

## HISTORY OF WIRELESS FACILITY REGULATIONS IN FAIRFAX COUNTY

First telecommunication facilities in Fairfax County were proposed in 1983. Between 1983 and the early 1990s few telecommunication facilities were reviewed by the County and land use cases for such proposals were generally noncontroversial in nature. The Policy Plan and Zoning Ordinance were general in scope and did not specifically address wireless telecommunication facilities.

**ZO-92-231** - Amended the Zoning Ordinance to add a new mobile and land based telecommunication facility definition to distinguish them from telecommunication facilities in general. Sect. 2-514 of the Zoning Ordinance was established to set forth limitations on the size, dimensions, color and illumination of antennas in residential districts, on public uses, on existing transmission towers, and in commercial and industrial districts. If such facility did not meet Sect. 2-514, special exception approval was required. **(Effective 1/2/93)**

**S92-CW-3CP** – In conjunction with ZO-92-231, the Board adopted a Comprehensive Plan amendment which added new specific policies and guidelines for wireless telecommunication facilities including a “feature shown” option for rooftop installations. In general, this amendment established policies favoring the use of publicly owned property and the collocation of telecommunication facilities on single sites and structures. The policies recommended that telecommunication uses be placed so as not to adversely affect the use or character of public property. The policies also supported telecommunication locations having a minimal impact on surrounding residential uses. **(Effective 1/2/93)**

**Telecommunications Act of 1996 Pub. LA. No. 104-104, 110 Stat. 56 (1996).** – This was the first major overhaul of federal telecommunications law in almost 62 years. The goal of this law was to let anyone enter any communications business and to let any communications business compete in any market against any other communications business. This Act impacted telephone service – local and long distance, cable programming and other video services, broadcast services, and services provided to schools.

**ZO-96-290** – Amended the Zoning Ordinance to allow, by right and without the requirement for a temporary special permit, temporary testing facilities for mobile and land based telecommunication facilities using portable or mobile units for periods of up to 12 hours. **(Effective 11/19/96)**

**ZO -96-291** – Amended the Zoning Ordinance to provide for greater flexibility in locating antennas on existing multiple family and nonresidential buildings in all zoning districts and on existing structures within public and utility rights-of-way. It was believed that the visual impacts of these facilities could be reduced with more antennas being placed on existing structures and some monopoles and towers being grouped with other existing poles and towers in major utility easements. **(Effective 11/19/96)**

**S96-CW-3CP** – In conjunction with ZO-96-291, the Board amended the “Energy and Communication Services” section of the Public Facilities element of the Comprehensive Plan by adding a new objective and policies. This amendment provided additional options for “feature shown” determinations, including low impact installations on utility poles and towers, existing structures such as monopoles and towers, and light and camera standards. The amendment also provided expanded policy guidance for the siting of telecommunication facilities and equipment and emphasized the need to mitigate the visual impact and prominence of telecommunication installations. **(Effective 11/19/96)**

**ZO-97-300** – Amended Sect. 2-514 of the Zoning Ordinance which allowed the steady red marker requirement light on antenna structures that exceed 100 feet in height to be waived by the Zoning Administrator, if it is determined by the Police Department that such marker light is not necessary for flight safety requirements for police and emergency helicopter operations. **(Effective 8/5/97)**

**ZO-01-335** - Amended Sect. 2-514 of the Zoning Ordinance to increase the maximum allowable size for equipment cabinets or structures used in association with antennas mounted on major utility easements from 240 cubic feet to 750 sq. ft. **(Effective 1/23/01)**

**ZO-03-359** - Amended Sect. 2-514 to facilitate the placement of antennas on existing or replacement utility poles and light standards in order to reduce the need for new monopoles or towers; and to encourage the use of stealth structures to lessen the visual impact of such facilities on adjacent properties. **(Effective 9/30/03)**

**S03-CW-1CP** – In conjunction with ZO-03-359, the Board amended the Policy Plan element of the Comprehensive Plan by reorganizing the “Energy and Communication Services” section into two sections including a Mobile and Land Based Telecommunications Services section and an Electrical and Land-Line Utility Services section. The Mobile and Land Based Telecommunications section was further divided into three major parts including General Guidelines, Feature Shown Guidelines and Administrative Review Guidelines. A new expedited review process for installations having little or no visual impacts was established under the Administrative Review Guidelines. This new administrative process allows for certain inconspicuous proposals to be processed without full Planning Commission review and approval when certain very specific guidelines are met. **(Effective 9/30/03)**

**ZO-09-415** – Amended Sect. 2-514 to Increase the maximum allowable height of by right structure and rooftop mounted panel antennas from 6 to 8 ½ feet; allow replacement utility poles and light poles on which antennas are mounted that are located in any street right-of-way to be greater in size than the pole being replaced, subject to limitations; and allow mobile and land based telecommunication hub sites to locate by right in residential districts in certain circumstances. **(Effective 2/24/09)**

**ZO-11-427** – Amended Sect. 2-514 to allow an 8 foot tall chain link fence to be used as a screening option for equipment cabinets associated with antennas mounted on light poles located on

athletic fields that are government owned or controlled when the equipment cabinets are located either completely or partially under bleachers. **(Effective 2/23/11)**

**ZO-11-446** – Amended Sect. 2-514 to Increase the maximum allowed volume and height of an equipment cabinet that is permitted to be located by-right on an existing or replacement utility pole or light poles in any street right-of-way or utility easement, in support of a telecommunication facility. In addition, clarifies the limitation placed on the number of permitted antennas for such facilities by eliminating the maximum allotment when the proposed antennas are entirely enclosed within a stealth extension of the existing or replacement pole or standard. **(Effective 10/29/14)**

**Sect. 6409 of the Spectrum Act (47 U.S.C. § 1455)** – Notwithstanding the Telecommunications Act of 1996 or any other provision of law, a state or local government may not deny, and must approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. Under this Act, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves: (a) collocation of new transmission equipment; (2) removal of transmission equipment; or (c) replacement of transmission equipment. **(Effective 2/22/12)**

**S12-CW-2CP** - The adopted Policy Plan amendment is the result of the Planning Commission’s Telecommunication Committee’s work to review the current Policy Plan provisions concerning mobile and land based telecommunication facilities. Among other things, the Amendment facilitated the placement of distributed antenna systems as an alternative to new monopoles or towers; clarified that public lands are a preferred location for siting facilities; clarified that telecommunication facilities should avoid areas of environmental sensitivity; expanded the mitigation measures for reducing negative visual impacts; and provided Administrative Review requirements that reflect current zoning regulations. **(Effective 4/30/13)**

**ZO-15-450** – Amended Sect. 2-514 to increase the maximum height of certain panel antennas from 6 to 8 ½ feet and to increase the maximum diameter of certain replacement poles from 42 to 60 inches. **(Effective 10/7/15)**

**House Bill 883** – HB 883 was adopted by the 2016 Virginia General Assembly and pertains to the approval process for telecommunication towers and stipulates that when telecommunication towers are located in a zoning district where they are permitted by right, the telecommunications tower is deemed to be substantially in accord with the Comprehensive Plan and Planning Commission approval under § 15.2-2232 of the Code of Virginia is not required. **(Effective 7/1/16)**

**ZO-16-453** – This Zoning Ordinance amendment was in response to HB 883 and requires special exception approval by the Board of Supervisors prior to the installation of any monopole or telecommunication tower in lieu of the previous provisions which allowed monopoles and towers to be permitted by right at certain locations and when all applicable zoning regulations were met. **(Effective 6/22/15)**

**Senate Bill 1282** - SB 1282 was adopted by the 2017 Virginia General Assembly and allows localities to require Zoning Administrator approval of a zoning permit for the installation of a small cell facility by a wireless service provider or wireless service infrastructure provider on an existing structure and to charge reasonable fees for the processing of such permits. **(Effective 7/1/17)**

**ZO-17-465** - Implemented Senate Bill 1282 and added a new Sect. 2-519 to the Zoning Ordinance which requires Zoning Administrator approval of a zoning permit for the installation of a small cell facility by a wireless services provider or wireless services infrastructure provider on an existing structure subject to certain limitations and an application filing fee. **(Effective 7/1/17)**

**PA 2017-CW-1CP** – This Plan Amendment made changes to the Mobile and Land Based Telecommunications Services Plan to reflect the enactment of the Spectrum Act and SB 1282. The Plan Amendment added references to the Spectrum Act and SB 1282 in the objectives and policies of the Public Facilities portion of the Comprehensive Plan. **(Effective July 25, 2017)**

**House Bill 1258 and Senate Bill 405** - New wireless telecommunications legislation took effect after the 2018 Virginia General Assembly adopted House Bill 1258 and Senate Bill 405. Virginia Code § 15.2-2316.3 now defines the term “administrative review-eligible project” (AREP) to include two types of projects: (1) the installation or construction of a new structure that is not more than 50 feet in height (and meets all other applicable criteria); and (2) the co-location on an existing structure of a wireless facility that is not a small cell facility. Virginia Code § 15.2-2316.4:1 prohibits localities from requiring a special exception for AREPs, but it allows localities to require administrative review for the issuance of a zoning permit for those projects. The legislation allows localities to continue requiring a special exception for projects that do not qualify as AREPs or small cell facilities, subject to limits on localities’ ability to require certain information or to disapprove applications for certain reasons. **(Effective 7/1/18)**

**Board Action Item** - To harmonize the County’s regulatory framework with the new legislation, the Board of Supervisors, adopted a combined 2232/zoning permit for all AREPs with a fee of \$500. AREPs are now processed administratively without a public hearing and are subject to review criteria that determines whether a permit can be approved. These objective criteria are based on existing guidelines in the Comprehensive Plan and Sect. 2-514 of the Zoning Ordinance and include reasonable requirements for the presentation and appearance of projects. **(Effective 7/31/18)**

**FCC Ruling** – On 9/26/2018, the Federal Communications Commission issued a Declaratory Ruling and Order which:

- Defines small wireless facilities (SWFs) as facilities mounted on structures 50 feet or less in height including their antennas.
- Imposes new deadlines for processing SWF applications.

- Creates a 3-part test for aesthetics, minimum spacing, and undergrounding requirements related to SWFs. Requirements must be (1) reasonable, (2) no more burdensome than requirements for other infrastructure deployments, and (3) objective and published in advance.
- Establishes a new standard for what should be considered a prohibition or effective prohibition on service. This standard prohibits localities from implementing legal requirements that **materially inhibit** an applicant (wireless service provider) from participating in activities related to (1) filling a coverage gap, (2) increasing the density of a wireless network, (3) introducing new services or (4) otherwise improving existing service.
- Localities must adopt aesthetic requirements, if at all, by 4/15/19.

**Effective 1/15/2019**