facility and within fifty (50) horizontal feet of the center of the proposed wireless support structure or tower.
    - i. The applicant shall inform in writing the Zoning Administrator, abutting property owners, and elected or appointed County officials of the district in which the proposed wireless facility is located of the date and times of the test at least fourteen (14) days in advance.
    - ii. The applicant shall request in writing permission from the abutting property owners to access their property during the balloon test to take pictures of the balloon and to evaluate the visual impact of the proposed wireless facility on their property.
    - iii. The date, time, and location of the balloon test shall be advertised in a locally distributed paper by the applicant at least seven (7) but no more than fourteen (14) days in advance of the test date. The advertisement shall also include an alternate inclement weather date for the balloon test.
    - iv. Signage shall be posted on the property to identify the location of the property where the balloon is to be launched a minimum of seventy-two (72) hours prior to the balloon test. If unsuitable weather conditions prevail on the date of the balloon test, then cancellation of the test shall be clearly noted on the signage.
    - v. The balloon shall be flown for at least four (4) consecutive hours during daylight hours on the date chosen.
    - vi. The applicant shall record the weather during the balloon test. If the wind during the balloon test is above twenty (20) miles per hour, then the test shall be postponed to the alternate inclement weather date provided in the advertisement.
  3. The applicant shall submit signed/sealed zoning drawings showing the potential future collocations on the proposed tower.
  4. The County has the right of first refusal to any available co-location, not including the anchor spot or prime equipment location intended to be used by the applicant; however, the County will be responsible for placing and maintaining its own equipment.
  5. The wireless telecommunications facility shall comply with all state, federal, and local regulations.
  6. The Applicant is further subject to the Application requirements set forth in Sec. 22-90.

**Sec 22-88. Setbacks and Landscaping Requirements.**

- (a) *Setbacks.* The following setbacks shall be required for wireless telecommunications facilities:
1. The minimum setback to the property lines of properties zoned industrial,

commercial or to any property owned by the same owner as the subject property is one-hundred and ten percent (110%) of the tower's designed break point (fall zone) measured from the center of the base of the tower.

2. The minimum setback to property lines of properties zoned residential, or agricultural shall generally be one-hundred and ten percent (110%) of total tower height or five hundred (500) feet to off-site dwellings not owned by the owner of the subject property, measured from the center of the base of the tower, whichever is greater.
    - i. A tower may be located closer to those property lines based on mitigating its impacts by a reduced height, alternative designs such as monople, camouflaging the tower or other methods.
    - ii. A tower may not be located closer than one-hundred and ten percent (110%) of the tower's designated break point (fall zone) to property lines or five hundred (500) feet to dwellings not owned by the owner of the subject property, measured from the center of the base of the tower, whichever is greater.
- (b) *Landscaping.* Telecommunications facilities shall be landscaped with a buffer of plant materials that effectively mitigates the visual impact of the Telecommunications facility.
1. The standard buffer shall consist of a landscaped strip at least ten (10) feet wide and shall run around the entire perimeter of the Compound.
  2. The buffer shall consist of existing vegetation and, if deemed necessary for the issuance of a Conditional Use Permit, an installed landscaped strip consisting of multiple rows of staggered trees and other vegetation. This buffer should be made up of plant materials at least three (3) feet tall, at the time of planting, and that are expected to grow to a height of eight (8) feet within three (3) years.
  3. Landscaping intended for screening shall consist of coniferous and broadleaf evergreen trees, shrubs, plants, forbs, and wildflowers native to the County. If a sufficient quantity of native plants cannot be procured, non-invasive plants may be used. A list of appropriate plant materials shall be available at the County Administration Office.
  4. The Planning Commission or Board may require increased setbacks and additional or taller vegetative buffering in situations where the topography affects the visual impact of the Telecommunications facility.
  5. A recommendation that the screening and/or buffer creation requirements be waived or altered may be made by the Planning Commission when the applicant proposes to use existing woodlands. The woodlands shall be permanently protected for use as a buffer.
  6. Existing trees and vegetation may be maintained within such buffer areas except where dead, diseased, or as necessary for development or to promote healthy growth, and such existing trees and vegetation may supplement or satisfy landscaping requirements as applicable. If existing trees and vegetation are disturbed, new plantings shall be required for the buffer.
  7. The buffer shall be maintained for the life of the facility such that the trees, plants, vegetation, shrubs, or other plant materials sufficiently mitigate the visual impact of the Telecommunications facility and do not become overgrown

or unsightly. Any vegetation inside the fencing of the Compound shall be routinely maintained to prevent overgrowth.

8. The Planning Commission or Board may require green vinyl inserts to be placed within the fencing for visual screening of high visibility telecommunications facilities in addition to the required vegetative buffer.
  9. No outdoor storage yards shall be allowed in the project area.
- (c) *Fencing*. Telecommunications facilities shall be enclosed by security fencing not less than six (6) feet high and equipped with an appropriate anti-climbing device such as strands of barbed wire on top of the fence. The height and/or location of the fence may be altered in the conditions for a particular permit. Fencing must be installed on the interior of the vegetative buffer. The fencing shall be maintained for the life of the telecommunications facility. The area located within the security fencing shall not be used for the storage of any excess equipment or hazardous materials, including but not limited to substances or chemicals that pose a health hazard, a physical hazard, or harm to the environment, that are not reasonably correlated to the immediate use or operation of the telecommunications facility.
- (d) *Signage*. Telecommunications facilities shall contain a sign no larger than four (4) square feet to provide adequate notification to persons in the immediate area of the telecommunications facility. The sign shall contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be located on the fencing at or near the gate or at such location where it can be easily seen by individuals in the immediate vicinity of the telecommunications facility. Except as provided herein, or as otherwise required by state or federal requirements, all signage shall comply the County Sign Ordinance, as adopted and, from time to time amended.

**Sec. 22-89. Co-location on Any Existing Structure of a Wireless Facility.**

Co-location, colocation modifications, antenna element replacements of different size, weight or frequency utilization or combining antenna shall adhere to the following requirements:

- (a) A co-located or combined antenna or antenna array shall not exceed the maximum height prescribed in the Conditional Use Permit (if applicable) or constitute a Substantial Change to the existing structure. Should the co-location or combined antenna or antenna array constitute a Substantial Change to the existing structure, a new Conditional Use Permit shall be required.
- (b) The new equipment cabinet shall be subject to the setbacks of the underlying zoning district. If the colocation or combined antenna is located on a non-conforming building or facility, then the existing permitted non-conforming setback(s) shall prevail; and
- (c) Equipment cabinets shall be located within the existing equipment compound. If the existing equipment compound is not sized adequately to accommodate the new proposed ground equipment, then a revised site plan of the original telecommunications facilities site shall be submitted addressing the overall ground space for said telecommunications facilities to be reviewed by the Zoning Administrator, or a third-party consultant, for approval; provided, however, that if the revised site plans constitute a Substantial

Change, then a new Conditional Use Permit shall be required unless the requirement for a new Conditional Use Permit is waived by the Board of Supervisors.

- (d) Whenever a proposed placement of an antenna on or in an existing structure such as a building, sign, light pole, utility pole, including placement on or within an existing transmission/utility tower, or tower, water tank, or other freestanding structure or existing tower or pole shall fall within the scope of Code of Virginia, Section 15.2-2316.4:1 and Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, Pub. L No. 112-96, as from time to time amended. (“Section 6409) such placement shall be permitted without the need for a Conditional Use Permit as long as the proposed placement complies with Section 6409 and the FCC rules and policies or implementing Section 6409.
- (e) Each telecommunications service provider that locates or otherwise places wireless communications equipment on the facility, auxiliary structures, or the host structure, or on the property shall obtain building and zoning permits from the County prior to attaching the equipment to the structure or erecting any accessory structures within or adjacent to the existing structure. The fees for the permits shall be in accordance with the fees set forth in Section 15.2-2316.4:1 of the Code of Virginia, as may be amended. For administrative review eligible-projects the fees shall be based on the fee schedule established by the County and shall not exceed actual direct costs to process the application, including permits and inspection, for all standard process projects.
- (f) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is closely compatible with the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

**Sec. 22-90. Procedure for Wireless Telecommunications Facilities.**

In addition to materials required for a Conditional Use Permit application under Sec. 22-87, upon an application being deemed complete, applications for Wireless Telecommunications Facilities shall, unless otherwise provided herein, include:

- (a) **Community Meeting.** An in-person public meeting shall be scheduled at least two (2) weeks after the submission of the application and shall be held prior to the determination that the project is in “*Substantial Accord*” with Comprehensive Plan to give the Community an opportunity to hear from the applicant and ask questions regarding the proposed wireless telecommunications facility. The Zoning Administrator shall have the authority to require a subsequent in-person public meeting if the Applicant resubmits or revises its initial application resulting in material changes to the proposed Project contained in the initial application.
  - 1. The applicant shall coordinate with the Zoning Administrator prior to the determination of a date for the community meeting.
  - 2. The applicant shall inform the Zoning Administrator and adjacent property owners in writing of the date, time and location of the meeting at least seven (7) but no more than fourteen (14) days in advance.
  - 3. The date, time and location of the meeting shall be advertised in the County’s newspaper of record by the applicant at least seven (7) but no more than fourteen (14) days in advance of the meeting date.

4. The meeting shall be held within the County, at a location open to the general public with adequate parking and seating facilities which may accommodate persons with disabilities.
  5. The meeting shall give members of the public the opportunity to review application materials, ask questions to the applicant and provide feedback.
  6. The applicant shall provide to the Zoning Administrator a summary of any input received from members of the public at the meeting.
- (b) **Comprehensive Plan (2232) Review.** A Comprehensive Plan review shall be based on the Conditional Use Permit Application Form and Supplemental information required to be submitted with the Application. The Code of Virginia §15.2-2232 requires a review of the public utility facility proposals by the Planning Commission to determine if their general or approximate location, character, and extent are in “*Substantial Accord*” with the Comprehensive Plan or part thereof.
1. The Planning Commission must consider, at a public meeting, whether the project is in “*Substantial Accord*” with the Comprehensive Plan.
  2. If the Planning Commission does not approve the 2232 review, the applicant may appeal the decision to the Board of Supervisors within ten (10) days after the decision of the Planning Commission. The appeal shall be by written petition to the Board of Supervisors setting forth the reasons for the appeal. A majority vote of the Board of Supervisors shall overrule the Planning Commission.
- (c) **Consideration by the Planning Commission.** Planning Commission must consider the Conditional Use Permit application at a public hearing. The Planning Commission has three (3) options:
1. Recommend approval of the application to the Board of Supervisors with written reasons for its decisions.
  2. Recommend denial of the application to the Board of Supervisors with written reasons for its decisions.
  3. Defer the application for further discussion.
- (d) **Consideration by the Board of Supervisors.** The Board must consider the Conditional Use Permit application at a public hearing. The Board has three (3) options:
1. Approve the application with written reasons for its decision.
  2. Deny the application with written reasons for its decision.
  3. Defer the application for further discussion and consideration.

**Sec. 22-91. Factors to be Considered by the Planning Commission and Board.**

- (a) The approving body, in exercise of the County’s zoning regulatory authority, may consider an application for approval and determine: whether a tower is in harmony with the area; the effects and general compatibility of a tower with adjacent properties; or the aesthetic effects of the tower as well as mitigating factors concerning aesthetics.
- (b) The approving bodies, in exercise of the County’s zoning regulatory authority, may disapprove an application on the grounds that the tower’s aesthetic effects are unacceptable, or may condition approval on changes in tower heights, design, style, buffers, or other features of the tower or its surrounding area. Such changes need not result in performance identical to that of the original application.
- (c) Factors relevant to aesthetic effects are: the protection of the view in sensitive or particularly scenic areas, and areas containing unique natural features, scenic roadways or

historical areas; the concentration of towers in the proposed area; and, whether the height, design, placement or other characteristics or the proposed tower could be modified to have a less intrusive visual impact.

- (d) The approving bodies, in accord with Code of Virginia, Section 15.2-2316.4:2, may disapprove an application based on 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.

**Sec. 22-92. Time Frame for Application Review and Consideration.**

- (a) Unless some other time frame is mutually agreed upon, an application for a tower shall be deemed complete or incomplete by the County and/or its third-party consultants within ten (10) days of receipt of the application. The applicant shall provide a valid electronic mail address. The County shall notify the applicant by electronic mail whether the application is incomplete or specify any missing information; otherwise, the application shall be deemed complete, or as otherwise provided by the Code of Virginia.
- (b) Unless some other time frame is mutually agreed upon, an application for a tower shall be reviewed by the County and a written decision shall be issued within one-hundred and fifty (150) days of a completed submission, or as otherwise provided by the Code of Virginia.
- (c) Unless some other time frame is mutually agreed upon, an application for co-location shall be reviewed by the County and a written decision shall be issued within ninety (90) days of a completed submission, or as otherwise provided by the Code of Virginia
- (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 or mutually agreed upon.
- (e) If the County disapproves an application it must provide the applicant with a written statement of the reasons or disapproval. 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 indemnify them in the written statement provided. The written statement must contain substantial recorded evidence and be publicly released within thirty (30) days of the decision, or as otherwise provided in the Code of Virginia.

**Sec. 22-93. Reporting Requirements.**

- (a) Requirement for Engineer's Structural Report Prior to Issuing Building Permit
  - 1. Except where the provisions of an approved Conditional Use Permit or other government regulation restricts the tower height, or where a stealth design is used, an engineering report, certifying that the proposed tower is compatible for co-location with a minimum of four (4) users, including the primary user, must be submitted. If the tower height is restricted, or a stealth design is used and the tower cannot accommodate four (4) facilities, then a report must be submitted that describes the design limitations for co-location.
- (b) Annual Reporting
  - 1. For each wireless telecommunications facility, except wireless telecommunications facilities deemed to be an eligible facility in existence prior to the original enactment of this article, the property owner on which a facility is

located shall be responsible for ensuring a report is submitted to the Zoning Administrator once a year, no later than June 30, starting, at minimum, the following:

- i. Name, address, telephone numbers, and email addresses of the property owner and, if applicable, the owner of the support structure.
- ii. The support structure's (including alternative support structures) location (latitude and longitude), street address, heights; and structure type.
- iii. The current user status of the facility including the name and contact information of each active tenant/wireless service provider leasing space from the site. If vacant/collocation space is available, the report shall indicate such information and explain the facility's available accommodations.
- iv. An explanation or listing of each tenant's/wireless equipment identifying at least the type, and number of all antennae, equipment cabinets, and any other supporting equipment. The location of such equipment shall also be described or illustrated.

(c) Change of Ownership

1. The applicant shall notify the County in writing within thirty (30) days of the sale or the change in ownership or operator of the owner of the tower.
2. The applicant shall require the new tower owner or operator to certify in writing that it agrees to abide by the conditions and requirements set forth by the County in the approved Conditional Use Permit within thirty (30) days of the sale or change in ownership.

**Sec. 22-94. Interference with Public Safety Communications.**

In order to facilitate the regulation, placement, and construction of antenna, and to ensure that all parties area complying to the fullest extent possible with the rules, regulations, and/or guidelines of the FCC, each owner of an antenna, antenna array or application for a colocation shall agree in a written statement to the following:

- (a) Compliance with "Good Engineering Practices" as defined by the FCC in its rules and regulations.
- (b) Compliance with FCC regulations regarding susceptibility to radio frequency (RF) interference, frequency coordination requirements, general technical standards for power, antenna, bandwidth limitations, frequency stability, transmitter measurements, operating requirements, and any and all other federal statutory and regulatory requirements relating to radio frequency interference (RFI).
- (c) In the case of an application for collocated telecommunications facilities, the applicant, together with the owner of the subject site, shall use their best efforts to provide a composite analysis of all users of the site to determine that the applicant's proposed facilities will not cause radio frequency interference (RFI) with the County's public safety telecommunications equipment and will implement appropriate technical measures, as described in antenna element replacements, to attempt to prevent such interference.
- (d) Whenever the County has encountered radio frequency interference (RFI) with its public safety telecommunications equipment, and it believes that such interference has been or is being caused by one (1) or more antenna arrays, the following steps shall be taken:

1. The County shall provide notification to all wireless service providers operating in the County of possible interference with the public safety telecommunications equipment, and upon such notifications, the owners shall use their best efforts to cooperate and coordinate with the County and among themselves to investigate and mitigate the interference, if any, utilizing the procedures set forth in the joint wireless industry-public safety “Best Practices Guide,” released by the FCC in February 2001, including the “Good Engineering Practices” as may be amended or revised by the FCC from time to time.
2. If any equipment owner fails to cooperate with the County in complying with the owner’s obligations under this section or if the FCC makes a determination of radio frequency interference with the County public safety telecommunication equipment, the owner who failed to cooperate and/or the owner of the equipment which caused the interference shall be responsible, upon FCC determination of radio frequency interference (RFI), for reimbursing the County for all costs associated with ascertaining and resolving the interference, including but not limited to any engineering studies obtained by the County to determine the source of the interference. For the purposes of this subsection, failure to cooperate shall include failure to initiate any response or action as described in the “Best Practices Guide” within twenty-four (24) hours of County’s notification.

**Sec. 22-95. Small Cell Facility.**

- (a) A wireless facility is considered a small cell facility if it meets the following criteria:
  1. Each of the facility's antennas are located inside an enclosure of no more than six (6) cubic feet in volume, or, in the case of antennas that have exposed elements, the antennas and all of the facility's exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet.
  2. All other wireless equipment associated with the facility have a cumulative volume of no more than twenty-eight (28) cubic feet, or a higher limit as if permitted by the Federal Communications Commission.
  3. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunication 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.
- (b) Small cell facilities are permitted by right in all zoning districts subject to the following standards:
  1. The small cell facility is installed by a wireless services provider on an existing structure.
  2. The wireless services provider or wireless infrastructure provider has obtained permission from the owner of the existing structure to co-locate the small cell facility on the existing structure and to co-locate the associated transmission equipment on or proximate to the existing structure.
  3. A building permit is approved.
- (c) Wireless facilities which do not meet the criteria to be deemed a small cell facility are subject to the regulations for telecommunication facilities.
- (d) A wireless services provider or wireless infrastructure provider may submit up to thirty-



five (35) permit requests for small cell facilities on a single application. Permit application fees are stated in the County fee schedule adopted as an appendix to this code.

- (e) Permit applications for small cell facilities will be reviewed and approved as follows:
1. Permit applications for the installation of small cell facilities will be approved or disapproved within sixty (60) days of receipt of the complete application. The sixty (60) day period may be extended by staff upon written notification to the applicant, for a period not to exceed an additional thirty (30) days.
  2. Within ten (10) days of receipt of an application and a valid electronic mail address for the applicant, the applicant will be sent an electronic mail notification if the application is incomplete. If the application is determined to be incomplete, the notification will specify the missing information which needs to be included in a resubmission in order to complete the application.
  3. Any disapproval of the application will be in writing and accompanied by an explanation for the disapproval. The disapproval may be based only on any of the following reasons:
    - i. 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.
    - ii. Public safety or other critical public service needs.
    - iii. If the installation is to be located on or in publicly owned or publicly controlled property, aesthetic impact, or the absence of all required approvals from all departments, authorities, and agencies with jurisdiction over such property. If the installation is to be located on a privately owned structure and the applicant does not provide an agreement from the owner of the structure.

**Sec. 22-96. Recertification of a Conditional Use Permit for Wireless Telecommunications Facilities.**

- (a) At any time between twelve (12) and six (6) months prior to the five (5) year anniversary date after the effective date of the Conditional Use Permit and all subsequent fifth anniversaries of the effective date of the original Conditional Use Permit for wireless telecommunications facilities shall submit a signed written request to the Board for recertification. In the written request for recertification, the holder of such Conditional Use Permit for such wireless telecommunication facilities shall submit a signed written request to the Board for recertification. In the written request for recertification, the holder of such Conditional Use Permit shall note the following;
1. The name of the holder of the Conditional Use Permit for the wireless telecommunications facilities.
  2. If applicable, the number or title of the Conditional Use Permit.
  3. The date of the original granting of the Conditional Use Permit.
  4. Whether the wireless telecommunications facilities have been moved, re-located, rebuilt, or otherwise modified since the issuance of the Conditional Use Permit, and if so, in what manner.
  5. If the wireless telecommunications facilities have been moved, re-located,

rebuilt, or otherwise modified, then whether the Board approved such action, and under what terms and conditions, and whether those terms and conditions were complied with.

6. Any requests for waivers or relief of any kind whatsoever from the requirements of this article and any requirements for a Conditional Use Permit.
  7. That the wireless telecommunications facilities are in compliance with the Conditional Use Permit and compliance with all applicable codes, ordinances, rules, and regulations.
  8. Recertification that the telecommunication tower and attachments both are designed and constructed (“as built”) and continue to meet all local, County, commonwealth, and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a qualified Virginia licensed professional engineer, the cost of which shall be borne by the applicant.
- (b) If, after such review, the Board determines that the permitted wireless telecommunications facilities are in compliance with the Conditional Use Permit and all applicable statutes, laws, local ordinances, codes, rules, and regulations, then the Board shall issue a recertification Conditional Use Permit for the wireless telecommunications facilities, which may include any new provisions or conditions that are mutually agreed upon, or required by applicable statutes, laws, local ordinances, codes, rules, and regulations. If, after such review, the Board determines that the permitted wireless telecommunications facilities are not in compliance with the Conditional Use Permit and all applicable statutes, laws, ordinances, codes, rules, and regulations, then the Board may refuse to issue a recertification Conditional Use Permit for the wireless telecommunications facilities, and in such event, such wireless telecommunications facilities shall not be used after the date the applicant receives written notice of such decision by the board. Any such decision shall be in writing and supported by substantial evidence contained in a written record.
- (c) If the applicant has submitted all of the information requested by the Board and required by this article, and if the Board does not complete its review, as noted in subsection (b) of this section, prior to the five (5) year-anniversary date of the Conditional Use Permit, or subsequent fifth anniversaries, then the applicant for the permitted wireless telecommunications facilities shall receive an extension of the special use permit for up to six (6) months, in order for the Board to complete its review.
- (d) If the holder of a Conditional Use Permit for wireless telecommunications facilities does not submit a request for recertification of such Conditional Use Permit within the timeframe noted in subsection (a) of this section, then such Conditional Use Permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Conditional Use Permit or subsequent fifth anniversaries, unless the holder of the Conditional Use Permit adequately demonstrates to the Board that extenuating circumstances prevented a timely recertification request. If the Board agrees that there were legitimately extenuating circumstances, then the holder of the Conditional Use Permit may submit a late recertification request or application for new Conditional Use Permit.

**Sec. 22-97. Removal.**

Any tower that is not in active use for a continuous period of twenty-four (24) months shall be considered abandoned, and the owner of any such tower, the landowners of the property on which a tower is located upon or their successors or assigns shall remove the tower within ninety (90) days of receipt of notice from the County. Removal includes the removal of the tower, all tower and fence footers, underground cables, and support buildings. The Zoning Administrator may permit the fence footers, underground dales, and support buildings to remain with the property owner's approval so long as they continue to be screened as required. When a tower is deemed to be abandoned, an owner wishing to extend the time for removal shall submit an application stating the reason for such extension. The Zoning Administrator may extend the time for removal or reactivation up to sixty (60) additional days upon a showing of good cause. If the antenna support structure or antenna is not removed within the specified time, the County may contract for removal. Thereafter, the County may cause removal of the antenna support. All costs thereof shall be charged to the landowner and become a lien on the property on which the tower is located.

**Sec. 22-98. Expiration of Conditional Use Permit.**

An approved Conditional Use Permit for wireless telecommunications facilities shall become null and void if no application for a building permit to construct the authorized improvements has been submitted within twenty-four (24) months of the date of approval by the Board in accordance with Virginia Code §15.2-2316.4:2, as may be amended.

**Sec. 22-98. Authority-**

This article is adopted pursuant to the authority granted by the Code of Virginia, Title 15.2, Chapter 22, Art. 7.2.