

Handout Regarding Proposed Zoning Ordinance Amendment—Wireless Telecommunications

Overview: In anticipation of 5G technology and in response to changes in state law and a recent Federal Communications Commission (FCC) ruling, Fairfax County must decide how to amend sections of the Zoning Ordinance related to small wireless facilities and their support structures.

Changes in Virginia Law: Effective July 2018, the Virginia General Assembly adopted new wireless telecommunications infrastructure legislation (House Bill 1258 and Senate Bill 405) that:

- Defines an administrative review-eligible project as the installation or construction of a new structure that is not more than 50 feet in height and meets other applicable criteria or the co-location on any existing structure of a wireless facility that is not a small cell facility.¹
- Prohibits localities from requiring special exception approval for new structures 50 feet or shorter except in historic districts and on private property, but allows localities to require the issuance of zoning permits for such projects.
- Limits the following: application fees, review time for applications, information that localities may request from applicants, and grounds for disapproval.
- Eliminates the need for zoning approval for routine maintenance or for replacement of wireless facilities or their support structures, within a 6-foot perimeter, with wireless facilities or support structures that are substantially similar, the same size, or smaller.
- Allows limits on the number of new structures and wireless facilities in a specific location.

FCC Ruling: Effective January 14, 2019, it:

- Defines small wireless facilities (SWFs) as facilities mounted on structures 50 feet or less in height including their antennas.
- Imposes new deadlines for processing SWF applications.
- Creates a 3-part test for aesthetics, minimum spacing, and undergrounding requirements related to SWFs. Requirements must be (1) reasonable, (2) no more burdensome than requirements for other infrastructure deployments, and (3) objective and published in advance.
- Establishes a new standard for what should be considered a prohibition or effective prohibition on service. This standard prohibits localities from implementing legal requirements that **materially inhibit** an applicant (wireless service provider) from participating in activities related to (1) filling a coverage gap, (2) increasing the density of a wireless network, (3) introducing new services or (4) otherwise improving existing service.
- Localities must adopt aesthetic requirements, if at all, by **APRIL 15, 2019.**

OPTIONS

OPTION 1:

Exempt all new utility and distribution poles (“poles”) and their associated facilities up to 50 feet in height from the Zoning Ordinance, except for any building permits or zoning permits required for the facilities on the poles.

BENEFITS	CHALLENGES
A. Reduced local regulatory burden (through deference to State and Federal guidelines). B. Decreased expenditure of local government resources.	A. Possible proliferation of poles. B. Eliminates consideration of community impacts, including aesthetics.

¹ Virginia uses the term “small cell facility,” but the FCC uses “small wireless facility.” Both will be referenced here as SWFs.

C. Decreased possibility of legal challenge.	
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OPTION 2:

1. Exempt poles and their associated facilities up to 50 feet in height if they are located within the street or a utility easement; EXCEPT
2. Historic Districts/Private Property
 - a. Administrative Review: Any new pole and supporting structure up to 50 feet in height on private property or in a historic district will be subject to administrative review by Zoning Administrator, but in historic districts they will also be reviewed by the Architectural Review Board (ARB) with specific criteria; OR
 - b. Board Review: Any such new pole will require a special exception for historic district or private property, but review must be done in 90 days with limited grounds for denial.

BENEFITS	CHALLENGES
A. County regulation only of poles outside any street or utility easement (otherwise, deference to State and Federal guidelines). B. Clear standards for historic districts published in advance. C. Decreased expenditure of local government resources. D. Decreased possibility of legal challenge.	A. Short deadlines for review of poles in historic districts. B. Illusion of special exception approval authority but legally constrained scope of review. C. Reduces consideration of community impacts, including aesthetics.

OPTION 3:²

Create standards for all new poles and their associated facilities and ground mounted equipment including

1. Wires, cables, and equipment on poles: new proposed size and aesthetic regulations.
2. Ground-mounted Equipment may have maximum equipment size 100–750 square feet of gross floor area and 8–12 feet in height.
3. Minimum Spacing Options
 - a. Minimum spacing between poles can be within 0–500 feet, OR
 - b. Option not to adopt provision.
4. Undergrounding Options
 - a. Zoning Administrator will/may disapprove all applications for poles/utility support structures in areas planned for undergrounding³, OR
 - b. Option not to adopt provision.
5. Historic District Options
 - a. Any new structure proposed in a historic district is subject to ARB review, OR
 - b. Option not to adopt provision.

BENEFITS	CHALLENGES
A. Clear guidelines. B. Consideration of community interests, including aesthetics.	A. Unknown implications for structures that were not previously regulated. B. Unclear FCC Ruling regarding permissible restrictions.

² Newly added Section 2-522 will set out all new standards for poles including their wiring, cables and conduits that were not previously subject to the Zoning Ordinance. The Amendment will also include changes in Zoning Ordinance Sections 2-104, 2-514, 2-519, and 2-523 of Article 2 and portions of Articles 3, 4, 5, 7, 9, and 20.

³ There may be situations where the Zoning Administrator has to approve a new pole if there are no other viable options.

<p>C. Objective and inclusive standards, applicable to all similar infrastructure.</p> <p>D. Advance publication.</p>	<p>C. Increased expenditure of local government resources due to increased administration and processing.</p> <p>D. Increased pressure to meet required short deadlines for review.</p>
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