

1           **Wireless Infrastructure Bill Draft – New Support**  
2                           **Structures Zoning 9-21-17**  
3

4   Article 7.2.

5   Zoning for Wireless Communications Infrastructure.

6    **§ 15.2-2316.3. Definitions.**

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

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

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

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

17   "Department" means the Department of Transportation.

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

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

27 "Small cell facility" means a wireless facility that meets both of the following qualifications: (i)  
28 each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the  
29 case of an antenna that has exposed elements, the antenna and all of its exposed elements could  
30 fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless  
31 equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or  
32 such higher limit as is established by the Federal Communications Commission. The following  
33 types of associated equipment are not included in the calculation of equipment volume: electric  
34 meter, concealment, telecommunications demarcation boxes, back-up power systems, grounding  
35 equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection  
36 of power and other services.

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

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

42 "Wireless facility" means equipment at a fixed location that enables wireless communications  
43 between user equipment and a communications network, including (i) equipment associated with  
44 wireless services, such as private, broadcast, and public safety services, as well as unlicensed  
45 wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio

46 transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and  
47 comparable equipment, regardless of technological configuration.

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

51 "Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. §  
52 332(c)(7)(C)(i); (ii) "personal wireless service facilities" as defined in 47 U.S.C. §  
53 332(c)(7)(C)(ii), including commercial mobile services as defined in 47 U.S.C. § 332(d),  
54 provided to personal mobile communication devices through wireless facilities; and (iii) any  
55 other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using  
56 wireless facilities.

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

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

63 **§ 15.2-2316.4. Zoning; small cell facilities.**

64 A. A locality shall not require that a special exception, special use permit, or variance be  
65 obtained for any small cell facility installed by a wireless services provider or wireless  
66 infrastructure provider on an existing structure, provided that the wireless services provider or  
67 wireless infrastructure provider (i) has permission from the owner of the structure to co-locate  
68 equipment on that structure and (ii) notifies the locality in which the permitting process occurs.

69 B. Localities may require administrative review for the issuance of any required zoning permits  
70 for the installation of a small cell facility by a wireless services provider or wireless  
71 infrastructure provider on an existing structure. Localities shall permit an applicant to submit up  
72 to 35 permit requests on a single application. In addition:

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

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

83 a. \$100 each for up to five small cell facilities on a permit application; and

84 b. \$50 for each additional small cell facility on a permit application.

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

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

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

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

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

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

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

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

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

108 **§ 15.2-2316.5. Zoning; construction or placing of other new wireless infrastructure.**

109 A. ~~—~~A locality shall not require that a special exception, special use permit, or variance be  
110 obtained for the installation of any new wireless support structure that is 50 feet or less ~~in height~~  
111 above ground level, provided that the structure (i) is not more than ten feet above the tallest  
112 existing utility pole located within a 500' foot radius, (ii) is not located within the boundaries of  
113 a local, state, or federal historic district, and (iii) is designed to support small cell equipment. A

114 locality may charge a reasonable fee for each application submitted pursuant to this section not  
115 to exceed \$500.

116 B. A locality shall approve or disapprove a complete zoning application for the construction of  
117 any new wireless support structure within 150 days of receipt of the application, unless a shorter  
118 timeframe is required by federal law. A locality shall approve or disapprove a completed zoning  
119 application for the co-location of any wireless facility that is not a small cell facility or eligible  
120 facilities request as defined by 47 U.S.C. §1455(a) on any existing tower, building or structure  
121 within 90 days of receipt of the application, unless a shorter timeframe is required by federal  
122 law. Within 10 business days after receipt of an application under this section, the locality shall  
123 notify the applicant by electronic mail whether the application is incomplete and specify any  
124 missing information; otherwise the application shall be deemed complete. Such application  
125 shall be deemed approved if the locality fails to act within the timeframes specified in this  
126 section. The time periods for approval of an application under this section may be extended by mutual  
127 agreement between the applicant and the locality.

128 C. If a locality does not approve a zoning application under this section, the locality shall set  
129 forth in writing the reasons for such denial and shall state what corrections or modifications, if  
130 any, will permit approval by such locality. Such denial shall not unreasonably discriminate  
131 between the applicant and other wireless service providers, providers of telecommunications  
132 services and nonpublic providers of cable television and electric services. The denial must be  
133 supported by substantial record evidence contained in a written record publicly released within  
134 ~~10 business~~30 days following the denial. An applicant adversely affected by the denial may file  
135 an appeal pursuant to § 15.2-2285(F) within 30 days following delivery of the written record to

136 the applicant. Nothing in this section shall be construed to prohibit a locality from limiting the  
137 number of new wireless support structures that can be installed in a specific location.

138 D. A locality may charge a reasonable fee for each application submitted pursuant to this  
139 section *for the installation of a new structure above 50 feet in height*, not to exceed the actual  
140 direct costs to process the application, including permits or inspections. The fee may not include  
141 direct payment or reimbursement of third party fees charged on a contingency basis or a result-  
142 based arrangement. Upon request, a locality shall provide the applicant with an accounting of  
143 the actual costs incurred. A locality shall not charge market based or value based fees for the  
144 processing of an application.

145 **§ 15.2-2316.6. Zoning approval process.**

146 A. When considering a zoning permit application under § 15.2-2316.5, a locality shall receive  
147 and process applications subject to the following requirements:

148 1. A locality shall not deny an application for a new wireless support structure for the  
149 following reasons:

150 a. On the basis of the applicant's business decision with respect to its designed  
151 service, customer demand for service or quality of its service to or from a  
152 particular site; or

153 b. On the basis of the applicant's specific need for the wireless support  
154 structure, including the applicant's desire to provide additional wireless  
155 coverage or capacity; or

156 c. On the basis of the choice of technology to be used by the applicant.

157 d. This section shall not prohibit a locality from rejecting a zoning application  
158 based on the height of the wireless support structure or wireless facilities in

159 its zoning review, if the height of the structure, facilities or structure with  
160 attached facilities exceeds 50 feet above ground level, so long as the authority  
161 does not unreasonably discriminate between the applicant and other wireless  
162 service providers, providers of telecommunications services and nonpublic  
163 providers of cable television and electric services.

164 e. This section shall not prohibit a locality from rejecting a zoning application in  
165 an area in which all cable and public utility facilities are required to be  
166 placed underground by a date certain provided that (i) the undergrounded  
167 requirement existed at least 3 months prior to the submission of the zoning  
168 application; (ii) the locality allows the collocation of small cell facilities on  
169 existing utility poles, government-owned structures with the government's  
170 consent, existing wireless support structures, or a building within that area,  
171 (iii)the locality allows the replacement of existing utility poles and wireless  
172 support structures with poles or support structures of the same size or smaller  
173 within that area, and (iv) such denial does not unreasonably discriminate  
174 between the applicant and other wireless service providers, providers of  
175 telecommunications services and nonpublic providers of cable television and  
176 electric services.

177 f. Nothing in this section shall be construed to prohibit a locality from limiting  
178 the number of new wireless support structures that can be installed in a  
179 specific location.

180 2. A locality shall not require an applicant to provide proprietary, confidential or other  
181 business information to justify the need for the new wireless support structure, including



182 propagation maps and telecommunications traffic studies, or information reviewed by a federal  
183 agency as part of the approval process for the same structure and equipment, provided that a  
184 locality may require an applicant to provide a copy of any approval granted by a federal agency,  
185 including conditions imposed by that agency.

186 3. A locality shall not require the removal of existing wireless support structures or wireless  
187 facilities, wherever located, as a condition for approval of an application. A locality may adopt  
188 reasonable rules with respect to the removal of abandoned wireless support structures or  
189 wireless facilities;

190 4. A locality shall not impose surety requirements, including bonds, escrow deposits, letters of  
191 credit, or any other type of financial surety, to ensure that abandoned or unused facilities can be  
192 removed unless the locality imposes similar requirements on other permits for other types of  
193 similar commercial development. Any such instrument cannot exceed a reasonable estimate of  
194 the direct cost of the removal of the facility;

195 5. A locality shall not discriminate or create a preference on the basis of the ownership,  
196 including ownership by the locality, of any property, structure, base station, or wireless support  
197 structure when promulgating rules or procedures for siting wireless facilities or for evaluating  
198 applications;

199 6. A locality shall not impose any unreasonable requirements or obligations regarding the  
200 presentation or appearance of facilities, including, but not limited to, those unreasonable  
201 requirements relating to (i) any kinds of materials used and those relating to (ii) arranging,  
202 screening, or landscaping of facilities;

203 7. A locality shall not impose any requirements that an applicant purchase, subscribe to, use, or  
204 employ facilities, networks, or services owned, provided, or operated by a locality, in whole or in

205 part, or by any entity in which a locality has a competitive, economic, financial, governance, or  
206 other interest;

207 8. A locality shall not condition or require the approval of an application on the basis of the  
208 applicant's agreement to allow any wireless facilities provided or operated, in whole or in part,  
209 by a locality or by any other entity, to be placed at or co-located with the applicant's wireless  
210 support structure;

211 9. A locality shall not impose a setback or fall zone requirement for a wireless support structure  
212 that is larger than a setback or fall zone area that is imposed on other types of similar structures  
213 of a similar size, including utility poles;

214 10. A locality shall not limit the duration of the approval of an application, except that  
215 construction of the approved structure or facilities shall commence within two years of final  
216 approval and be diligently pursued to completion; or

217 11. A locality shall not require an applicant to perform services unrelated to an application,  
218 including restoration work on any surface not disturbed by the applicant.

219 12. A locality shall not require a zoning application or use permit or special exception for  
220 routine maintenance or the replacement of equipment with equipment that is substantially  
221 similar and is the same size or smaller.

222 B. Nothing in this section shall be construed to prohibit an applicant from voluntarily submitting,  
223 and the locality from accepting, any conditions that otherwise address potential visual or  
224 aesthetic effects resulting from the placement of small cell wireless facilities.

225 **§ 15.2-2316.57. Moratorium prohibited.**

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