

AN ORDINANCE AMENDING APPENDIX A OF THE CITY CODE, ENTITLED "ZONING," ARTICLE 13, SECTIONS 13-601 AND 13-602 THEREOF, TO AMEND THE DEFINITION OF SMALL CELLS TO REFLECT CHANGES IN STATE LAW; ADD THE DEFINITION OF "MICRO-WIRELESS FACILITIES;" PROVIDE THAT SMALL CELLS ADMINISTRATIVE REVIEW MAY INCLUDE UP TO 35 SMALL CELLS; AMEND THE SMALL CELLS ADMINISTRATIVE REVIEW TO REMOVE CONFLICTS WITH STATUTORY REQUIREMENTS; ADD THE FEE STRUCTURE LIMITATIONS FOR SMALL CELL ADMINISTRATIVE REVIEW, AND EXEMPT MICRO-WIRELESS FACILITIES FROM PERMITS AND FEES IF THEY ARE IN COMPLIANCE WITH NATIONAL SAFETY CODES; ALL AS REQUIRED BY CHANGES TO STATE LAW ENACTED BY THE 2017 SESSION OF THE GENERAL ASSEMBLY AND TO ADD THE DEFINITION OF "WIRELESS SUPPORT STRUCTURE" AND PERMIT THE ADMINISTRATIVE REVIEW OF SMALL CELL FACILITIES ON WIRELESS SUPPORT STRUCTURES UP TO FIFTY FEET IN HEIGHT PROVIDED CERTAIN REQUIREMENTS ARE MET.

WHEREAS the Council of the City of Chesapeake finds the public necessity, convenience, general welfare and good zoning practice so require;

BE IT ORDAINED by the Council of the City of Chesapeake, Virginia that Appendix "A" of the Chesapeake City Code, entitled "Zoning," Article 13, entitled "Supplemental Regulations," Sections 13-601 and 13-602, be amended and reenacted, as follows:

ARTICLE 13. - SUPPLEMENTAL REGULATIONS

Section 13-601. - Definitions and scope.

D. *Communication small cell facility* is defined as a wireless ~~low-power radio access facility, together with associated antennas mounting and mechanical equipment,~~ which provides and extends wireless communications systems' service coverage and increases network capacity; Communication small cell facilities consist of associated antennas that are attached to wireless support structures or other existing poles, buildings or structures and mounting and mechanical equipment, all of which meet the following qualifications: ~~and such antennae is attached either to a pole which supports an athletic field or parking lot light, street light or utility line or to a building or other structure.~~ 1)



Each antenna is located inside an enclosure of no more than six (6) 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 (6) cubic feet; and
2) All other wireless equipment associated with the facility has a cumulative volume of no more than twenty eight (28) cubic feet, or higher if permitted by Virginia Code Section 15.2-2316.3, 1950, as amended. The volume calculation excludes electric meters, 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.

E. *Micro-wireless facility* is defined as a small cell facility that is no larger than twenty four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, no longer than eleven (11) inches.

F. *Wireless support structure* means a freestanding structure, such as a pole, pole-like structure, 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.

Section 13-602. - Conditional use permit required.

A. *Compliance with article 17.* Except as provided below, all communication towers shall require a conditional use permit, obtained in accordance with the provisions of article 17 of this ordinance. Towers meeting the definition of a stealth tower may be approved by City Council with a conditional use permit on residentially zoned land. No conditional use permit shall be approved for a proposed stealth tower designed as a



simulated tree that exceeds thirty (30) feet above the existing average tree height within a 100-foot radius. The location of towers permitted as exceptions as provided below shall not interfere with the operation of the City's eight hundred (800) megahertz communication systems.

B. *Exceptions to conditional use permit requirement.*

1. *Building-supported antennas.* The applicant shall submit a preliminary site plan to the Department of Planning for administrative review and approval by the Director of Planning as authorized under section 18-202 of this ordinance. The site plan for the building-supported antenna shall be approved only if the following minimum standards are met:

b. The highest point of the antenna shall not exceed twenty-two (22) feet as measured from the highest point of the roof on the building or structure to which the antenna is attached.

e. Antennas shall not be mounted on utility poles or lighting structures unless installed within a Virginia Power standard transmission easement or within a public right-of-way along or on an interstate maintained by the Virginia Department of Transportation.

f. Antennas shall not be attached to any building or structure less than fifty (50) feet in height as measured from ground level.

g. A statement is received from a registered engineer certifying that the NIER (non-ionizing electromagnetic radiation) emitted from the antenna, when measured in conjunction with all other emissions from antennas mounted on the same building or structure, does not result in



an exposure at any point within or outside such facility which exceeds the lowest applicable exposure standards established by any regulatory agency of the U.S. Government or the American National Standards Institute.

2. *Municipal property.* In accordance with good zoning practice, City Council hereby deems municipal property suitable in location and character for the placement of communication towers, regardless of zoning, subject to all criteria specified below. All communication towers located on municipal property shall be exempt from conditional use permit requirements and shall be allowed as a permitted use in all zoning districts, subject to the following requirements: approval by virtue of a franchise agreement and right-of-way permit or of a lease by either the School Board or City Council, as required by law, appropriate with public notification to adjacent property owners by sign posting in the same manner required for rezoning applications and conditional use permits and preliminary site plan approval. All communication towers on municipal property shall meet the following minimum standards:

c. No communication tower may exceed one hundred seventy-five (175) feet in height unless a conditional use permit is acquired for this purpose. In no event may a conditional use permit authorize heights greater than those set out in section 13-604.D. of this ordinance.

3. *Extension or replacement of existing communication towers.*

(a) Communication towers existing under a valid conditional permit may be replaced and/or increased up to twenty-five (25) percent in height by administrative site



plan approval, provided that (i) the communication tower, as replaced or increased in height, does not exceed the height limitations set out in section 13-604.D. below, (ii) all landscaping requirements in section 13-606 of this ordinance are met, (iii) all new structures and buildings installed in conjunction with the replacement of the tower and/or increase in height meet applicable development criteria and standards of this ordinance; and (iv) the application for approval of the site plan contains all information, reports and evidence required under section 13-602.D. below, relating to structural integrity and emissions.

- (b) As authorized in section 13-604.D.2.(b) of this ordinance, communication towers existing under a valid use permit which exceed or, with a twenty-five (25) percent expansion will exceed, the height limitations in section 13-604.D.1. below may nevertheless qualify for administrative site plan approval under this subsection 13-602.B.3. provided that (i) the height of the communication tower, as replaced or extended, does not exceed five hundred (500) feet or ten (10) percent of the height of the communication tower prior to replacement or extension, whichever is less, (ii) the increase in the height of the communication tower does not trigger the need for new or more intensive lighting or striping requirements under applicable Federal Aviation Agency regulations, (iii) the communication tower, as extended or replaced, will meet all of the requirements set out in subsection 13-602.B.3.(a)(ii)—(iv) above, and (iv) to the extent possible, as reasonably determined by the holder of the conditional use permit, the extension or replacement of the communication tower will be designed and constructed to



accommodate multiple users. No more than one (1) increase in the height of a communication tower is permitted under this subsection.

4. *Collocation facilities.* Additional antennas, unmanned public facility buildings, and similar appurtenances necessary for a provider to collocate on an existing communication tower constructed under a valid conditional use permit, as an exception to the conditional use permit requirement or otherwise constructed lawfully, may be installed upon administrative site plan approval under section 18-202 of this ordinance provided that all development criteria and standards set out in this section and article 19 of this ordinance are met and all information, reports, and evidence required under section 13-602.D. below relating to structural integrity and emissions have been submitted as part of the application for preliminary site plan approval.
5. *Temporary portable towers.* Temporary portable towers, also known as cells on wheels (COWS), are permitted under the following circumstances:
 - e. For special events not to exceed seven (7) days under a special event permit approved in accordance with section 13-1504 of this ordinance.
6. ~~*Stealth tower in a non-residential zone or municipal property.*~~ Stealth tower in a non-residential zone or municipal property which meets the following criteria:
 - d. For those proposed towers within the Fentress Airfield overlay district, within five (5) miles of Naval Support Activity Norfolk, Northwest Annex and within three thousand (3,000) feet of the perimeter of Norfolk Naval Shipyard and St. Julien's Creek Annex, the Planning Department shall request that the Department of the Navy evaluate the impacts on naval facilities and operations. A conditional use



permit shall be required for a proposed communications tower that the Navy determines may have an impact on naval facilities and operations.

7. ~~*Stealth tower in an industrial zone.*~~ Stealth tower in an industrial zone which meets the following criteria:

a. The minimum setback requirements from the communication tower, ancillary equipment or accessory structure may not be closer ~~that~~ [than] three hundred (300) feet from the nearest residential structure and one hundred (100) feet from any property abutting property zoned or used for residential purposes.

8. Communication small cells facility. Communication small cell facilities which are installed by a wireless service provider or wireless infrastructure provider on wireless support structures or other existing poles, buildings or structures; provided that the following requirements are met:

a. The wireless service provider or wireless infrastructure provider either (1) obtains the approval of the City of Chesapeake by virtue of a franchise agreement and right of way permit or lease, as required by law, if a new wireless support structure is proposed to be located in the right-of-way or on City property; or (2) the wireless service provider or wireless infrastructure provider (i) has permission from the owner of an existing pole, building or structure to co-locate equipment on that pole, building or structure and (ii) notifies and provides evidence of such permission to the locality in which the permitting process occurs; and

b. The applicant shall submit a preliminary site plan to the Department of Planning for administrative review and approval by the Director of Planning or designee



as authorized under Section 18-202 of this ordinance. The applicant shall also submit an application which shall include: (i) photographs or accurate renderings, including correct colors and exact dimensions, of each type of proposed small wireless facility; (ii) a statement signed by a professional engineer licensed in the Commonwealth of Virginia stating that the proposed facilities comply with all applicable Federal Communications Commission regulations, including, without limitation, regulations pertaining to the emission of radio frequency radiation; and (iii) such additional information as the Planning Director may reasonably require in order to determine whether the requirements of this section are met. An applicant may submit up to thirty five (35) permit requests on a single application. All such completed applications, as determined by the Director of Planning or designee, shall be approved or disapproved within sixty (60) days of receipt of the complete application. Within ten (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 thirty (30) days. The application shall be deemed approved if the locality fails to act within the initial sixty (60) days or an extended 30-day period. Notwithstanding the fees put forth in Section 20-102 of this ordinance, the fee for processing small cell facility applications shall be



\$100 for each application proposing up to five (5) small cell facilities and \$50 for each additional small cell facility proposed on a permit application. The application and site plan for the communication small cell facility shall be approved only if the following minimum standards are met:

1. ~~a.~~ The communication small cell shall not have the potential to pose a material interference with other pre-existing communication facilities or with future communication facilities that have already been designed and planned for a specific location or that have been reserved for future public safety communication facilities, as determined by the City. The communication small cells may encompass multiple sites, provided that all such sites are located individually in separate, unconnected areas within the city.
2. ~~b.~~ If the communication small cell facility shall be installed on or in publicly owned or publicly controlled property, excluding privately owned structures, the communication small cells facility shall be substantially concealed from view by means of painting or tinting to match the surface of the building or other structure to which they are affixed or by other suitable method, such as by flush-mounting or integration into the design elements of the building or structure.
- ~~e.~~ 3. If visible from a public street, equipment other than ~~In addition,~~ whip antennas and electrical power or battery backup cabinets



shall be no greater than eight (8) cubic feet. Whip antennas shall be no longer than sixty-two (62) inches.

d. ~~E~~Further, electrical power and battery backup cabinets shall, ~~to the extent practicable,~~ shall be roof-mounted or otherwise located so as not to be visible from a public street or, where not practicable as determined by the Director of Planning or designee, such equipment shall be appropriately screened by landscaping or other means minimizing visibility from a public street. This section shall not be construed to prohibit or limit an applicant from voluntarily submitting conditions to address visual or aesthetic effects resulting from the placement of small cell facilities on private property.

~~4.e.~~ Communication small cells facilities shall only be permitted in the Chesapeake historic and cultural preservation overlay district if they are not visible from a public right-of-way, as determined by the Zoning Administrator or designee. ~~common areas serving multi-family residential districts (R-MF-1 and R-MF-2) and shall not be permitted in any other residential districts. They shall be permitted in all other non-residential districts other than conservation (C-1, C-2 and C-3) and agricultural (A-1) districts.~~

~~5.f.~~ Special requirements based on whether a communication small cell facility is affixed to a new wireless support structure or an existing pole, building or structure~~building or pole:~~



(i) New wireless support structure.

(a) A communication small cell facility may be installed on a new wireless support structure that is fifty (50) feet or less in height above ground level provided that the structure (i) is no greater than ten (10) feet above the tallest existing utility pole that is located within a five hundred foot (500) radius; (ii) it has no other wireless support structure or existing cable, communications, telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service located within a five hundred (500) foot radius; (iii) is not located within the boundaries of a local, state, or federal historic district; (iv) is designed and constructed to support small cell equipment; and (v) is approved by the City Council if located on public right of way or other property owned by the City.

(ii) Existing building-mounted.

- (a) The communication small cell may be attached to any building which is at least twenty (20) feet in height as measured from the ground level;
- (b) When attached to such building, the communication small cell shall be affixed at least



eighteen (18) feet in height as measured from the ground level.

(iii) Existing pole or other structure. Pole-mounted.

- (a) The communication small cell ~~shall~~ may be mounted on a pole or other structure that is which ~~supports an athletic field or parking lot light, street light or utility line.~~ Such pole ~~shall be~~ at least fifteen (15) feet in height as measured from the ground level;
- (b) The communication small cell shall not be more than five (5) feet above the height of the pole or structure on which it is mounted;
- (c) The communication small cell shall not protrude outward more than two (2) feet from the pole or structure on which it is mounted;
- (d) There shall be no more than one (1) communication small cell per pole or structure unless the applicant submits a certification as set out in section 13-602(D)(2) of this ordinance;
- (e) The antenna size does not exceed the diameter or width of the pole or structure on which it is mounted.



eg. At such time that the communication small cell ceases to be used for communications purposes for three (3) consecutive months, the applicant shall remove the communication small cell from the property. If the applicant fails to remove the communication small cell within thirty (30) days of written notice from the Zoning Administrator, the Director of Development and Permits or designee, through his or her own agents or employees, shall be authorized to remove the communication small cell and assess all charges incurred in such removal on the applicant.

9. Micro-wireless facilities. The installation, placement, maintenance or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles shall not require any permit from the City nor shall they be subject to any fee from the City if the applicant provides the Director of Planning or designee with proof of compliance with all national safety codes.
10. Nothing herein shall be construed to exempt the applicant from the requirement for a grant of franchise from the City Council pursuant to Section 15.2-2100 of the Code of Virginia, 1950, as amended.

An emergency is deemed to exist and this ordinance shall be retroactive to July 1, 2017.

ADOPTED by the Council of the City of Chesapeake, Virginia, this 19th day of

December _____, 2017.

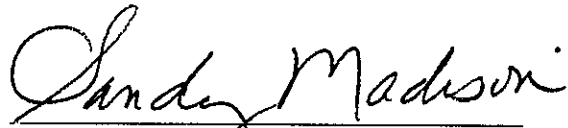


APPROVED:



Mayor

ATTEST:



Clerk of the Council

