

MEMORANDUM

DATE: July 14, 2020

TO: The Board of Supervisors

FROM: Tom Leininger, Planner

SUBJECT: Case No. ORD-20-0008. Proposed Ordinance and Policy Amendments to Address Code of Virginia Changes Regarding Wireless Communication Facilities

In 2017 and 2018, the General Assembly passed legislation requiring changes to how local Zoning Ordinances process applications for wireless communications facilities. Those State Code changes, combined with recent Federal Communications Commission (FCC) decisions regarding facilities intended to support the deployment of 5G technology, continue to erode local zoning authority. To keep James City County Ordinances in conformance with state and federal requirements, staff has worked with the County Attorney's Office to ensure the attached proposed revisions fully comply with state and federal requirements.

The 2035 Comprehensive Plan lends support to these Ordinance amendments through goals, strategies, and actions in the Community Character Section. Action No. 7.1 from the Community Character chapter which 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."

Per the new federal and state regulations, staff proposes a series of updates to Division 6 - Communication Facilities including changing the title of Section 24-122(a) to "antenna application types" instead of "antenna mounting." The new text provides five different applications under which a wireless facility could be reviewed. The *Standard Process Projects* are the wireless facilities that already exist in the Zoning Ordinance and have limited revisions to their sections. Two additional application types have been added to the Ordinance, small cell facilities, and administrative review-eligible projects (AREP). These projects have specific criteria that set them apart from the *Standard Process Projects*. Both the small cell and the AREP applications are permitted in all zoning districts, as required by State Code.

These applications consist of the following:

- Small Cell Facilities: A communication facility to be installed on an existing structure that meets a specific size requirement as defined in the Definitions section.
- AREP: The installation of a new structure not more than 50 feet above the ground level, provided that the structure with attached communication facilities meets the requirements defined in the Definitions section. Additionally, AREPs can be co-located on any existing structure of a communications facility that is not a small cell facility.

As shown in Attachment No. 1, staff also proposed revisions to Sections 24-121 through 24-128.1 in Division 6 to align with the requirements of State Code. The revisions include specific criteria for each of the application types as part of the submittal requirements, public safety considerations to comply with the FCC, fee requirements for small cell and AREP applications, and staff review timelines for specific applications.

To ensure all districts aligned with new requirements of State Code, each Zoning District Use List was amended to ensure that the application types have the correct process according to new State Code and FCC regulations (Attachment No. 1). The Use List descriptions were simplified to affirm Division 6 as the one-stop reference for applicable processes and regulations.

Staff also proposes revised Ordinance language to Section 24-2 - Definitions to ensure that the Zoning Ordinance complies with State Code. As shown in Attachment No. 1, the draft language has revised the Definitions section to incorporate new terms and also redefined terms to better align with State Code.

Additionally, staff proposes changes to the policy titled “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 (Attachment No. 4). The amendments to the policy include removing text that is covered by the Zoning Ordinance and removing text referencing items that are now prohibited by State Code.

The County’s legal consultant also reviewed the draft Ordinance and definition changes for consistency with the State Code and FCC regulations. That review produced additional minor edits clarifying the timelines for application reviews in Section 24-128(c) and added additional definitions. Other than these minor adjustments, which have been incorporated in the attached text, the legal consultant review indicated the proposed Ordinance conforms with current state and federal regulations.

On June 10, 2020, the FCC released Declaratory Ruling FCC 20-75, which clarified the FCC’s interpretation of certain regulatory language related to eligible facilities requests. Although the Declaratory Ruling will impact staff’s implementation of the Ordinance, no additional amendments to the language of the proposed Ordinance are necessary.

RECOMMENDATION

At its June 3, 2020 meeting, the Planning Commission voted 6-1 to recommend approval of the attached Ordinance amendments and policy to the Board of Supervisors. Staff recommends that the Board of Supervisors approve the attached Ordinance and policy.

TL/nb
Ord20-08AmndWCF-mem

Attachments:

1. Ordinance - Strikethrough version
2. Resolution - Performance Standards for CATS Policy
3. Ordinance - Clean version
4. Performance Standards for CATS Policy - Strikethrough version
5. Performance Standards for CATS Policy - Clean
6. Wireless Communication Facilities Va. Code §§ 15.2-2316.3-2316.5
7. Unapproved Minutes of the June 3, 2020, Planning Commission Meeting