

ORDINANCE NO. 7535-19

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 45, ZONING ORDINANCE, OF THE CODE OF THE CITY OF NEWPORT NEWS, VIRGINIA, ARTICLE V., GENERAL REGULATIONS, SECTION 45-523, COMMUNICATION TOWER/ANTENNA.

BE IT ORDAINED by the Council of the City of Newport News, Virginia:

That Chapter 45, Zoning Ordinance, of the Code of the City of Newport News, Virginia, Article V., General Regulations, Section 45-523, Communication tower/antenna, be, and the same hereby is, amended and reordained as follows:

CHAPTER 45

ZONING ORDINANCE

ARTICLE V. GENERAL REGULATIONS

Sec. 45-523. Communication towers, wireless facilities and small cell facilities.

The purpose of this section is to describe minimum standards for the construction and siting of communication towers that are greater than fifty (50) feet in height in order to minimize adverse visual effects and traffic distraction, by careful design, siting and vegetative screening and to maximize the use of any such new or existing communication towers to avoid their proliferation. Further, this section sets forth applicable administrative processes for the permitting of communication towers that are not greater than fifty (50) feet in height, and for wireless and small cell facilities.

- (1) Communication towers that are greater than fifty (50) feet in height are allowed by conditional use permit in accordance with Article IV, section 45-402, and are subject to the following:
 - a. Conditional use permit applications shall contain or be accompanied by the following information in addition to that which is required under Article XXVII, section 2703:
 1. A site plan drawn to scale specifying the location of tower(s), guy anchors (if any), transmission building and other accessory uses, parking, access, landscaped areas, fences and adjacent uses.

2. Verifiable evidence from the applicant of the lack of space on either suitable existing towers, buildings, and other structures to locate the tower, or on existing tower sites to construct a tower for the proposed antenna within their search area.
 3. Frequency of proposed antennas and capacity of proposed structure to accommodate one additional user.
 4. Information demonstrating that potential users have been contacted to discuss collocation and conveyed that current plans can/cannot be facilitated by collocation.
 5. Location of proposed structure and an evaluation of its impact on the character of surrounding areas.
 6. A written statement of preliminary approval or approval from the Federal Aviation Administration.
- b. Action by City Council:
- (1) City Council must take final action on conditional use permit applications within one hundred fifty (150) days after a complete application has been filed with the department of planning.
 - (2) When a conditional use permit application is incomplete as filed, the one hundred fifty (150) day time frame does not include the time an applicant takes to respond to a request by the department of planning for additional information to complete the application, provided the applicant is notified that its application is incomplete during the first thirty (30) days after filing.
 - (3) Any person affected by any failure by City Council to act on a complete application may, within 30 days after such failure to act, commence an action in any court of competent jurisdiction.
- c. Minimum setbacks:
1. The minimum side and rear yard setback from the base of the tower shall be twenty-five (25) feet in all permitted districts.
 2. The minimum required setback from the base of a tower to any public street right-of-way shall be one hundred (100) feet.

3. For towers of more than two hundred (200) feet in height, for every four feet in height of the tower over forty (40) feet, there shall be an additional one foot in setback from all property lines.
 4. Towers located in public rights-of-way having a minimum width of two hundred (200) feet, are exempt from the minimum setback requirements contained in this subsection.
- d. Screening requirements:
1. One row of evergreen trees at least eight (8) feet in height shall be planted and maintained on ten (10) foot centers completely surrounding the tower and equipment building compound, excluding entrances. Where existing trees abut the compound but are located within the lease area, such trees shall be maintained and the evergreen trees shall be used as infill to achieve minimum spacing.
 2. In lieu of the above requirements, in special cases, including stealth applications, the applicant may prepare an alternate landscape plan and specifications for landscape and screening, including plantings, fences, walls, buildings, topography, etc. to screen the tower. The plan may deviate from the requirements set out in c.1. above, provided that the director of planning determines that the alternative arrangement provides the same degree of screening. Stealth applications may include flag poles, light poles, simulated trees, and other similar applications where the tower is disguised to blend into its surroundings.
 3. All required landscaping must be installed and approved by the director of planning prior to the first planting season following issuance of certificate of use and occupancy, and maintained thereafter.
- e. Accessory facilities associated with communication towers may not include offices, vehicle storage or outdoor storage.
- f. Obsolete, unused or abandoned towers and associated facilities shall be removed within twelve (12) months of obsolescence, cessation of use or abandonment. A bond may be required, of sufficient amount, to cover removal of the structure.
- g. Advertising and/or signage on tower structures is expressly prohibited.

- h. Towers two hundred (200) feet or less in height shall have an unpainted galvanized finish. Regulations of the Federal Aviation Administration or the Federal Communications Commission supersede this requirement, if the same are contradictory.
- i. Towers more than two hundred (200) feet in height shall be painted in accordance with regulations by the Federal Communications Commission and/or the Federal Aviation Administration.
- j. Towers shall be illuminated as required by the Federal Communications Commission and/or the Federal Aviation Administration. No lighting shall be incorporated if not required by the aforesaid agencies.
- k. The owner shall have a structural inspection conducted every three (3) years by a registered professional engineer licensed in the Commonwealth of Virginia and a copy of the inspection report shall be filed with the department of codes compliance.
- l. Other conditions of approval may be specified and shall be reasonably imposed to insure compliance with the purpose and criteria of these provisions.
- m. In any instance where the regulations and requirements of this section conflict with those of the Federal Communications Commission or the Federal Aviation Administration, the federal regulation or requirement shall govern.
- n. In any instance where the regulations and requirements of this section conflict with those of Section 15.2-2293.1 of the Code of Virginia, 1950, as amended, the provisions of Section 15.2-2293.1, as amended, shall govern.
- o. The following shall be included as conditions to any conditional use permit granted under this section:
 - 1. A report from a registered professional engineer licensed in the Commonwealth of Virginia, indicating tower height and design, foundation, structure, installation and total capacity of the structure (including number and types of users that the structures will accommodate). This data shall satisfactorily demonstrate that the proposed tower conforms to all structural requirements of the Virginia Uniform Statewide Building Code.
 - 2. A statement from a registered engineer that non-ionizing electromagnetic radiation (NIER) emitted therefrom does not result

in a ground level exposure at any point 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) Communication towers not greater than fifty (50) feet in height are not subject to a conditional use permit requirement; however, such towers are permitted with administrative approval in mixed use, park, office, office park, office/research and development, retail commercial, general commercial, regional business, Oyster Point business, Oyster Point business/manufacturing, light industrial and heavy industrial district zones, and are permitted as a local utility in a publically owned right-of-way by written agreement of the owner thereof. The administrative permitting process is as follows:
- a. The owner shall submit an application and fee in the amount of five hundred dollars (\$500.00) to the department of codes compliance.
 - b. Final action must be taken on the application within one hundred fifty (150) days after a complete application has been filed or within the period required by federal law. A complete application shall be deemed approved if a determination is not made on the application within the one hundred fifty (150) day time period. Such period may be extended by mutual agreement between the applicant and the department of codes compliance.
 - c. The owner shall submit a report from a registered professional engineer licensed in the Commonwealth of Virginia, indicating tower height and design, foundation, structure, installation and total capacity of the structure (including number and types of users that the structure will accommodate). This data shall satisfactorily demonstrate that the proposed tower conforms to all structural requirements of the Virginia Uniform Statewide Building Code.
 - d. A statement from a registered engineer that non-ionizing electromagnetic radiation (NIER) emitted therefrom does not result in a ground level exposure at any point outside such facility which exceeds the lower applicable exposure standards established by any regulatory agency of the U.S. government or the American National Standards Institute.
 - e. The owner shall have a structural inspection conducted every three (3) years by a registered professional engineer licensed in the Commonwealth of Virginia and a copy of the inspection report shall be filed with the Department of Codes Compliance.

- f. The department of codes compliance may deny an application if the proposed location of the tower is in an area where all cable and public utility facilities are recommended to be placed underground, and if the underground requirement existed in the city's comprehensive plan at least three months prior to submission of the application, or if the proposed location of the wireless facility is within the boundaries of a local, state or federal historic district.
- g. The department of codes compliance may deny an application if the proposed location of the wireless facility is within the boundaries of a local, state or federal historic district.
- h. Obsolete, unused or abandoned towers and associated facilities shall be removed within twelve (12) months of obsolescence, cessation of use or abandonment. A bond shall be required, of sufficient amount, to cover removal of the structure.
- i. The applicant may voluntarily submit and the department of codes compliance may accept conditions that address potential visual or aesthetic effects resulting from the placement of a tower.
- j. Disapproval of applications submitted hereunder shall be provided to the applicant in writing. Such disapproval shall not be based upon:
 - 1. The applicant's business decision with respect to its designed service, customer demand for service or its service to or from a particular site;
 - 2. The applicant's specific need for the project, including the applicant's desire to provide additional wireless coverage or capacity; or
 - 3. The wireless facility technology selected by the applicant for use at the project.
- k. If the applicant is not the owner of the real property on which the tower is to be erected, then the applicant shall submit proof to the department of codes compliance that permission to use the land has been granted to the applicant. In instances where the tower is proposed in the public right-of-way, then the applicant must submit a copy of an executed Franchise Agreement, or other comparable document, as proof of permission to use the right-of-way in question.
- l. The city may make reasonable requirements of the applicant regarding the presentation or appearance of a project including reasonable requirements

regarding the kind of materials used and/or the arranging, screening or landscaping of the project.

- m. Nothing in this section shall prohibit the city from limiting the number of towers that can be installed in a specific location.
- n. Construction of the approved project shall commence within two (2) years of final approval or the permit shall expire at such time.

(3) Wireless facilities mounted on existing structures (communication towers, buildings, water towers, etc.) are not subject to a conditional use permit requirement. However, such facilities are permitted with administrative approval in industrial, commercial, office and park zones, but shall not be mounted on structures used for single-family dwellings. Wireless facilities are otherwise prohibited in multi-family and single-family zones, except that they shall be permitted in such zones with administrative approval on roofs of buildings that are four (4) stories or higher. Wireless facilities are also permitted as a local utility in any publically owned right-of-way by written agreement of the owner thereof. The administrative permitting process is as follows:

- a. The owner of the wireless facility shall submit an application and fee, in the amount of five hundred dollars (\$500.00) to the department of codes compliance.
- b. Final action must be taken on the application within ninety (90) days after a complete application has been filed or within the period required by federal law. A complete application shall be deemed approved if a determination is not made on the application within the ninety (90) day time period. Such period may be extended by mutual agreement between the applicant and the department of codes compliance.
- c. The department of codes compliance shall deny an application if the proposed location of the wireless facility is in an area where all cable and public utility facilities are recommended to be placed underground, and if the underground requirement existed in the city's comprehensive plan at least three months prior to submission of the application, or if the proposed location of the wireless facility is within the boundaries of a local, state or federal historic district.
- d. Obsolete, unused or abandoned wireless facilities shall be removed within twelve (12) months of cessation of use or abandonment. A bond shall be required, of sufficient amount, to cover removal.
- e. The applicant may voluntarily submit and the department of codes

compliance may accept conditions that address potential visual or aesthetic effects resulting from the placement of a wireless facility.

- f. Disapproval of applications submitted hereunder shall be provided to the applicant in writing. Such disapproval shall not be based upon:
 - 1. The applicant's business decision with respect to its designed service, customer demand for service or its service to or from a particular site;
 - 2. The applicant's specific need for the project, including the applicant's desire to provide additional wireless coverage or capacity; or
 - 3. The wireless facility technology selected by the applicant for use at the project.
 - g. If the applicant is not the owner of the structure on which the wireless facility is to be mounted, then the applicant shall submit proof to the department of codes compliance that permission to mount the wireless facility has been granted by the owner of the structure. In instances where the wireless facility is proposed in the public right-of-way, then the applicant must submit an executed Franchise Agreement, or comparable document, as proof of permission to use the right-of-way in question.
 - h. The city may make reasonable requirements of the applicant regarding the presentation or appearance of a project including reasonable requirements regarding the kind of materials used and/or the arranging, screening or landscaping of the project.
 - i. Nothing in this section shall prohibit the city from limiting the number of wireless facilities that can be installed in a specific location.
 - j. Construction of the approved project shall commence within two (2) years of final approval or the permit shall expire at such time.
- (4) Small cell facilities mounted on existing structures (communication towers, buildings, water towers, etc.) are not subject to a conditional use permit requirement. However, such facilities are permitted with administrative approval in industrial, commercial, office and park zones, but shall not be mounted on structures used for single-family dwellings. Small cell facilities are otherwise prohibited in multi-family and single-family zones, except that they shall be permitted in such zones with administrative approval on roofs of buildings that are four (4) stories or higher. Small cell facilities are also permitted as a local utility in any publically owned right-of-way by written agreement of the owner thereof. The administrative permitting process is

as follows:

- a. The owner of a small cell facility/facilities must submit a permit application to the department of codes compliance which may contain up to thirty-five (35) requests on a single application. A fee in the amount of one hundred dollars (\$100.00) will be charged for each small cell facility, for up to five (5) small cell facilities per permit application. Thereafter, a fee of fifty dollars (\$50.00) will be charged for each additional small cell facility on a permit application.
- b. The department of codes compliance may disapprove of a proposed location or installation of a small cell facility only for the following reasons:
 1. 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;
 2. The public safety or other critical public service needs; or
 3. 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.
 4. Conflict with a local historic district ordinance adopted pursuant to §15.2-2306.
- c. If the applicant is not the owner of the structure on which the small cell facility is to be mounted, then the applicant shall submit proof to the department of codes compliance that permission to mount the small cell facility has been granted by the owner of the structure. In instances where the small cell facility is proposed in the public right-of-way, the applicant must submit a copy of an executed Franchise Agreement, or other comparable document, as proof of permission to use the right-of-way in question.
- d. The applicant may voluntarily submit, and the department of codes compliance may accept conditions that otherwise address potential visual or aesthetic effects resulting from the placement of small cell facilities.
- e. Obsolete, unused or abandoned small cell facilities shall be removed within

twelve (12) months of obsolescence, cessation of use or abandonment. A bond shall be required, of sufficient amount, to cover removal.

- f. 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 city permitting requirements and fees.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON FEBRUARY 26, 2019

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk