

1 **Wireless infrastructure bill draft 5-1-17 Zoning**  
2

3 Article 7.2.

4 Zoning for Wireless Communications Infrastructure.

5 **§ 15.2-2316.3. Definitions.**

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

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

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

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

16 "Department" means the Department of Transportation.

17 "Distributed antenna system" means a network that distributes radio frequency (RF) signals and  
18 consisting of (i) remote communications or antenna nodes deployed throughout a desired  
19 coverage area, each including at least one antenna for transmissions and receptions; (ii) a high  
20 capacity signal transport medium that is connected to a central communications hub site; and  
21 (iii) radio transceivers located at the hub site to process or control the communications signals  
22 transmitted and received through the antennas to provide wireless or mobile service within a  
23 geographic area or structure.

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

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

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

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

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

48 "Wireless facility" means equipment at a fixed location that enables wireless communications  
49 between user equipment and a communications network, including (i) equipment associated with  
50 wireless services, such as private, broadcast, and public safety services, as well as unlicensed  
51 wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio  
52 transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and  
53 comparable equipment, regardless of technological configuration.

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

57 "Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. §  
58 332(c)(7)(C)(i); (ii) "personal wireless service facilities" as defined in 47 U.S.C. §  
59 332(c)(7)(C)(ii), including commercial mobile services as defined in 47 U.S.C. § 332(d),  
60 provided to personal mobile communication devices through wireless facilities; and (iii) any  
61 other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using  
62 wireless facilities.

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

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

69 § 15.2-2316.4. Zoning; small cell facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114 **§ 15.2-2316.5. Zoning; construction or placing of other new wireless infrastructure.**

115 A. A locality shall approve or disapprove of a complete zoning application for (i) the  
116 construction of a new wireless support structure or (ii) the co-location of any wireless facility  
117 that is not a small cell facility on any building or existing structure that has not received prior  
118 zoning approval for a wireless facility within 150 day. Within 10 days after receipt of an  
119 application, the locality shall notify the applicant by electronic mail whether the application is  
120 incomplete and specify any missing information; otherwise the application shall be deemed  
121 complete. Such application shall be deemed approved if the locality fails to act within 150 days.

122 B. A locality shall approve or disapprove of a zoning application for the co-location of any  
123 wireless facility that is not a small cell facility on (i) a base station, (ii) a utility pole, (iii)  
124 wireless support structure, or (iv) any building or existing structure that has prior zoning  
125 approval for a wireless facility within 60 days of receipt of the complete application. Within 10  
126 days after receipt of an application, the locality shall notify the applicant by electronic mail  
127 whether the application is incomplete and specify any missing information; otherwise the  
128 application shall be deemed complete. The 60-day period may be extended by the locality in  
129 writing for a period not to exceed an additional 30 days. Such application shall be deemed  
130 approved if the locality fails to act within the initial 60 days or an extended 30-day period.

131 C. Any disapproval of an application under this section must be (i) in writing, (ii) supported by  
132 substantial record evidence contained in a written record publicly released within 10 days  
133 following the denial, (iii) accompanied by an explanation for the disapproval and an explanation  
134 of what the applicant must do to cure the disapproval, and (iv) nondiscriminatory. An applicant  
135 adversely affected by the denial may file an appeal pursuant to § 15.2-2285(F) within 30 days  
136 following delivery of the written record to the applicant.

137 D. A locality may charge a reasonable fee for each application submitted pursuant to this  
138 chapter; such fee shall not exceed \$500 or the costs of processing and reviewing an application,  
139 whichever is less.

140 E. Localities shall permit an applicant to submit up to 20 new wireless support structures less  
141 than 60 feet tall or 10 co-locations of a wireless facility that is not a small cell facility on a single  
142 application.

143 § 15.2-2316.6. Zoning approval process.

144 A. When considering a zoning permit application under § 15.2-2316.5, a locality shall not:

145 1. Require an applicant to submit information about, or evaluate an applicant's business  
146 decisions with respect to, its designed service, customer demand for service, or quality of its  
147 service to or from a particular area or site;

148 2. Require information that concerns the specific need for the wireless support structure,  
149 including if the service to be provided from the wireless support structure is to add additional  
150 wireless coverage or additional wireless capacity. A locality may not require proprietary,  
151 confidential, or other business information to justify the need for the new wireless support  
152 structure, including propagation maps and telecommunications traffic studies;

153 3. Dictate the type of wireless facilities, infrastructure, or technology to be used by the applicant,  
154 including, but not limited to, requiring an applicant to construct a distributed antenna system or  
155 small cell facility in lieu of constructing a new wireless support structure, provided that a  
156 locality may consider denying the application based on the height of the wireless support  
157 structure or wireless facilities in its zoning review if the height of the structure, facilities, or  
158 structure with attached facilities exceeds 60 feet above ground level, so long as the locality does  
159 not unreasonably discriminate between the applicant and other wireless services providers,

160 providers of telecommunications services, and nonpublic providers of cable television and  
161 electric services;

162 4. Require the removal of existing wireless support structures or wireless facilities, wherever  
163 located, as a condition for approval of an application. This section shall not preclude a locality  
164 from adopting reasonable rules with respect to the removal of abandoned wireless support  
165 structures or wireless facilities;

166 5. Impose surety requirements, including bonds, escrow deposits, letters of credit, or any other  
167 type of financial surety, to ensure that abandoned or unused facilities can be removed unless the  
168 locality imposes similar requirements on other permits for other types of similar commercial  
169 development or land uses and any such instrument cannot exceed a reasonable estimate of the  
170 direct cost of the removal of the facility;

171 6. Discriminate or create a preference on the basis of the ownership, including ownership by the  
172 locality, of any property, structure, base station, or wireless support structure when  
173 promulgating rules or procedures for siting wireless facilities or for evaluating applications;

174 7. Impose any unreasonable requirements or obligations regarding the presentation or  
175 appearance of facilities, including, but not limited to, those unreasonable requirements relating  
176 to (i) any kinds of materials used and those relating to (ii) arranging, screening, or landscaping  
177 of facilities;

178 8. Impose any requirements that an applicant purchase, subscribe to, use, or employ facilities,  
179 networks, or services owned, provided, or operated by a locality, in whole or in part, or by any  
180 entity in which a locality has a competitive, economic, financial, governance, or other interest;



181 9. Condition or require the approval of an application on the basis of the applicant's agreement  
182 to permit any wireless facilities provided or operated, in whole or in part, by a locality or by any  
183 other entity, to be placed at or co-located with the applicant's wireless support structure;

184 10. Impose a setback or fall zone requirement for a wireless support structure that is larger than  
185 a setback or fall zone area that is imposed on other types of similar structures of a similar size,  
186 including utility poles;

187 11. Limit the duration of the approval of an application, except that construction of the approved  
188 structure or facilities shall commence within two years of final approval and be diligently  
189 pursued to completion; or

190 12. Require an applicant to perform services unrelated to an application, including restoration  
191 work on any surface not disturbed by the applicant.

192 B. Nothing shall prohibit an applicant from voluntarily submitting, and the locality from  
193 accepting, any conditions that otherwise address potential visual or aesthetic effects resulting  
194 from the placement of small cell wireless facilities.

195 C. Nothing in this section shall prohibit a locality from requesting information of an  
196 applicant that the locality finds necessary to determine its compliance with federal law, provided  
197 that the locality shall not deny an application solely because the applicant declined to provide  
198 such information. Nothing in this section shall prohibit a locality from requiring coverage  
199 information specific to the locality's obligation to determine a gap in coverage under federal law;  
200 provided, however, that the coverage information shall be limited to the site or sites requested in  
201 the application and that the locality cannot deny the application based on the applicant's refusal  
202 to make any changes to the location or configuration of the wireless facilities proposed in the  
203 application.

204 § ~~15.2-2316.57~~. **Moratorium prohibited.**

205 A locality shall not adopt a moratorium on considering zoning applications submitted by wireless

206 services providers or wireless infrastructure providers.