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
December 13, 2018
4:00 PM

A. CALL TO ORDER

B. ROLL CALL

C. MINUTES

1. November 8, 2018 Meeting Minutes

D. OLD BUSINESS

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

E. NEW BUSINESS

1. Proposed Ordinance Amendments to Address Protections for the Public Water Supply and Areas of Public Health and Water Quality Sensitivity
2. Proposed Ordinance Amendments to Address Code of Virginia Changes Regarding Wireless Communication Facilities
3. Preparation for Review of the County's 2015 Adopted Comprehensive Plan

F. ADJOURNMENT

AGENDA ITEM NO. C.1.

ITEM SUMMARY

DATE: 12/13/2018

TO: The Policy Committee

FROM: Paul D. Holt, III, Secretary

SUBJECT: November 8, 2018 Meeting Minutes

ATTACHMENTS:

	Description	Type
🗋	Minutes of the November 8, 2018 Meeting	Cover Memo

REVIEWERS:

Department	Reviewer	Action	Date
Policy	Rosario, Tammy	Approved	12/7/2018 - 11:21 AM
Policy	Holt, Paul	Approved	12/7/2018 - 11:49 AM
Publication Management	Daniel, Martha	Approved	12/7/2018 - 12:02 PM
Policy Secretary	Secretary, Policy	Approved	12/7/2018 - 2:13 PM

M I N U T E S
JAMES CITY COUNTY POLICY COMMITTEE
REGULAR MEETING
Building A Large Conference Room
101 Mounts Bay Road, Williamsburg, VA 23185
November 8, 2018
4:00 PM

A. CALL TO ORDER

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

B. ROLL CALL

Present:
Jack Haldeman, Chair
Rich Krapf
Julia Leverenz
Tim O'Connor

Absent:
Heath Richardson

Staff:
Christy Parrish, Zoning Administrator
Louis Pancotti, Zoning Officer
John Risinger, Community Development Assistant
Katie Pelletier, Community Development Assistant

C. MINUTES

1. October 11, 2018 Meeting Minutes

Mr. Tim O'Connor made a motion to approve the October 11, 2018, meeting minutes.

The motion passed 2-0-2, with Mr. Haldeman and Mr. Rich Krapf abstaining as they were not present at the meeting.

D. OLD BUSINESS

There was no old business.

E. NEW BUSINESS

1. Consideration of Zoning Ordinance Amendment to Authorize the Board of Zoning Appeals to Grant a Reasonable Modification in Accordance with the Americans with Disabilities Act or State and Federal Fair Housing Laws, as Applicable

Mr. Haldeman opened the discussion.

Mr. Louis Pancotti stated that amendments were made to Section 15.2-2309 of the Code of Virginia. He stated that the amendments allow the Board of Zoning Appeals (BZA) to alleviate a hardship by granting a reasonable modification to a property or improvement thereon

requested by, or on behalf of, a person with a disability in accordance with the Americans with Disabilities Act or state and federal fair housing laws. He stated that staff recommends that Section 24-650 of the Zoning Ordinance be amended to reflect the changes. He stated that this section gives the BZA the criteria to use when reviewing variances. He stated that the County Attorney's office recommended that Section 24-650(2)a. be amended to state, "A variance shall be granted only in accordance with Va. Code § 15.2-2309." He stated that this change would alleviate the need for future amendments stemming from Code of Virginia changes. He stated that the BZA is only empowered to act in accordance with the criteria prescribed by the statute.

Ms. Julia Leverenz stated that the word "with" needed to be inserted in the draft Ordinance language.

Mr. Haldeman asked if the amendment provides authority but not the obligation for the BZA to grant a reasonable modification. He asked if the Code of Virginia amendment permits but does not require variances.

Ms. Christy Parrish confirmed. She stated the BZA is not obligated to grant a variance. She stated the BZA has to view a hardship for the case to grant a variance.

Ms. Leverenz asked if the proposed Ordinance would not need to be amended for future changes to the Code of Virginia.

Ms. Parrish confirmed.

Mr. Krapf stated that the amendment was a great solution.

Mr. Haldeman made a motion to approve the draft amendment. The amendment passed 4-0.

F. ADJOURNMENT

Mr. O'Connor made a motion to adjourn. The motion passed 4-0.

Mr. Haldeman adjourned the meeting at approximately 4:10 p.m.

Mr Jack Haldeman, Chair

Mr. Paul Holt, Secretary

AGENDA ITEM NO. D.1.

ITEM SUMMARY

DATE: 12/13/2018

TO: The Policy Committee

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

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

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ATTACHMENTS:

	Description	Type
🗋	Memorandum	Cover Memo
🗋	Proposed Revisions to Section 24-23	Backup Material
🗋	Summary of Master Plan Consistency Determinations from the last +/- 5 years	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Policy	Rosario, Tammy	Approved	12/7/2018 - 8:36 AM
Policy	Holt, Paul	Approved	12/7/2018 - 8:37 AM
Publication Management	Daniel, Martha	Approved	12/7/2018 - 9:36 AM
Policy Secretary	Secretary, Policy	Approved	12/7/2018 - 9:38 AM

M E M O R A N D U M

DATE: December 13, 2018

TO: The Policy Committee

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

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

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Currently, Section 24-23 of the Zoning Ordinance states that final development plans may be approved after approval of a master plan by the Board of Supervisors. All final development plans shall be consistent with the master plan, but may deviate from the master plan if the Planning Director concludes that the development plan does not: significantly affect the general location or classification of housing units or buildings; significantly alter the distribution of recreation or open space areas; significantly affect the road layout; or, significantly alter the character of land uses or other features or conflict with any building conditions placed on the corresponding legislatively-approved case.

In the event the Planning Director determines that a proposed change would deviate from the approved master plan, the applicant may appeal the decision to the Development Review Committee.

At its May 22, 2018 work session, the Board of Supervisors asked the Commission to consider limiting the number of residential dwelling units that could be transferred via a master plan consistency determination that is made under Section 24-23 of the Zoning Ordinance.

The Policy Committee discussed this code section and possible revisions on July 10 and August 9. At the request of the Policy Committee, the Board of Supervisors provided input into this matter at its November 27 work session.

In summary, staff understood there to be consensus that final development plans that propose changes in dwelling unit location, dwelling unit counts and/or dwelling unit type versus that shown in the master plan, should be processed as a Master Plan Amendment that includes a public hearing.

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

PDH/md
PZOA-ORD18-13MPln

Attachments:
1. Proposed revisions to Section 24-23 (proposed revisions do not yet contain formatting and grammatical changes for ease of reading)
2. Summary of Master Plan Consistency Determinations from the last +/- 5 years

Sec. 24-23. - Submittal requirements.

(a) The following information shall be submitted with any request for an amendment of this chapter, as provided for in section 24-13, or for any building or use and addition or expansion thereto which requires a special use permit under this chapter, provided however, applications for family subdivisions, manufactured homes and temporary classroom trailers shall be exempt from the requirements of this section.

(1) The community impact statement shall describe the probable effects of the proposed development upon the community and at a minimum shall address the following topics regarding infrastructure and quality of life:

a. A traffic impact analysis for all projects that expect to generate 100 or more weekday peak hour trips to and from the site during the hours of operation and/or those projects with an entrance or exit onto a roadway with a level of service "D" or lower shall be required pursuant to the Traffic Impact Analysis Submittal Requirement Policy. Vehicular access points and drives shall be designed to encourage smooth traffic flow, with controlled turning movements and minimum hazards to vehicular and pedestrian traffic. Buildings, parking areas and drives shall be arranged in a manner that encourages pedestrian access and minimizes traffic movement. No more than one access point on each abutting public street shall be permitted unless specifically approved by the board of supervisors after reviewing the applicant's traffic impact analysis; and

b. A water and sewer impact study for all projects with an anticipated average daily flow greater than 15,500 gallons, and/or for proposed residential projects containing 50 lots or more. Water conservation information shall be submitted in accordance with water conservation guidelines policy; and

c. Environmental information shall be submitted in accordance with the environmental constraints analysis for legislative cases; and

d. An adequate public facilities report in accordance with board of supervisors policy to include sewer, water, schools, fire stations, libraries, and other major locally-financed facilities. School information shall be prepared according to the adequate public school facilities test policy; and

e. Additional on-site and off-site public facilities or services which would be required as a result of the development; and

f. A Phase IA historic and archaeological study if the property is identified as being a highly-sensitive area on the James City County archaeological assessment. If the property is identified as a moderately-sensitive area on the assessment, studies shall be provided in accordance with the currently adopted archaeological policy; and

g. An environmental inventory in accordance with the James City County natural resource policy; and

h. A fiscal impact analysis, using the worksheet and assumptions provided by the planning division, when the proposal includes residential dwelling units. The analysis must estimate revenues to be generated versus the cost of public improvements to be financed by the county or the state using the fiscal impact model prepared by the county. If desired by the applicant supplemental studies may be prepared by an individual or firm qualified to conduct a fiscal impact study in a manner and form acceptable to the planning director; and

i. Parks and recreation information based on parks and recreation master plan proffer guidelines.

(2) The master plan shall depict and bind the approximate boundaries and general location of all principal land uses and their building square footage and height, roads, rights-of-way (with an indication of whether public or private), accesses, open spaces, public uses and other features

to be located on the site for which approval is sought. The planning director may require other features, including general location and approximate boundaries of buildings, structures or parking areas, to be incorporated into the master plan where deemed necessary due to the size of the development, access to or location of public roads, distance from residential areas, presence of environmentally sensitive areas or availability of public utilities. The master plan shall be prepared by a licensed surveyor, engineer, architect, landscape architect or planner. A scale may be used so that the entire parcel can be shown on one piece of paper no larger than 30 inches by 48 inches. The master plan shall also include:

a. An inset map at a scale of not less than one inch to one mile showing the property in relation to surrounding roads, subdivision or major landmarks;

b. A north arrow, scale, the proposed use, approximate development phasing (if applicable);

c. The location of existing property lines, watercourse or lakes, wooded areas and existing roads which are within or adjoining the property;

d. If applicable, a table which shows for each section or area of different uses: the use; approximate development phasing, maximum number of dwelling units and density for residential areas, maximum square feet of floor space for commercial or industrial areas; and maximum acreage of each use;

e. If applicable, schematic plans which shall indicate the phasing of development and master water, sewer and drainage plans; and

f. If more than one type of land uses is proposed, each use shall be designated on the master plan as follows:

Type of Development	**Area Designation**
Single family	**A**
Multi-family dwellings containing up to and including four dwelling units	**B**
Multi-family dwellings containing more than four dwelling units	**C**
Apartments	**D**
Commercial uses	**E**
Wholesale and warehouse uses	**F**
Office uses	**G**
Light industrial uses	**H**
Institutional or public uses	**I**
Areas of common open space, with recreation areas noted	**J**

Structures containing a mixture of uses	**M***
Other structures, facilities or amenities	**X**

***** Areas of a master plan designated M (structures containing a mixture of uses) shall indicate in parentheses, following the M designation, the appropriate letter designations of the types of uses contained within the structure (e.g. M (CG)) in the order of their proportion in the mixed use structure.

A total of 12 copies of the master plan should be submitted along with an application for rezoning or a special use permit; if necessary, additional copies of the master plan may be required for submittal. The master plan shall be reviewed and approved and thereafter become binding upon approval of a rezoning or a special use permit by the board of supervisors. Thereafter, all amendments to the master plan shall be in accordance with section 24-13 of this chapter. Final development plans may be approved after approval of a master plan by the board of supervisors. All final development plans shall be consistent with the master plan, but may deviate from the master plan if the planning director concludes that the development plan does not:

1. ~~Significantly affect the general location or classification of housing units or buildings as shown on the master plan;~~
2. Significantly alter the distribution of recreation or open space areas on the master plan;
3. Significantly affect the road layout as shown on the master plan;
4. Significantly alter the character of land uses or other features or conflict with any building conditions placed on the corresponding legislatively-approved case associated with the master plan.

If the planning director determines that a proposed change would deviate from the approved master plan, the amendment shall be submitted and approved in accordance with section 24-13. In the event the planning director disapproves the amendment, the applicant may appeal the decision of the planning director to the development review committee which shall forward a recommendation to the planning commission.

Any development plan that proposes significant changes in dwelling unit location, dwelling unit counts and/or dwelling unit type over that shown on the adopted Master Plan, shall be submitted and approved in accordance with section 24-13 and such decisions by the Planning Director are not subject to appeal to the DRC.

For additional information regarding master plan submittal requirements refer to the submittal sections for the following zoning districts: R-4, Residential Planned Community; RT, Research and Technology; PUD, Planned Unit Development; MU, Mixed Use; EO, Economic Opportunity; and Residential Cluster Development Overlay District.

(3) Any other submittal requirement which may be required by this chapter.

(4) An application and fee in accordance with section 24-7 of this chapter.

(b) Supplemental information should be submitted in accordance with the "Supplemental Submittal Requirements for Special Use Permits and Rezonings" policy as adopted by the board of supervisors and any additional policies as deemed necessary by the planning director.

(c) In addition to the paper copies of all documents required by this chapter, all information and plans required under (a)(1), (a)(2) or (a)(3) shall be submitted in an electronic format in accordance with the "Electronic Submittal Requirements for Legislative Applications" policy, as approved by the planning commission.

(d) Unless otherwise required by this chapter, upon written request by the applicant, the planning director may waive any requirement under (a)(1) or (a)(2) above after finding that such information would not be germane to the application.

In the R-4 District, Section 24-276(b)(1):

The above designation shall be the highest and densest use to which such land may be put without amending the master plan. ~~However, where the planning director finds the project does not vary the basic concept or character of the planned community and where it does not exceed the maximum density permitted under section 24-279, the planning director may approve final plans for projects with lower densities or a lower category of uses than those shown on the master plan without amending the master plan.~~ Any development plan that proposes significant changes in dwelling unit location, dwelling unit counts and/or dwelling unit type over that shown on the adopted Master Plan, shall be submitted and approved in accordance with section 24-13 and such decisions by the Planning Director are not subject to appeal to the DRC.

In the MU District, Section 24-516 (a) and (b)

Development plans shall be submitted and reviewed in accordance with article III of this chapter or with the county's subdivision ordinance, whichever is applicable. Development plans may be submitted for review after approval of a master plan by the board of supervisors. All development plans shall be consistent with the master plan. Development plans may deviate from the master plan if the planning director concludes that the plan does not significantly alter the character of land uses or other features or conflict with any conditions placed on the approval of rezoning. A conceptual plan may be submitted for this purpose in a form sufficient to illustrate the proposed deviations. If the planning director determines that a proposed change would significantly deviate from the approved master plan, the applicant may submit alternative proposed development plans or proceed with amendment of a master plan in accordance with section 24-13.

Appeals. In the event the planning director disapproves the items specified in section 24-516 (a) or recommends conditions or modifications that are unacceptable to the applicant, the applicant may appeal the decision of the planning director to the development review committee which shall forward a recommendation to the planning commission. Any development plan that proposes significant changes in dwelling unit location, dwelling unit counts and/or dwelling unit type over that shown on the adopted Master Plan, shall be submitted and approved in accordance with section 24-13 and such decisions by the Planning Director are not subject to appeal to the DRC.

Summary of Master Plan Consistency Determination cases reviewed by the Development Review Committee that involve changes in the residential nature of the adopted master plan

1. Case Nos- SP00872012/ S-0047-2012, Village at Candle Station
   March 5, 2013

- Widen the width of the single family lots; revise the layout of the single family homes
- Relocate two, five-unit townhome units to another area on the site
- Relocate a seven-unit townhome unit to another area on the site; provide open space/stormwater BMP in lieu
- Change the layout of the townhome portion of the project to be a more dense area; alleys are more narrow and are longer
- Relocation of ten townhome units to another area on the property
- Changes to the layout of the townhomes
- Eliminate detached garages; all units would now have attached garages
- (Façade architecture for the dwelling units was changed as part of a separate DRC action)

2. CONCEPTUAL PLAN 0041-2015. WindsorMeade, Windsor Hall Facility Addition
   August 26, 2015

   Increase assisting living units by two; decrease dementia units by six; increase skilled nursing units by two.

3. Site Plan 0067-2015. Greensprings Vacation Resort Maintenance Building
   October 28, 2015

   Construction of a 6,500 square foot maintenance facility in an area that is designated as a residential area on the approved Master Plan and approved for timeshare units on approved site plan.

4. CONCEPTUAL PLAN-0065-2016. The Colonies at Williamsburg Pool Addition
   August 31, 2016

   Construction of a swimming pool where the approved master plan shows timeshare units.

5. SITE PLAN-0047-2017. Colonial Heritage Model Home Rentals
   May 24, 2017

   Rental of two existing model home units to prospective purchasers for up to two nights as part of a “Discovery Package” stay.

6. CONCEPTUAL PLAN-0018-2018. Stonehouse Density Transfer 2018
   April 18, 2018

   To build fewer units within Land Bays 1, 3, 8 and 14 and Tract 12, and to build more units in Stonehouse Land Bay 5 than what the current Stonehouse Master Plan designates. The proposal would result in an overall decrease in the number of units.

Summary of Master Plan Consistency Determination cases reviewed by the Development Review Committee that **do not** involve changes in the residential nature of the adopted master plan

1. C0026-2013, Cottage Hill Nursery; 7691 Richmond Road
   May 29, 2013

   The master plan shows this property as a retail store and garden center with outdoor displays and onsite storage. The applicant has proposed using the existing structure as his residence and operating a commercial plant nursery on the property.

2. CONCEPTUAL PLAN-0011-2015. Ford's Colony Maintenance Area Bay Conversion
   March 25, 2015

   Conversion of a storage area in the existing Community Services Building which is located within the Project Maintenance Area on Manchester Drive into a recreational exercise room for the use of Ford's Colony residents.

3. CONCEPTUAL PLAN 0067-2015. Lightfoot Marketplace Building 5
   September 30, 2015

   The applicant for this case proposes a medical office building on the portion of the property which is labeled on the master plan as building 5. As compared with the master plan, the proposed medical office building would be set further to the rear of the site, approximately twenty feet from the western property line. Instead of two rows of parking between the internal roadway system and the building, the concept shows the equivalent of four rows of parking. The concept shows the previously proposed row of parking to the rear of the building being eliminated.

4. SITE PLAN 0049-2015. The Promenade at John Tyler
   September 30, 2015

   The site plan proposes to disturb and replant a portion of the buffer between The Promenade at John Tyler and the Winston Terrace subdivision.

5. SITE PLAN-0071-2015. St. Olaf Catholic Church Building Addition
   November 18, 2015

   Revised architectural elevations and minor changes to the building foot print.

6. CONCEPTUAL PLAN-0008-2016. Williamsburg Indoor Sports Complex (WISC) Aquatic Center
   February 24, 2016

   To build two indoor swimming pools and associated office/locker room facilities. The application also proposes a new parking lot and internal sidewalks and an outdoor patio.

7. CONCEPTUAL PLAN-0037-2016. Natural Resource and Farm Link Center, Community Gardens
   May 25, 2016

   To begin the first phase of a multi-phase project to build a community agricultural resource center at the Warhill Sports Complex. The initial phase proposes an area to be used for community garden plots.

8. CONCEPTUAL PLAN-0058-2017. Norge Food Lion Store
   August 23, 2017

   To build two enclosed dumpsters behind the existing grocery store.

9. SITE PLAN-0130-2017. Berkeley's Green Recreation Area Amendment
   January 24, 2018

   Convert one existing tennis court to a basketball court and convert the existing basketball court to a picnic/recreation area.

10. CONCEPTUAL PLAN-0024-2018, Lightfoot McDonald's Remodel
    April 18, 2018

    Exterior/Interior remodel of the existing McDonald's structure.

11. CONCEPTUAL PLAN-0038-2018. Chickahominy Riverfront Park Improvements
    June 20, 2018

    To build an additional boathouse and to relocate the RV/boat storage.

12. CONCEPTUAL PLAN-0031-2016. Noland Blvd. AutoZone
    September 28, 2016

    Demolition of the existing structure (Handel's Ice Cream) and construction of a 7,381 square-foot store for retail sales of auto parts and accessories.

AGENDA ITEM NO. E.1.

ITEM SUMMARY

DATE: 12/13/2018

TO: The Policy Committee

FROM: Tori Haynes, Planner

SUBJECT: Proposed Ordinance Amendments to Address Protections for the Public Water Supply and Areas of Public Health and Water Quality Sensitivity

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ATTACHMENTS:

	Description	Type
🗋	Memorandum	Cover Memo
🗋	Attachment 1. Initiating Resolution	Resolution
🗋	Attachment 2. Newport News Reservoir Protection Ordinance	Backup Material
🗋	Attachment 3. York County Watershed Management and Protection Area Overlay District	Backup Material
🗋	Attachment 4. Comparison of Newport News and York County Regulations	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Policy	Rosario, Tammy	Approved	12/7/2018 - 8:17 AM
Policy	Holt, Paul	Approved	12/7/2018 - 8:24 AM
Publication Management	Daniel, Martha	Approved	12/7/2018 - 8:33 AM
Policy Secretary	Secretary, Policy	Approved	12/7/2018 - 9:11 AM

M E M O R A N D U M

DATE: December 13, 2018

TO: The Policy Committee

FROM: Tori Haynes, Planner

SUBJECT: Proposed Ordinance Amendments to Address Protections for the Public Water Supply and Areas of Public Health and Water Quality Sensitivity

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At its May 22, 2018 work session, the Board of Supervisors expressed interest in examining and discussing regulations to protect the drinking water supply and areas of public health and water quality sensitivity, and on November 13 the Board adopted the corresponding initiating resolution. At its November 27, 2018 work session, the Board further directed the Planning Commission and staff to develop these regulations within the Special Regulations section of the Zoning Ordinance.

Special regulations represent a text amendment in the Ordinance and can be a useful tool when creating enhanced or additional requirements for particular uses (e.g., uses that sell, distribute or store petroleum-based products of a certain size). Special regulations can also be a useful tool when enhanced or additional requirements are needed within a certain distance of another use or feature (e.g., the regulations would be applicable for uses and features that are within a certain distance of a reservoir or public water supply).

For the Committee's reference, Newport News' Reservoir Protection Ordinance and York County's Watershed Management and Protection Area Overlay District, as well as a comparison chart between the two, are provided as Attachment Nos. 2, 3 and 4. Staff will present Stage I materials for review and Committee feedback at a later date.

TH/md
POAPubWtrSupply-mem

Attachments:
1. Initiating Resolution
2. Newport News Reservoir Protection Ordinance
3. York County Watershed Management and Protection Area Overlay District (see Section 24.1-376)
4. Comparison of Newport News and York County regulations

RESOLUTION

INITIATION OF CONSIDERATION OF AMENDMENTS TO THE ZONING AND SUBDIVISION ORDINANCES TO ADDRESS PROTECTIONS FOR THE PUBLIC WATER SUPPLY AND AREAS OF PUBLIC HEALTH AND WATER QUALITY SENSITIVITY

WHEREAS, the Code of Virginia § 15.2-2286 and County Code § 19-10 and § 24-13 permit the Board of Supervisors of James City County, Virginia (the "Board") to, by resolution, initiate amendments to the regulations of the Subdivision and Zoning Ordinances that the Board finds to be prudent; and

WHEREAS, the 2035 Comprehensive Plan Environment Chapter includes Strategy No. 1 to protect and improve the quality of water in County watersheds, wetlands and waterways; and

WHEREAS, water supply and water quality protection issues are inherently regional in nature and several adjacent localities have adopted regulations addressing these issues; and

WHEREAS, amendments to the Zoning and Subdivision Ordinances are necessary in order to identify and protect the public water supply and areas of public health and water quality sensitivity; and

WHEREAS, the Board is of the opinion that the public necessity, convenience, general welfare and good zoning practice warrant the consideration of amendments to the Zoning and Subdivision Ordinances.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby initiate staff review of the entirety of Chapter 19, Subdivisions, and Chapter 24, Zoning of the James City County Code to amend the Subdivision and Zoning Ordinances, respectively, to address protections for the public water supply and areas of public health and water quality sensitivity. The Planning Commission shall hold at least one public hearing on the consideration of amendment of said Ordinances and shall forward its recommendation thereon to the Board of Supervisors in accordance with the law.

Ruth M. Larson
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows
Deputy Clerk to the Board

	VOTES		
	AYE	NAY	ABSTAIN
MCGLENNON	✓		
ICENHOUR	✓		
SADLER	✓		
HIPPLE	✓		
LARSON	✓		

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of November, 2018.

PublicWaterAmend-res

ARTICLE V. - RESERVOIR PROTECTION

Sec. 42-79. - General.

(a) *Purpose and intent.* The purpose and intent of this article is to protect against and minimize the pollution and degradation of the drinking water supply reservoirs in the City of Newport News resulting from land development in the respective watersheds thereof.

(b) *Applicability.* The provisions of this article shall apply to areas in the city with stormwater runoff that would eventually be deposited into the Skiffe's Creek, Lee Hall, or Harwood's Mill Reservoirs.

(Ord. No. 6233-06, § 1)

Sec. 42-80. - Definitions.

The following words and terms used in this article shall have the following meanings:

Acreage. Any parcel of land described by metes and bounds and not shown on a plat of a recorded subdivision.

Bulk storage. Storage equal to or exceeding six hundred sixty (660) gallons.

Design Criteria Manual. The city's department of engineering Design Criteria Manual, latest revision.

Development. Any construction, external repair, land-disturbing activity, grading, road building, pipe laying, or other activity resulting in a change in the physical character of any parcel of land.

Intermittent stream. A stream or portion of a stream that flows only in direct response to precipitation which is identified as such on the most recent published United States Geological Survey quadrangle map, except that the designation of intermittent may go beyond the limits identified on this map based upon field verification by the department.

Lot. Any piece, parcel or portion of real property created by a subdivision.

Lot of record. A portion of a subdivision identified for the purpose of transfer of ownership or building development on a plat which has been recorded in the office of the clerk of the appropriate court.

Perennial stream. A stream that flows continuously, which is identified as such on the most recently published United States Geological Survey quadrangle map, except that the designation of perennial may go beyond the limits identified on this map based on field verification by the department.

Reservoir. Any public impoundment of surface water used to provide public drinking water for the waterworks system.

Reservoir protection appeals committee. A committee composed of the director, the city attorney and a citizen civil engineer appointed by the city council.

Reservoir protection area. A special purpose area delineated as reservoir watershed drainage areas on maps in the department of engineering.

Runoff control official. The director or his designated representative trained in runoff control who acts as the administrator of this article. The runoff control official shall be vested with all the necessary authority on behalf of the city to administer and enforce the provisions of this article.

Utility. A provider of essential energy or communication services to the general public. This includes but is not limited to: electric, natural gas, water, sewer, and telephone companies.

Watershed. The portion of the city lying within the drainage basin of any reservoir.

(Ord. No. 6233-06, § 1)

Sec. 42-81. - Requirements for development.

(a) *Runoff control permit.* Except as herein expressly provided, it shall be illegal to engage in any development otherwise permitted by law in the watershed of any reservoir until a runoff control permit is issued by the city's runoff control official. It shall thereafter be illegal for anyone to willfully fail to conform to the provisions of said permit in carrying out such development or in operating and maintaining the activities or improvements so developed. Nothing herein shall be construed to prohibit the approval of any subdivision plat where no physical development is to be carried out within any watershed.

(1) Any person applying for a runoff control permit shall submit an application to the runoff control official that includes a runoff control plan prepared by a registered professional engineer with specifications for the temporary and permanent control of surface water runoff sufficient in detail to meet the requirements of this article regarding the quantity and quality of surface runoff. If the runoff control official determines that the natural drainage system is sufficient to contain and decontaminate the runoff created by the development, and that the drainage system is under the control of the applicant and unavailable for future development, a permit may be granted without a specific runoff control plan or further review by staff.

(2) The runoff control official shall review the plans and specifications to ensure that the quality and quantity of surface water runoff will not be detrimental to the water quality of the reservoir. Plans should provide for a diversion/retention system that is equal to or more effective than wet ponds (outlined in the Design Criteria Manual) in containing and removing potential pollutants. Plans should also provide for the complete containment of a spill of any materials stored on the property and long-term maintenance of the system.

(3) In the event that the runoff control official shall determine that the plans and specifications are insufficient in any respect, the runoff control official shall promptly notify the applicant to correct the deficiencies. In addition, the runoff control official may require the submission of such additional data as may be reasonably necessary to carry out a thorough review of the application.

(4) In the event that the plans and specifications submitted are found to be adequate, the runoff control official may require, prior to issuing a permit, a bond with surety or other security satisfactory to the runoff control official sufficient for and conditioned upon completion of the controls specified in such plans and specifications, in the manner and within the time prescribed in such permit.

(5) Failure of the city to act on any permit application within sixty (60) days after all the necessary information has been properly filed with the runoff control official shall constitute approval of the application. The city shall be deemed to have acted whenever written notice of conditional approval, rejection or modification shall have been mailed by the runoff control official to the applicant at the address shown on the application.

(6) In the event of any change in any plan for development, the developer shall submit to the runoff control official any additional data, plans and specifications as may be reasonably necessary to ensure the control of the quantity and quality of any additional surface water runoff occasioned by such change. The

procedure for submission of such additional data shall conform to the original application procedure.

(7) Whenever any development is proposed to be carried out by any person, other than the owner of the land, the responsibility for complying with this article and with all conditions imposed pursuant hereto, including, but not limited to, the maintenance, repair and replacement of any temporary or permanent runoff control measure, shall remain on the property owner.

(8) In the event that a developer wishes to utilize a city-owned and maintained diversion/retention system to ensure that the quality and quantity of surface water runoff will not be detrimental to the water quality of the reservoir, the developer shall submit such request to the runoff control official with plans, specifications and calculations of sufficient detail for the runoff control official to determine if this is a feasible option. The runoff control official will approve or deny the request. Should approval be granted, the developer shall be responsible for a pro rata share of design, construction, maintenance costs and any required bond with surety or other security required by city, and shall enter into an agreement with the city for use of the diversion/retention system consistent with the department's best management practice cost sharing policy.

(b) *Exceptions to permit requirements.* Notwithstanding the provisions of subsection (a) hereof, no runoff control permit shall be required for any of the following activities:

(1) The installation, repair, replacement, enlargement or modification of any water supply intended to serve a total of not more than two (2) dwelling units; and

(2) The interior repair, remodeling or reconstruction of any existing structure.

(c) *Existing uses.* Any exterior modification to a use whether renovation, expansion or reconstruction, which results in an increase in impervious surface, requires a runoff control permit.

(d) *Septic tanks and drain fields.* Notwithstanding the city council's long-term goal to prohibit the installation of new septic tanks and drainage fields in the reservoir protection area, the council nevertheless promulgates the following regulations to permit such new installations in the reservoir protection area in accordance with the conditions prescribed below:

(1) New septic tanks and drainage fields may be installed in acreage or lots of record existing prior to September 13, 1988; provided that in no case shall such installation require use of the buffer zone described in paragraph (f) below; and provided further that the required health department approval is first obtained.

(2) From and after September 13, 1988, septic tanks and drainage fields may be installed in lots of newly created subdivisions provided that such lots are one (1) acre or larger in size; provided that in no case shall such installation require use of the buffer zone described in paragraph (f) below; and provided further that the required health department approval is first obtained.

(3) Properties in which septic systems are installed pursuant to this section must connect to the Newport News public sewer system when such public system is reasonably available. For the purposes of this section, the term "reasonably available" shall mean that a public sewer line to which connections are permitted is within one hundred (100) feet in length in a straight line or one hundred twenty-five (125) feet in length if a connection must be installed which circumvents an obstacle of a permanent nature. The distances are measured from the property line closest to the public sewer line to the public sewer line.

(e) *Prohibited uses.* Notwithstanding the provisions of subsections (b)(1) and (2) hereof, it shall be illegal to do the following activities unless the activity is accessory to a utility and it can be proven to the satisfaction of the runoff control official that adequate measures can be taken to achieve the same degree of water quality with

the acceptable best management practices (outlined in the Design Criteria Manual):

(1) Activities involving the manufacture, bulk storage, or any type of distribution of petroleum, chemical, asphalt products, or any hazardous substances as defined in Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and substances designated under section 311(b)(2)(A) of the Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, as amended in 1977).

(2) Installing a new septic tank and drain field unless otherwise permitted by this article. This does not preclude the maintenance of existing septic tanks or drain fields.

(f) *Buffer zones.* It shall be illegal for any permitted development to occur within two hundred (200) horizontal feet from the center of any perennial stream or from the edge of any city reservoir and within one hundred (100) horizontal feet from the center of any intermittent stream. Crossing of perennial or intermittent streams, by roads, utilities and the like should be limited to the least impactive portion of the stream as verified by the department. Where such crossings are necessary for the development of the site and required by other city regulations, the standards for construction as outlined in the Design Criteria Manual shall apply.

(g) *Waiver option.* The buffer requirement may be reduced to no less than fifty (50) feet when it can be proven to the satisfaction of the runoff control official that the reduction would achieve the same degree of water quality with acceptable best management practices (outlined in the Design Criteria Manual) as with the two hundred- or one hundred-foot buffer. If it is determined a significant hardship exists after the maximum allowable waiver is granted, then the runoff control official may grant, after consultation with the director, an additional parcel waiver. This waiver will only be granted in the case of a proven hardship and would allow single-family development (one detached single-family structure with such accessory structures as are permitted in the city's zoning ordinance) on one-acre minimum lots or lots of record when parcel size is less than one (1) acre and would allow a buffer reduction to a minimum of twenty-five (25) feet. A detail of an acceptable best management practice appears in the Design Criteria Manual.

Under no circumstances will the following uses be permitted within either buffer area:

(1) Septic tanks and drain fields.

(2) Trash containers and dumpsters.

(3) Feed lots or other livestock impoundments.

(4) Any prohibited use as defined in subsection (e) of this section.

(5) Fuel storage in excess of fifty (50) gallons.

(6) No sewage pumping stations or sewage lines unless standards are met as defined in the Design Criteria Manual.

(h) *Reservoir protection appeals committee.* The reservoir protection appeals committee shall be responsible for reviewing and determining either to uphold or overturn decisions rendered by the runoff control official when appealed by a runoff control permit applicant. The reservoir protection appeals committee will also advise the city council on property acquisition for reservoir protection. The responsibilities of the reservoir protection appeals committee are as follows:

(1) Review of the runoff control official's denial of the runoff control permit applicant's request for full or partial "waiver of buffer" as outlined in subsection (g) of this section when review is requested by the applicant;

(2) Review of rejection of an application for a runoff control permit by the runoff control official when

requested by the applicant; and

(3) Review of requests by property owners to have the city purchase partial or whole parcels which are claimed to be a severe hardship consistent with the department's reservoir protection property acquisition policy when requested by the property owner. Recommendations will be made to the city council regarding the purchase of property requests.

(Ord. No. 6233-06, § 1)

Sec. 42-82. - Review standards.

The runoff control official shall prepare guidelines for the calculation of pre- and post-development runoff flow and characteristics, and for the control of such runoff for inclusion in the Design Criteria Manual. These guidelines shall be used to review all applications for runoff control permits submitted pursuant to this article; provided, however, that the runoff control official may approve any alternative runoff control measure which the official finds provides runoff control in accordance with standards that are set out in the guidelines. Nothing herein shall be construed to require the approval of any application or part thereof which is found by the runoff control official to pose a danger to the public health, safety and general welfare, or to deviate from sound engineering practices.

(Ord. No. 6233-06, § 1)

Sec. 42-83. - Inspections and enforcement.

(a) The runoff control official and his designated agents shall have the right to enter upon the property subject to this article at all reasonable times for the purposes of monitoring surface water runoff and of making inspections and investigations relating to compliance with the provisions of this article. The property owner shall permit access to all runoff control structures to facilitate said inspections.

(b) In the event a person fails to comply with the specifications of any permit previously issued, he shall be notified by the runoff control official to comply with the provisions of said permit. Any person failing to comply within the time specified shall be subject to the revocation of any runoff control permit previously issued and, in addition, be deemed in violation of this article.

(c) Any required runoff control structure or system shall be constructed in accordance with standards outlined in the Design Criteria Manual. The runoff control official may require a bond or other security for the maintenance of any permanent runoff control measure.

(Ord. No. 6233-06, § 1)

Sec. 42-84. - Violation; punishment.

(a) Any person violating the provisions of this article shall, upon conviction thereof, be guilty of a misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). Each day's violation shall constitute a separate offense.

(b) Revocation of the runoff control permit shall also result in the revocation of the certificate of use and occupancy for such development.

(Ord. No. 6233-06, § 1)

Secs. 42-85—42-89. - Reserved.

of the business shall be considered “outdoor storage” and shall be screened/buffered from view from public rights-of-way. This shall not be deemed to require screening of vehicles stopped temporarily for delivery/pick-up or loading/unloading. Outdoor display areas shall not encroach into any required front yard landscape area.

(12) Parking areas shall have ten percent (10%) of their surface areas in landscaped islands. Surface parking within forty-five feet (45') of a public road right-of-way shall be screened from direct view from the public road by shrubbery and earthforms.

(13) Site landscaping shall be designed to blend the architecture of the structures on the site with the natural landscape and character of the surroundings.

(14) Compliance with the provisions of this subsection shall be evidenced by the submission to the zoning administrator of the following plans and information, in addition to complying with all applicable provisions of the subdivision ordinance or article V of this chapter:

a. Comprehensive sign plan including design, materials, and colors to be utilized.

b. Architect's or artist's rendering of all proposed structures depicting the front, side and rear elevations including architectural treatment of all structural exteriors to be visible from an external roadway, including building materials and colors to be utilized.

c. Rendering of the landscape treatment in perspective view depicting parking areas visible from public road. If appropriate, this rendering may be combined with the one in subparagraph b. above.

d. The location and design of all proposed exterior site lighting within the proposed development.

e. Photographs or drawings of neighboring uses and architectural styles.

(g) *Appeals.* In the event the zoning administrator disapproves plans submitted under the provisions of this section or recommends conditions or modifications which are unacceptable to the applicant may request that such plans shall be forwarded to the planning commission for review and action at a public meeting at which the applicant shall have an opportunity to present its case and reasons for appeal. The plans shall be approved by the planning commission if it finds such plans to be in accordance with all applicable ordinances and consistent with the intent of protecting the aesthetic and visual character of the district. If the planning commission finds that such plans do not meet the above stated criteria, it shall deny approval of the plans or shall approve them with reasonable conditions which implement the intent of this district. This section shall not be interpreted to confer upon the planning commission any right to override the decision of the zoning administrator on any issue not directly related to the specific additional requirements of this section. In any case in which an applicant is dissatisfied with a decision of the planning commission, the applicant may appeal the decision to the board of supervisors within thirty (30) days by filing a notice of appeal with the clerk of the board of supervisors. Said appeal shall be reviewed by the board of supervisors at a public meeting at which the applicant shall have an opportunity to present its case and reasons for appeal. In accordance with the terms of section 15.2-2306 of the Code of Virginia, the applicant shall be entitled to appeal the decision of the board of supervisors to the circuit court within thirty (30) days of the board’s decision.

(Ord. O98-22, 11/4/98; Ord. No. 05-13(R), 5/17/05; Ord. No. 08-17(R), 3/17/09; Ord. No. 10-24, 12/21/10)

Sec. 24.1-376. WMP-Watershed management and protection area overlay district.

(a) *Statement of intent*. In accordance with the objectives of the comprehensive plan, the Watershed Management and Protection Area Overlay regulations are intended to ensure the protection of watersheds surrounding current or potential public water supply reservoirs. The establishment of these regulations is intended to prevent the causes of degradation of the water supply reservoir as a result of the operation or the accidental malfunctioning of the use of land or its appurtenances within the drainage area of such water sources.

(b) *Applicability*. The special provisions established in this section shall apply to the following areas:

(1) Areas designated on the Watershed management and protection area overlay district map, dated September 12, 2008, and made a part of this chapter by reference. (See Map III-2 in Appendix A)

(2) Such other areas as may be determined by the zoning administrator through drainage, groundwater and soils analyses conducted by the department of environmental and development services to be essential to protection of such existing or potential reservoirs from the effects of pollution or sedimentation.

(c) For the purposes of this section, the following terms shall have the following meanings:

Bulk storage. Storage equal to or exceeding 660 gallons in a single above-ground container

Development. Any construction, external repair, land disturbing activity, grading, road building, pipe laying, or other activity resulting in a change in the physical character of any parcel or land.

Reservoir. Any impoundment of surface waters designed to provide drinking water to the public.

Tributary stream. Any perennial or intermittent stream, including any lake, pond or other body of water formed therefrom, flowing either directly or indirectly into any reservoir. Intermittent streams shall be those identified as such on the most recently published United States Geological Survey Quadrangle Map, or the Soil Conservation Service *Soil Survey of James City and York Counties and the City of Williamsburg, Virginia*, or as determined and verified upon field investigation approved by the zoning administrator.

Watershed. Any area lying within the drainage basin of any reservoir.

(d) *Use regulations*. Permitted uses, special permit uses, accessory uses, dimensional standards and special requirements shall be as established by the underlying zoning district, unless specifically modified by the requirements set forth herein.

The following uses shall be specifically prohibited within the WMP areas:

(1) Storage or production of hazardous wastes as defined in either or both of the following:

a. Superfund Amendment and Reauthorization Act of 1986; and

b. Identification and Listing of Hazardous Wastes, 40 C.F.R. §261 (1987).

(2) Land applications of industrial wastes.

(e) *Special requirements*.

(1) Except in the case of property proposed for construction of an individual single-family residential dwelling unit, any development proposal, including the subdivision of land, in WMP areas shall be accompanied by an impact study prepared in accordance with the requirements set forth in subsection (f) below.

(2) A two hundred foot (200') wide buffer strip shall be maintained along the edge of any tributary stream or reservoir. The required setback distance shall be measured from the centerline of such tributary stream and from the mean high water level of such reservoir. Such buffer strip shall be maintained in its natural state or shall be planted with an erosion resistant vegetative cover. In the case of tributary streams located upstream from a stormwater management facility designed to provide water quality protection, no buffer shall be required if such facility has been designed to accommodate and manage the quality of runoff from the subject site.

The zoning administrator may authorize a reduction in the two hundred foot (200') wide buffer down to an absolute minimum of fifty feet (50') upon presentation of an impact study, as defined herein, which provides documentation and justification, to the satisfaction of the zoning administrator, that even with the reduction, the same or a greater degree of water quality pro-

tection would be afforded as would be with the full-width buffer. In granting such authorization, the zoning administrator may require such additional erosion control and runoff control measures as deemed necessary.

Except as provided below, all development shall be located outside of the required buffer strip.

a. The buffer strip requirement shall not apply to development which is appurtenant to the production, supply, distribution or storage of water by a public water supplier.

b. Encroachment into or through the required buffer by roads, main-line utilities, or stormwater management structures may be permitted by the zoning administrator provided the following performance standards are met:

1. Road and main-line utility crossings will be limited to the shortest path possible and that which causes the least amount of land disturbance and alteration to the hydrology of the watershed.

2. Stormwater management facilities located within the buffer must be designed to be a part of a watershed stormwater management program.

3. No more land shall be disturbed than is necessary.

4. Indigenous vegetation shall be preserved to the maximum extent possible.

5. Wherever possible, disturbed areas shall be planted with trees and shrubs.

6. The post-development non-point source pollutant loading rate shall be no greater than ninety percent (90%) of the pre-development pollutant loading rate.

7. Non-essential elements of the road or utility project, as determined by the zoning administrator, shall be excluded from the buffer.

c. When the property where an encroachment is proposed is owned by the entity owning and operating the water supply reservoir being protected, and such entity specifically and in writing authorizes and approves the encroachment, it shall be allowed.

(3) In the case of permitted non-residential uses within the WMP areas, performance assurances shall be provided to guarantee that all runoff control and reservoir protection measures proposed in the impact study shall be constructed, operated and maintained so as to meet the performance criteria set forth in the study. The form of agreement and type of letter of credit or other surety shall be approved by the county attorney. The amount of the letter of credit or other surety and designated length of completion time shall be set by the zoning administrator.

(4) The following uses shall not be permitted within the buffer strip required above or within five hundred feet (500') of the required buffer strip:

a. septic tanks and drainfields;

b. feed lots or other livestock impoundments;

c. trash containers and dumpsters which are not under roof or which are located so that leachate from the receptacle could escape unfiltered and untreated;

d. fuel storage in excess of fifty (50) gallons [200L];

e. sanitary landfills;

f. activities involving the manufacture, bulk storage or any type of distribution of petroleum, chemical or asphalt products or any materials hazardous to a water supply (as defined in the *Hazardous Materials Spills Emergency Handbook*, American Waterworks Association, 1975, as revised) including specifically the following general classes of materials:

1. oil and oil products;

2. radioactive materials;

3. any material transported in large commercial quantities (such as in 55-gallon [200L] drums), which is a very soluble acid or base, causes abnormal growth of an organ or organism, or is highly biodegradable, exerting a severe oxygen demand;

4. biologically accumulative poisons;

5. the active ingredients of poisons that are or were ever registered in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 USC 135 et seq.); or

6. substances highly lethal to mammalian or aquatic life.

(f) *Impact study*.

(1) The impact study shall be performed or reviewed by a registered professional engineer who shall certify that the study has been conducted in accordance with good engineering practices. The study shall address, at a minimum, the following topics:

a. Description of the proposed project including location and extent of impervious surfaces; on-site processes or storage of materials; the anticipated use of the land and buildings; description of the site including topographic, hydrologic, and vegetative features.

b. Characteristics of natural runoff on the site and projected runoff with the proposed project, including its rate, and chemical composition including phosphorus concentration, nitrogen concentration, suspended solids, and other chemical characteristics as deemed necessary by the zoning administrator to make an adequate assessment of water quality.

c. Measures proposed to be employed to reduce the rate of runoff and pollutant loading of runoff from the project area, both during construction and after.

d. Proposed runoff control and reservoir protection measures for the project and performance criteria proposed to assure an acceptable level and rate of runoff quality. Such measures shall be consistent with accepted best management practices and shall be designed with the objective of ensuring that the rate of surface water runoff from the site does not exceed pre-development conditions and that the quality of such runoff will not be less than pre-development conditions. Special emphasis shall be placed on the impacts of proposed encroachments into the required buffer.

e. Proposed methods for complete containment of a spill or leaching of any materials stored on the property which would or could cause contamination of drinking water sources.

f. Where the developer of property which is subject to the terms of this overlay district desires to utilize existing or planned off-site stormwater quality management facilities, the developer shall provide a written certification to the zoning administrator that the owner of the off-site facilities will accept the runoff and be responsible for its treatment to a level of treatment acceptable to the county and consistent with the requirements of this chapter.

(2) Such study shall be submitted to the zoning administrator for review and approval concurrent with the submission of applications for review and approval of site or subdivision plans or applications for land disturbing or erosion and sediment control permits. A copy of the impact study shall also be forwarded to the agency which owns or manages the subject watershed for review and comments.

(Ord. No. O98-18, 10/7/98; Ord. No. 08-17(R), 3/17/09)

Sec. 24.1-377. Yorktown Historic District Overlay.

(a) Statement of Intent

The Yorktown Historic District is intended to promote and protect the historical significance, appearance, architectural quality, and general welfare of the Yorktown community through the identification, preservation, and enhancement of landmarks, buildings, structures, and areas which have special historical, cultural, architectural, or archaeological significance as provided by Section 15.2- 2306, Code of Virginia. The Historic District and the accompanying guidelines are drawn with the objective of protecting and improving the village character and ambiance and ensuring its preservation for the benefit of the residents of Yorktown and York County.

The preservation of the historical significance of Yorktown is of paramount importance and it is recognized that the deterioration, destruction, or alteration of Yorktown landmarks, buildings, structures, and significant areas may cause the permanent loss of unique resources which are of great value to the people of Yorktown and York County, the Commonwealth of Virginia, and the nation. These special controls and incentives are warranted to ensure that such losses are avoided when possible.

The purposes for establishing a special Yorktown Historic District zoning classification are:

(1) To preserve and improve the historical significance of Yorktown for all residents of York County by protecting familiar and treasured visual and historical elements in the area.

(2) To promote tourism by protecting historical and cultural resources attractive to visitors and thereby supporting local businesses.

(3) To stabilize and improve property values by providing guidelines for the upkeep and rehabilitation of older structures and by encouraging desirable uses and forms of residential and commercial development.

(4) To educate residents on the local cultural and historic heritage as embodied in the Historic District and to foster a sense of pride in this heritage.

(5) To prevent the encroachment of buildings and structures which are architecturally incompatible with their environs within areas of architectural harmony and historic character.

(b) Definitions

(1) *Historic Yorktown Design Committee (HYDC)* - A three-member board appointed by the York County Board of Supervisors, the purpose of which is to review and determine the appropriateness of proposed actions involving properties within the Historic District.

(2) *Certificate of Appropriateness* - A statement signed by the Chair of the Historic Yorktown Design Committee, or his designee, which certifies the appropriateness of a particular request for the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or a part of any building or structure within the Historic District, subject to the issuance of all other permits needed for the matter sought to be accomplished.

(3) *Contributing Building/Structure* - A building or structure within the Yorktown Historic district that was constructed between and including the years 1866 to 1945.

(4) *Demolition* - The dismantling or tearing down of all or part of any building or structure and all operations incidental thereto.

(5) *Exterior Features* - The architectural style, general design, and general arrangement of the exterior of a building or structure, including the kind and texture of the building mate-

Comparison of Regulations to Protect Drinking Water Supply and Areas of Public Health and Water Quality Sensitivity

	NEWPORT NEWS	YORK COUNTY
Regulation	Newport News Code of Ordinances Chapter 42, Article V	The Code of the County of York Section 24.1-376 (see page 654 of Code) Watershed Protection Overlay District Map (see page 806 of Code)
Link	https://library.municode.com/va/newport_news/codes/code_of_ordinances?nodeId=CD_ORD_CH42WASU_ARTVREPR	https://www.yorkcounty.gov/DocumentCenter/View/2073/County-Code?bidId
Sections	– General (Purpose and Intent, Applicability) – Definitions – Requirements for development – Review standards – Inspections and enforcement – Violation, punishment	– Statement of intent – Applicability – Definitions – Use regulations – Special requirements – Impact study
Intent	Protect against and minimize the pollution and degradation of the drinking water supply reservoirs in the City of Newport News resulting from land development in the respective watersheds thereof.	– Intended to ensure the protection of watersheds surrounding current or potential public water supply reservoirs. – Intended to prevent the causes of degradation of the water supply reservoir as a result of the operation or the accidental malfunctioning of the use of land or its appurtenances within the drainage area of such water sources..
Applicability	The provisions of this article shall apply to areas in the city with stormwater runoff that would eventually be deposited into the Skiffe's Creek, Lee Hall, or Harwood's Mill Reservoirs.	The special provisions established in this section shall apply to: (1) Areas designated on the Watershed management and protection area overlay district map (See Map III-2 in Appendix A) (2) Such other areas as may be determined by the zoning administrator through drainage, groundwater and soils analyses essential to protection of such existing or potential reservoirs from the effects of pollution or sedimentation.
Definitions with JCC equivalents	– Development – Lot – Lot of record – Perennial stream – Watershed	– Development – Watershed
Definitions not found in JCC ordinances	– Acreage – Bulk storage – Design Criteria Manual* – Intermittent stream – Reservoir – Reservoir Protection Appeals Committee* – Reservoir protection area – Runoff Control Official* – Utility **Specific to Newport News*	– Bulk storage – Reservoir – Tributary stream
Use regulations	Any development otherwise permitted by law in the watershed of any reservoir must obtain a runoff control permit from the city's runoff control official.	Permitted/specially permitted/accessory uses are established by the underlying zoning district.

Comparison of Regulations to Protect Drinking Water Supply and Areas of Public Health and Water Quality Sensitivity

Prohibited uses	– Activities involving the manufacture, bulk storage, or any type of distribution of petroleum, chemical, asphalt products, or any hazardous substances. – Installing a new septic tank and drain field unless otherwise permitted by this article. This does not preclude the maintenance of existing septic tanks or drain fields.	– Storage or production of hazardous wastes – Land applications of industrial wastes (see Buffer Zone section for additional prohibited uses within buffer range)
Special Requirements and Procedures	Runoff Control Permit: – The runoff control official shall review the plans and specifications to ensure that the quality and quantity of surface water runoff will not be detrimental to the water quality of the reservoir. – Application includes runoff control plan prepared by engineer, specs for control of surface water runoff to meet reqs. If natural drainage system sufficient, Official may grant permit without runoff control plan or further review. – Runoff control official may require, prior to issuing a permit, a bond with surety or other security satisfactory to the runoff control official sufficient for and conditioned upon completion of the controls specified in such plans and specifications, in the manner and within the time prescribed in such permit. – Failure of the city to act on any permit application within sixty (60) days after all the necessary information has been properly filed shall constitute approval of the application. The city shall be deemed to have acted whenever written notice of conditional approval, rejection or modification shall have been mailed. – If any change in any plan for development, the developer shall submit any additional data, to ensure the control of the quantity and quality of any additional surface water runoff, conforming to the original application procedure. – If developer wishes to utilize a city-owned and maintained diversion/retention system, developer shall submit such request to determine if a feasible option. Developer shall be responsible for a pro rata share of design, construction, maintenance costs and any required bond with surety or other security required by city, and shall enter into an agreement with the city for use of the diversion/retention system consistent with the department's best management practice cost sharing policy.	Impact Study: – Any development proposal (except for SFD construction), including the subdivision of land, in WMP areas shall be accompanied by an impact study performed or reviewed by a registered professional engineer. – Such study shall be submitted to the zoning administrator for review and approval concurrent with the submission of applications for review and approval of site or subdivision plans or applications for land disturbing or erosion and sediment control permits. A copy of the impact study shall also be forwarded to the agency which owns or manages the subject watershed for review and comments. – The study shall address, at a minimum, the following topics: a. Description of proposed project including location and extent of impervious surfaces; on-site processes or storage of materials; the anticipated use of the land and buildings; description of the site including topographic, hydrologic, and vegetative features. b. Characteristics of natural runoff on the site and projected runoff with the proposed project, including its rate, and chemical composition including phosphorus concentration, nitrogen concentration, suspended solids, and other chemical characteristics to make an adequate assessment of water quality. c. Measures proposed to be employed to reduce the rate of runoff and pollutant loading of runoff from the project area, both during construction and after. d. Proposed runoff control and reservoir protection measures for the project and performance criteria proposed to assure an acceptable level and rate of runoff quality--objective of ensuring that the rate of surface water runoff from the site does not exceed pre-development conditions and that the quality of such runoff will not be less than pre-development conditions. Special emphasis shall be placed on the impacts of proposed encroachments into the required buffer.

		e. Proposed methods for complete containment of a spill or leaching of any materials stored on the property which would or could cause contamination of drinking water sources. – Where the developer of property which is subject to the terms of this overlay district desires to utilize existing or planned off-site stormwater quality management facilities, the developer shall provide a written certification to the zoning administrator that the owner of the off-site facilities will accept the runoff and be responsible for its treatment to a level of treatment acceptable to the county and consistent with the requirements of this chapter.
Exceptions	The following are excepted from a runoff control permit: – Installation/repair/replacement of water supply intended to serve not more than 2 dwelling units. – Interior repair/renovation of existing structures	Construction of individual single family dwellings
Buffer Zones	– 200’ from: – center of any perennial stream – edge of any city reservoir – 100’ from: – center of any intermittent stream – Where crossing of streams is necessary by roads or utilities, it should be limited to the least impactive portion of the stream. – Additional uses prohibited within either buffer area: – septic tanks and drain fields – trash containers and dumpsters – feed lots or other livestock impoundments – Fuel storage in excess of 50 gallons – Sewage pumping stations or sewage lines unless they meet the standards of the Design Criteria Manual.	– 200' wide buffer strip maintained along the edge of any tributary stream or reservoir – Buffer strip shall be maintained in its natural state or shall be planted with an erosion resistant vegetative cover. – Encroachment through the buffer by roads and utilities should be limited to the least amount of disturbance possible; BMPs within the buffer must be designed to be part of a watershed stormwater management program. – Additional uses prohibited within 500’ of buffer strip: – septic tanks and drain fields – feed lots or other livestock impoundments – trash containers and dumpsters which are not under a roof – fuel storage in excess of 50 gallons – sanitary landfills – activities involving petroleum, chemical, or asphalt products, and other materials deemed hazardous to the water supply per *Hazardous Materials Spills Emergency Handbook*: – oil and oil products – radioactive materials – any material transported in large commercial quantities which is a very soluble acid or base; causes abnormal growth of an organism; or is highly biodegradable, exerting a severe oxygen demand. – poisons and other substances highly lethal to mammalian or aquatic life

Comparison of Regulations to Protect Drinking Water Supply and Areas of Public Health and Water Quality Sensitivity

Waiver option / buffer reduction	– Buffer may be reduced to 50' if BMPs can achieve the same degree of water quality as with a 100' or 200' buffer – If a significant hardship exists after the maximum allowable waiver is granted, an additional parcel waiver and buffer reduction to 25' may be granted for single family dwellings	– Buffer may be reduced to 50' upon presentation of an impact study that proves the same degree of water quality protection can be achieved as a 200' buffer – No buffer required if encroachment is proposed on property that is owned by the same entity that owns and operates the water supply reservoir being protected.
Reservoir Protection Appeals Committee	– Appellate body that reviews appeals of the Runoff Control Official's determinations, and either upholds or reverses the RCO's decision. – Also advises the city on property acquisition for reservoir protection	N/A
Enforcement	– Runoff Control Official or designees can inspect the property at a reasonable times to determine compliance with this article. – Runoff Control Official can require a bond or other security for the maintenance of a permanent runoff control measure. – If violation continues, misdemeanor punishable by $100-500 fine. Each day's offense shall constitute a separate offense. – Revocation of runoff control permit shall also result in the revocation of C.O.	Performance assurances shall be provided to guarantee that all runoff control and reservoir protection measures per the Impact Study are constructed, operated, and maintained. – Includes signed agreement and surety approved by the County Attorney

Last updated 12/5/18

AGENDA ITEM NO. E.2.

ITEM SUMMARY

DATE: 12/13/2018

TO: The Policy Committee

FROM: Tom Leininger, Planner

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

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ATTACHMENTS:

	Description	Type
🗋	Memorandum	Cover Memo
🗋	2017 General Assembly Session Changes	Backup Material
🗋	2018 General Assembly Session Changes	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	12/7/2018 - 8:15 AM
Policy	Holt, Paul	Approved	12/7/2018 - 8:26 AM
Publication Management	Daniel, Martha	Approved	12/7/2018 - 8:35 AM
Policy Secretary	Secretary, Policy	Approved	12/7/2018 - 9:00 AM

M E M O R A N D U M

DATE: December 13, 2018

TO: The Policy Committee

FROM: Tom Leininger, Planner

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

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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. These State Code of Virginia 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.

For the Committee's reference, staff has attached the 2017 and 2018 Code of Virginia updates as well as the resulting full text of Code of Virginia sections 15.2-2316.3 to -2316.5. Staff has begun looking at these updates but has not yet developed options or draft language for Committee feedback at this time. Staff will present Stage I materials for review and Committee feedback at a later date.

TL/md
POAWirelessCommFac-mem

Attachments:
1. 2017 General Assembly Session Changes
2. 2018 General Assembly Session Changes
3. Wireless Communication Facilities Va. Code §§ 15.2-2316.3 to -2316.5

CHAPTER 835

An Act to amend the Code of Virginia by adding in Chapter 22 of Title 15.2 an article numbered 7.2, consisting of sections numbered 15.2-2316.3, 15.2-2316.4, and 15.2-2316.5, and by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.31, relating to wireless communications infrastructure.

[S 1282]

Approved April 26, 2017

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 22 of Title 15.2 an article numbered 7.2, consisting of sections numbered 15.2-2316.3, 15.2-2316.4, and 15.2-2316.5, and by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.31, as follows:

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:

"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.

"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.

"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.

§ 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.

CHAPTER 15.1.

WIRELESS COMMUNICATIONS INFRASTRUCTURE.

§ 56-484.26. Definitions.

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

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

"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.

"Districtwide permit" means a permit granted by the Department to a wireless services provider or wireless infrastructure provider that allows the permittee to use the rights-of-way under the Department's jurisdiction to install or maintain small cell facilities on existing structures in one of the Commonwealth's nine construction districts. A districtwide permit allows the permittee to perform multiple occurrences of activities necessary to install or maintain small cell facilities on non-limited access right-of-way without obtaining a single use permit for each occurrence. The central office permit manager shall be responsible for the issuance of all districtwide permits. The Department may authorize districtwide permits covering multiple districts.

"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.

"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, ground-based enclosures, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

"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 services 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, including a person authorized to provide telecommunications service in the state, 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.

§ 56-484.27. Access to the public rights-of-way by wireless services providers and wireless infrastructure providers; generally.

A. No locality or the Department shall impose on wireless services providers or wireless infrastructure providers any restrictions or requirements concerning the use of the public rights-of-way, including the permitting process, the zoning process, notice, time and location of excavations and repair work, enforcement of the statewide building code, and inspections, that are unfair, unreasonable, or discriminatory.

B. No locality or the Department shall require a wireless services provider or wireless infrastructure provider to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements. This shall not limit the ability of localities, their authorities or commissions

that provide utility services, or the Department to enter into voluntary pole attachment, tower occupancy, conduit occupancy, or conduit construction agreements with wireless services providers or wireless infrastructure providers.

C. No locality or the Department shall adopt a moratorium on considering requests for access to the public rights-of-way from wireless services providers or wireless infrastructure providers.

§ 56-484.28. Access to public rights-of-way operated and maintained by the Department for the installation and maintenance of small cell facilities on existing structures.

A. Upon application by a wireless services provider or wireless infrastructure provider, the Department shall issue a districtwide permit, consistent with applicable regulations that do not conflict with this chapter, granting access to public rights-of-way that it operates and maintains to install and maintain small cell facilities on existing structures in the rights-of-way. The application shall include a copy of the agreement under which the applicant has permission from the owner of the structure to the co-location of equipment on that structure. If the application is received on or after September 1, 2017, (i) the Department shall issue the districtwide permit within 30 days after receipt of the application and (ii) the districtwide permit shall be deemed granted if not issued within 30 days after receipt of the complete application. Within 10 days after receipt of an application and a valid electronic mail address for the applicant, the Department shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. A districtwide permit issued for the original installation shall allow the permittee to repair, replace, or perform routine maintenance operations to small cell facilities once installed.

B. The Department may require a separate single use permit to allow a wireless services provider or wireless infrastructure provider to install and maintain small cell facilities on an existing structure when such activity requires (i) working within the highway travel lane or requiring closure of a highway travel lane; (ii) disturbing the pavement, shoulder, roadway, or ditch line; (iii) placement on limited access rights-of-way; or (iv) any specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof. Upon application by a wireless services provider or wireless infrastructure provider, the Department may issue a single use permit granting access to install and maintain small cell facilities in such circumstances. If the application is received on or after September 1, 2017, (a) the Department shall approve or disapprove the application within 60 days after receipt of the application, which 60-day period may be extended by the Department in writing for a period not to exceed an additional 30 days and (b) the application shall be deemed approved if the Department fails to approve or disapprove the application within the initial 60 days and any extension thereof. Any disapproval of an application for a single use permit shall be in writing and accompanied by an explanation of the reasons for the disapproval.

C. The Department shall not impose any fee for the use of the right-of-way on a wireless services provider or wireless infrastructure provider to attach or co-locate small cell facilities on an existing structure in the right-of-way. However, the Department may prescribe and charge a reasonable fee not to exceed $750 for processing an application for a districtwide permit or $150 for processing an application for a single use permit.

D. The Department shall not impose any fee or require a permit for 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. However, the Department may require a single use permit if such activities (i) involve working within the highway travel lane or require closure of a highway travel lane; (ii) disturb the pavement, shoulder, roadway, or ditch line; (iii) include placement on limited access rights-of-way; or (iv) require any specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof, and either were not authorized in or will be conducted in a time, place, or manner that is inconsistent with terms of the existing permit for that facility or the structure upon which it is attached.

§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities on existing structures.

A. Upon application by a wireless services provider or wireless infrastructure provider, a locality may issue a permit granting access to the public rights-of-way it operates and maintains to install and maintain small cell facilities on existing structures. Such a permit shall grant access to all rights-of-way in the locality for the purpose of installing small cell facilities on existing structures, 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) provides notice of the agreement and co-location to the locality. The locality shall approve or disapprove any such requested permit 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 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 permit request shall be deemed approved if the locality fails to act within the initial 60 days or an extended 30-day period. No such permit shall be required for providers

of telecommunications services and nonpublic providers of cable television, electric, natural gas, water, and sanitary sewer services that, as of July 1, 2017, already have facilities lawfully occupying the public rights-of-way under the locality's jurisdiction.

B. Localities shall not impose any fee for the use of the rights-of-way, except for zoning, subdivision, site plan, and comprehensive plan fees of general application, on a wireless services provider or wireless infrastructure provider to attach or co-locate small cell facilities on an existing structure in the right-of-way. However, a locality may prescribe and charge a reasonable fee not to exceed $250 for processing a permit application under subsection A.

C. Localities shall not impose any fee or require any application or permit for 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. However, the locality may require a single use permit if such activities (i) involve working within the highway travel lane or require closure of a highway travel lane; (ii) disturb the pavement, shoulder, roadway, or ditch line; (iii) include placement on limited access rights-of-way; or (iv) require any specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof, and either were not authorized in or will be conducted in a time, place, or manner that is inconsistent with terms of the existing permit for that facility or the structure upon which it is attached.

§ 56-484.30. Agreements for use of public right-of-way to construct new wireless support structures; relocation of wireless support structures.

Subject to any applicable requirements of Article VII, Section 9 of the Constitution of Virginia, public right-of-way permits or agreements for the construction of wireless support structures issued on or after July 1, 2017, shall be for an initial term of at least 10 years, with at least three options for renewal for terms of five years, subject to terms providing for earlier termination for cause or by mutual agreement. Nothing herein is intended to prohibit the Department or localities from requiring permittees to relocate wireless support structures when relocation is necessary due to a transportation project, the need to remove a hazard from the right-of-way when the Commissioner of Highways determines such removal is necessary to ensure the safety of the traveling public, or material change to the right-of-way, so long as other users of the right-of-way that are in similar conflict with the use of the right-of-way are required to relocate. Such relocation shall be completed as soon as reasonably possible within the time set forth in any written request by the Department or a locality for such relocation, as long as the Department or a locality provides the permittee with a minimum of 180 days' advance written notice to comply with such relocation, unless circumstances beyond the control of the Department or the locality require a shorter period of advance notice. The permittee shall bear only the proportional cost of the relocation that is caused by the transportation project and shall not bear any cost related to private benefit or where the permittee was on private right-of-way. If the locality or the Department bears any of the cost of the relocation, the permittee shall not be obligated to commence the relocation until it receives the funds for such relocation. The permittee shall have no liability for any delays caused by a failure to receive funds for the cost of such relocation, and the Department or a locality shall have no obligation to collect such funds. If relocation is deemed necessary, the Department or locality shall work cooperatively with the permittee to minimize any negative impact to the wireless signal caused by the relocation. There may be emergencies when relocation is required to commence in an expedited manner, and in such situations the permittee and the locality or Department shall work diligently to accomplish such emergency relocation.

§ 56-484.31. Attachment of small cell facilities on government-owned structures.

A. If the Commonwealth or a locality agrees to permit a wireless services provider or a wireless infrastructure provider to attach small cell facilities to government-owned structures, both the government entity and the wireless services or wireless infrastructure provider shall negotiate in good faith to arrive at a mutually agreeable contract terms and conditions.

B. The rates, terms, and conditions for such agreement shall be just and reasonable, cost-based, nondiscriminatory, and competitively neutral, and shall comply with all applicable state and federal laws. However, rates for attachments to government-owned buildings may be based on fair market value.

C. For utility poles owned by a locality or the Commonwealth that support aerial cables used for video, communications, or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the government entity owning or controlling the utility pole for any make-ready work necessary to enable the utility pole to support the requested co-location shall include pole replacement if necessary.

D. For utility poles owned by a locality or the Commonwealth that do not support aerial cables used for video, communications, or electric service, the government entity owning or controlling the utility pole shall provide a good faith estimate for any make-ready work necessary to enable the utility pole to support the requested co-location, including pole replacement, if necessary, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good faith estimate by the wireless services provider or a wireless

infrastructure provider.

E. The government entity owning or controlling the utility pole shall not require more make-ready work than required to meet applicable codes or industry standards. Charges for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other wireless services providers, providers of telecommunications services, and nonpublic providers of cable television and electric services for similar work and shall not include consultants' fees or expenses.

F. The annual recurring rate to co-locate a small cell facility on a government-owned utility pole shall not exceed the actual, direct, and reasonable costs related to the wireless services provider's or wireless infrastructure provider's use of space on the utility pole. In any controversy concerning the appropriateness of the rate, the government entity owning or controlling the utility pole shall have the burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs incurred for use of space on the utility pole for such period.

G. This section shall not apply to utility poles, structures, or property of an electric utility owned or operated by a municipality or other political subdivision.

VIRGINIA ACTS OF ASSEMBLY -- 2018 RECONVENED SESSION

CHAPTER 835

An Act to amend and reenact § 15.2-2316.3 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.2-2316.4:1, 15.2-2316.4:2, and 15.2-2316.4:3, relating to zoning for wireless communications infrastructure.

[H 1258]

Approved April 18, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2316.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.2-2316.4:1, 15.2-2316.4:2, and 15.2-2316.4:3 as follows:

§ 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.

§ 15.2-2316.4:1. 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.

§ 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.

§ 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.

2. That any publicly-owned or privately-owned wireless service provider operating within the Commonwealth or serving residents of the Commonwealth shall, by January 1, 2019, and annually thereafter until January 1, 2025, provide to the Department of Housing and Community Development a report detailing by county, city, and town enhanced service capacity in previously served areas and expansion of service in previously unserved geographic areas that are provided access to wireless services. Notwithstanding any other provision of law, the Department shall maintain the confidentiality of company-specific data but may publicly release aggregate data.

3. That the Secretariats of Commerce and Trade and Public Safety and Homeland Security shall convene a group of stakeholders, to include representatives from the Department of Housing and Community Development, the Virginia Economic Development Partnership, the Virginia Tobacco Region Revitalization Commission, and the Department of Emergency Management, industry representatives, and representatives of affected communities, to develop a plan for expanding access to wireless services in unserved and underserved areas of the Commonwealth. The plan shall be completed by December 15, 2018. The plan shall include the following components: a definition of unserved and underserved areas, identification of barriers to access to wireless services in such areas, a proposed expedited review process for such areas, identification of ways to encourage industry to locate in such areas, and consideration of a lower fee for such an expedited review process.

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.

2017, c. 835;2018, cc. 835, 844.

§ 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.

AGENDA ITEM NO. E.3.

ITEM SUMMARY

DATE: 12/13/2018

TO: The Policy Committee

FROM: Tammy Rosario, Principal Planner

SUBJECT: Preparation for Review of the County's 2015 Adopted Comprehensive Plan, Toward 2035: Leading the Way

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ATTACHMENTS:

	Description	Type
🗋	Memorandum	Cover Memo

REVIEWERS:

Department	Reviewer	Action	Date
Policy	Rosario, Tammy	Approved	12/7/2018 - 9:05 AM
Policy	Holt, Paul	Approved	12/7/2018 - 9:11 AM
Publication Management	Daniel, Martha	Approved	12/7/2018 - 9:41 AM
Policy Secretary	Secretary, Policy	Approved	12/7/2018 - 9:59 AM

M E M O R A N D U M

DATE: December 13, 2018

TO: The Policy Committee

FROM: Tammy Mayer Rosario, Principal Planner

SUBJECT: Preparation for Review of the County's 2015 Adopted Comprehensive Plan, *Toward 2035: Leading the Way*

Section 15.2-2230 of the Code of Virginia states, "at least once every five years the comprehensive plan shall be reviewed by the local planning commission to determine whether it is advisable to amend the plan." As James City County approaches the four-year mark of the Comprehensive Plan's adoption on June 23, staff is making preparations for that review.

At the December Policy Committee meeting, staff will brief the committee on the anticipated framework and timeline of the review process and invite questions and comments. At the January Policy Committee meeting, staff will lead the committee through a discussion of new items of consideration for the Comprehensive Plan review and try to attain a sense of the Policy Committee's or Planning Commission's overall prioritization of focus areas. From there, staff will begin to engage the Board of Supervisors regarding its prioritization and direction for the work effort.

Staff looks forward to this discussion with the Policy Committee and any Planning Commission members who wish to attend.

TMR/md
RvwPrepFocus2019-mem