

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 10/14/14, CUT OFF DATE: 10/08/14
10/14/14 (Resolution to Initiate)

RESOLUTION X ORDINANCE PUBLIC HEARING

ITEM TITLE:

RESOLUTION INITIATING TA-14-645 AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 10, 11, 12, 13, 15, 15.1, 16, 16.1, 18, AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO TELECOMMUNICATIONS FACILITIES, PERMIT AND REVIEW REQUIREMENTS, AND FEES

STAFF RECOMMENDATION:

Initiate the text amendment to start formal public hearing review process

PUBLIC NOTICE AND HEARING:

N/A

ADVISORY BOARD RECOMMENDATION:

If the item initiated, the item will go to Planning Commission for recommendation and then back to Council for two readings/public hearing.

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

Table with 4 columns: DEPARTMENT, INITIALS FOR APPROVAL, INITIALS FOR DISAPPROVAL, DATE. Rows include Planning Director, City Attorney, City Manager, and Clerk of Council.

Initiating Department Director's Signature: (Zoning and Inspections) [Signature] 10/8/14



APPROVED AS TO FORM:

[Signature] 10/8/2014 CITY ATTORNEY

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Aaron Grisdale, Director of Zoning and Inspections *AMG*  
**Date:** October 14, 2014  
**Re:** RESOLUTION INITIATING TA-14-645 AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 10, 11, 12, 13, 15, 15.1, 16, 16.1, 18, AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO TELECOMMUNICATIONS FACILITIES, PERMIT AND REVIEW REQUIREMENTS, AND FEES

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## **THE ISSUE:**

During Council work session on October 7, 2014, staff provided a presentation on possible ordinance revisions for how telecommunications facility requests are reviewed and permitted. At the meeting Council decided to forward the issue to the next Council meeting for initiation of the amendment.

## **RELATIONSHIP TO STRATEGIC PLAN:**

Goal 4 – Create a More Livable City for All, Objective 3 – Manage future growth, development and redevelopment consistent with City’s vision, comprehensive plan and development standards and policies

## **BACKGROUND:**

Following a review of our Zoning Ordinance provisions for telecommunications facilities and provisions of the Middle Class Tax Relief Act of 2012, staff has presented some opportunities to facilitate a more streamlined review process for collocations and modifications of existing facilities. The updated provisions in the draft amendment categorize the types of requests received from telecommunications providers into three groups: new telecommunications facilities, major modifications, and minor modifications. New facilities and major modifications will still require the CUP process; however, minor modifications will be an administrative review and approval.

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Major modifications are based upon FCC guidance as to what constitutes a substantial increase in size of an existing facility:

- The height of the existing facility is increased by more than ten percent (10%) from the current height or twenty (20) feet, whichever is greater;
- More than 4 new equipment cabinets or 1 new shelter;
- Protrusion of more than twenty (20) feet or width of the tower, whichever is greater; or,
- Excavation outside existing leased or owned property and current easements.

Minor modifications include new antennas that do not meet the threshold for major modifications, as well as collocations on existing towers and buildings. The applicant will be able to submit an application for administrative review and approval. Through this process, the applicant will still need to secure additional zoning requirements, if needed, such as Historic Winchester and Corridor Enhancement district approval. A fee of \$500 will be associated with the application. The ordinance will also include the same three basic requirements for administrative approval as are typically included with a telecommunications CUP approval: certification the antennas meet federal requirements, bond covering removal of the equipment, and a requirement to remove the equipment once it is no longer in active use.

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**BUDGET IMPACT:**

No funding is required.

**OPTIONS:**

- Initiate the zoning text amendment.
- Decline to initiate the text amendment.

**RECOMMENDATIONS:**

Staff believes this draft amendment serves the intent of Council to streamline the process for modifications of existing facilities.

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RESOLUTION INITIATING TA-14-645 AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 10, 11, 12, 13, 15, 15.1, 16, 16.1, 18, AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO TELECOMMUNICATIONS FACILITIES, PERMIT AND REVIEW REQUIREMENTS, AND FEES.

**TA-14-645**

WHEREAS, the Zoning Ordinance has existing provisions in that regulate the construction and modification of telecommunications facilities; and,

WHEREAS, in accordance with §15.2-2283 of the Code of Virginia, the purpose of this ordinance is to facilitate the creation of a convenient, attractive and harmonious community, by ensuring that telecommunications facilities are used and constructed in a manner that is consistent with a property's zoning district and the Comprehensive Plan; and,

WHEREAS, the proposed changes will comply with the review and approval requirements for such facilities pursuant to the Middle Class Tax Relief Act of 2012, Section 6409; and,

WHEREAS, the proposed ordinance language will allow for City Council to review and approve new facilities and substantial modifications to such facilities, while allowing for a more expedited review process through the Zoning Administrator for minor modifications and collocations of telecommunications equipment; and,

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Winchester hereby initiates the following text amendment:

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ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 10, 11, 12, 13, 15, 15.1, 16, 16.1, 18, AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO TELECOMMUNICATIONS FACILITIES, PERMIT AND REVIEW REQUIREMENTS, AND FEES.

**TA-14-645**

Draft 1 – (10/07/14)

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Ed. Note: The following text represents excerpts of the Zoning Ordinance that are subject to change. Words with strikethrough are proposed for repeal. Words that are boldfaced and underlined are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.

**ARTICLE 3  
LOW DENSITY RESIDENTIAL DISTRICT - LR**

**SECTION 3-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.**

- 3-2-2 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 4  
MEDIUM DENSITY RESIDENTIAL DISTRICT – MR**

**SECTION 4-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.**

- 4-2-5 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 5  
HIGH DENSITY RESIDENTIAL DISTRICT – HR**

**SECTION 5-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.**

- 5-2-14 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)
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**ARTICLE 5.1  
LIMITED HIGH DENSITY RESIDENTIAL DISTRICT - HR-1**

**SECTION 5.1-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.**

- 5.1-2-6 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.**

**ARTICLE 6  
RESIDENTIAL OFFICE DISTRICT - RO-1**

**SECTION 6-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.**

- 6-2-5 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 7  
RESIDENTIAL BUSINESS DISTRICT - RB-1**

**SECTION 7-2. USES REQUIRING A CONDITIONAL USE PERMIT.**

- 7-2-18 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 8  
HIGHWAY COMMERCIAL DISTRICT - B-2**

**SECTION 8-2. USES REQUIRING A CONDITIONAL USE PERMIT**

- 8-2-17 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 9  
CENTRAL BUSINESS DISTRICT - B-1**

**SECTION 9-2. USES REQUIRING A CONDITIONAL USE PERMIT.**

- 9-2-15 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 10**

**COMMERCIAL INDUSTRIAL DISTRICT - CM-1**

**SECTION 10-2. USES REQUIRING A CONDITIONAL USE PERMIT.**

10-2-8 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 11**

**LIMITED INDUSTRIAL DISTRICT - M-1**

**SECTION 11-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.**

11-2-4 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 12**

**INTENSIVE INDUSTRIAL DISTRICT - M-2**

**SECTION 12-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.**

12-2-1 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

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**ARTICLE 13**

**PLANNED DEVELOPMENT**

**SECTION 13-2. PLANNED COMMERCIAL DISTRICT – PC**

13-2-4 USES PERMITTED WITH A CONDITIONAL USE PERMIT.

13-2-4.3 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ **Telecommunications facilities** in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.**

**ARTICLE 15**

**HEALTH SERVICES DISTRICT – HS**

**SECTION 15-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.**

15-2-3 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ Telecommunications facilities in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 15.1  
MEDICAL CENTER DISTRICT – MC**

**SECTION 15.1-2. USES PERMITTED BY CONDITIONAL USE PERMIT.**

15.1-2-3 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ Telecommunications facilities in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 16  
HIGHER EDUCATION DISTRICT - HE-1**

**SECTION 16-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.**

16-2-1 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ Telecommunications facilities in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.** (2/13/96, Case TA-95-07, Ord. No. 002-96)

**ARTICLE 16.1  
EDUCATION, INSTITUTION AND PUBLIC USE DISTRICT – EIP**

**SECTION 16.1-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.**

16.1-2-1 ~~Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~ Telecommunications facilities in accordance with Section 18-2-1.2 of this Ordinance **with the exception of minor modifications of existing facilities as provided in Section 18-2-1.2C.**

**18-2-1.2      Telecommunications Facilities**

**A. For the purposes of this section, the following definitions shall apply:**

- 1) Telecommunications Facility: Any antenna, antenna array or other communications equipment consisting of personal wireless services, as defined in the Federal Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services, including cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), and paging, as well as unlicensed wireless services and common carrier wireless exchange access services, and similar services that currently exist or that may in the future be developed. Where reference is made to a telecommunications facility, unless otherwise specified or indicated by context, such reference will be deemed to include the support structure on which the antenna or other communications equipment is mounted, transmission cables, and any associated equipment shelter.
- 2) New Telecommunications Facility: The establishment of a telecommunications facility, on a tower, building, or other support structure, where such facility does not presently exist.
- 3) Major Modification: An alteration of a telecommunications facility wherein:
  - i. The height of the existing facility is increased by more than ten percent (10%) from the current height or twenty (20) feet, whichever is greater;
  - ii. More than 4 new equipment cabinets or 1 new shelter;
  - iii. Protrusion of more than twenty (20) feet or width of the tower, whichever is greater; or,
  - iv. Excavation outside existing leased or owned property and current easements.
  - v. The calculation for such modifications shall be cumulative over time following the initial approval of the telecommunications facility. No such modification shall be permitted if the structure will exceed the height for the zoning district as provided in 18-2-1.2B.
- 4) Minor Modification: An alteration of an existing telecommunications facility that does not meet or exceed the thresholds for a major modification outlined in Section 18-2-1A(2). The calculation for such modifications shall be cumulative over time following the initial approval of the telecommunications facility. No such modification shall be permitted if the structure will exceed the height for the zoning district as provided in 18-2-1.2B. Any modification, replacement or collocation of antennas on a building containing an existing telecommunications facility shall be classified as a minor modification.

18-2-1.2B.

~~Proposals for new transmitting and receiving facilities and towers for cellular communications systems and similar communications systems~~

**telecommunications facilities or major modifications of such facilities** shall demonstrate the following: (2/14/96, Case TA-95-07, Ord. No. 002-96; 8/13/13, Case TA-13-198, Ord. No. 2013-21)

- 1)** All possible means for sharing space on existing towers or on existing buildings or other structures have been exhausted and no alternative other than constructing a new tower exists, and if a new tower is proposed, the applicant has executed a Letter of Intent to share space on their tower and negotiate in good faith with other interested parties.;
- 2)** The height of any tower is no more than the minimum to accomplish required coverage and any new tower is separated from property lines in a residential district by not less than the height of the tower. In no case shall any tower exceed 75 feet in height in a LR, MR, HR, HR-1, RO-1, RB-1 or HS Districts, nor 100 feet in the B-1, B-2, CM-1, PC, MC, **EIP** or HE-1 Districts, nor 200 feet in the M-1 or M-2 Districts;
- 3)** The tower construction is of a design which minimizes the visual impact and the tower and other facilities have been camouflaged and/or screened from adjacent properties and rights of way to the maximum extent practicable. To this end, the proposal must provide for retention of existing stands of trees and the installation of screening where existing trees do not mitigate the visual impact of the facility. Such screening must, at a minimum, meet the requirements of Section 19-5-6.4d of this Ordinance. The Planning Commission may recommend and the City Council may require additional trees and screening when the minimum provisions do not mitigate adverse visual impacts of the facility;
- 4)** The electromagnetic fields do not exceed the radio frequency emission standards established by the American National Standards Institute or standard issued by the Federal Government subsequent to the adoption of this Ordinance.

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**C. Minor modifications of existing telecommunications facilities shall require approval of an administrative zoning permit in place of a conditional use permit and fee as provided in Section 23-8-1:**

- 1) Such modifications shall be submitted for approval on a form designated by the Administrator.**
- 2) Prior to approval of the zoning permit, the applicant shall demonstrate that required approval has been secured for any additional ordinance**

requirements as provided in this ordinance, including but not limited to site plan approval and certificates of appropriateness for facilities in the Historic Winchester (HW) and Corridor Enhancement (CE) districts, as needed.

- 3) Approval of an administrative telecommunications permit shall include the following conditions:
- i. Submission of an as-built emissions certification after the facility is in operation, demonstrating compliance with radio frequency emission standards established by the Federal Government.
  - ii. Submittal of a bond at one hundred and fifty percent (150%) to guarantee removal of the approved facilities should the use cease.
  - iii. The applicant, tower owner, or property owner shall remove equipment within ninety (90) days once the equipment is no longer in active use.

**ARTICLE 23**

**ADMINISTRATION AND INTERPRETATION**

**SECTION 23-8. FEES.** (10/13/99, Case TA-99-04, Ord. No. 029-99; 10/9/02, Case TA-02-07, Ord. No. 024-2002; 8/13/13, Case TA-13-198, Ord. No. 2013-21)

23-8-1	Conditional Use (when applied for at same time as site plan) (10/8/02, Case TA-02-07, Ord. No. 024-2002)	\$200
	Conditional Use (when applied for separate from site plan) (10/8/02, Case TA-02-07, Ord. No. 024-2002)	\$500
	Conditional Use – Telecommunications Facility/Tower (New, <u>Major</u> Modification, <del>or Collocation</del> ) (8/13/13, Case TA-13-198, Ord. No. 2013-21)	\$1500
	<u>Administrative Telecommunications Permit (Minor Modifications)</u>	<u>\$500</u>