

ORDINANCE NO. 2018-03

ORDINANCE NO. 2018-03 AMENDS THE ASHLAND TOWN CODE, CHAPTER 21, "ZONING" TO ADD ARTICLE IX, "SMALL CELL WIRELESS FACILITIES" TO ESTABLISH THE STANDARDS FOR SMALL WIRELESS FACILITIES IN THE RIGHTS-OF-WAY. ORDINANCE NO. 2018-3 IS CONSIDERED PURSUANT TO THE GRANT OF AUTHORITY CONTAINED IN VA CODE §§ 15.2-2316.3 & 15.2-2316.4. ORDINANCE NO. 2018-3 ALSO RENUMBERS SECTION 21-277, "ELECTRIC VEHICLE CHARGING STATIONS" TO BE SECTION 21-278.

WHEREAS the Town of Ashland ("Town") desires to promote the management of the rights-of-way for the protection of the public health, safety and welfare of its citizens; and

WHEREAS the Town seeks to comply with state and federal law.

NOW THEREFORE, BE IT ORDAINED by the Ashland, VA Town Council that Chapter 21, "Zoning" of the Code of the Town of Ashland shall be amended by adding Article IX, "Small Cell Wireless Facilities" which shall read in its entirety as follows:

"ARTICLE IX. SMALL CELL WIRELESS FACILITIES

Sec 21-279. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

"Wireless support structure" means a freestanding structure, such as a 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.

Sec 21-280. Purpose/Intent & Scope

The purpose of this Article is to establish policies and procedures for the placement of small cell wireless facilities and associated utility poles in rights-of-way within the Town's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the Town rights-of-way and the Town as a whole. In enacting this Chapter, the Town is establishing uniform standards to address issues presented by small wireless facilities, including without limitation, to:

- (1) limit interference with the use of streets, sidewalks, alleys, parkways, public utilities, public views, certain Town corridors, and other public ways and places;
- (2) limit the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (3) limit interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;
- (4) limit environmental damage, including damage to trees;
- (5) respect the character of the neighborhoods in which facilities are installed.

Sec 281. Zoning; Small Cell Facilities

(1) The installation of a small cell facility by a wireless services provider or wireless infrastructure provider on an existing structure may be permitted on any lot in any zoning district subject to approval by the Zoning Administrator of a small cell facility zoning permit and compliance with the provisions below.

(2) The provider must demonstrate that each small cell facility complies with the following:

- i. 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
- ii. All other wireless equipment associated with the facility has a cumulative volume of no more than twenty-eight (28) cubic feet or such higher limit as is established by the Federal Communication Commission.

(3) The following types of associated equipment are not included in the equipment volume calculation: electric meter, concealment, telecommunications demarcation boxes, backup power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(4) Before installing any small cell facility, the provider must obtain an approved zoning permit for each facility. The applicant must complete an application for each zoning permit request on forms provided by the Town of Ashland and must file completed forms with the Zoning Administrator. A single application may include up to thirty-five (35) permit requests. The application form may require certification by the applicant that the small cell facility will not materially interfere with or degrade any existing public safety communications system.

Each permit request must include the specific location of each proposed small cell facility including specific identification of the existing structure on which the facility will be installed, specifications showing the size of the antennas and associated equipment of each small cell facility, and a statement from the owner of the existing structure consenting to co-location of the small cell facility on the structure.

The application shall be approved or disapproved within 60 days of receipt of the complete application. Within 10 days after receipt of an application and a valid electronic mail address for the applicant, the applicant shall be notified 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 Town of Ashland in writing for a period not to exceed an additional 30 days. The application shall be deemed approved if the Town of Ashland fails to act within the initial 60 days or an extended 30-day period.

a. The fees for processing applications shall be as follows:

- i. \$100 each for up to five small cell facilities on a permit application; and
- ii. \$50 for each additional small cell facility on a permit application.

(5) A small cell facility installed by a wireless services provider or wireless infrastructure provider on an existing structure shall be permitted, provided that the wireless services provider or wireless infrastructure provider (i) has permission from the owner of the structure to co-locate equipment on that structure and (ii) notifies the Town of Ashland.

(6) The Town of Ashland may disapprove a proposed location or installation of a small cell facility only for

the following reasons:

- a. Materially interferes with the safe operation of traffic control equipment; or
- b. Materially interferes with sight lines or clear zones for transportation or pedestrians; or
- c. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement; or
- d. Fails to comply with reasonable and nondiscriminatory spacing requirements that apply to other communications service providers and electric utilities in the ROW and that concern the location of ground-mounted equipment and new Utility Poles. Such spacing requirements shall not prevent a small wireless facility from serving any location; or
- e. 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; or
- f. Materially interferes with public safety or other critical public service needs; or
- g. Conflicts with an applicable local ordinance adopted pursuant to § 15.2-2306, or pursuant to local charter on a historic property that is not eligible for the review process established under 54 U.S.C. § 306108.

(6) Nothing shall prohibit an applicant from voluntarily submitting, and the Town of Ashland from accepting, any conditions that otherwise address potential visual or aesthetic effects resulting from the placement of small cell facilities.

(7) 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 locality-imposed permitting requirements and fees. For the purposes of this provision, a micro-wireless facility is a small cell facility that is no greater than twentyfour(24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height, and that has an exterior antenna, if any, no more than eleven (11) inches in length.

- a. A small cell facility must be removed by the wireless services provider or wireless infrastructure provider that installed the facility or is otherwise responsible for the facility within 120 days after the owner of the existing structure withdraws or revokes its consent for co-location of such facility; the owner of the existing structure removes the existing structure; or such facility is no longer in use, in which case it will be deemed abandoned and must be removed by such provider on that basis.
- b. Installation, modification or collocation for which a permit is granted pursuant to this section shall be completed within one year after the permit issuance date unless the Town and the applicant agree to extend this period or a delay is caused by the lack of commercial power or communications facilities at the site.”

BE IT FURTHER ORDAINED THAT Chapter 21, “Zoning,” Article XXV, “Supplemental Regulations,” Section 21-277, “Electric Vehicle Charging Stations” of the Code of the Town of Ashland be amended and renumbered, as follows:

“Sec. 21-278 277. Electric Vehicle Charging Stations

Electric vehicle charging stations, as defined in Section 21-3, shall be permitted as an accessory use to off-street parking in non-single-family residentially zoning districts. Charging of electric vehicles is permitted in single-family detached residentially zoned property, when incidental to the primary use, and not for commercial purposes.”

This Ordinance shall take effect upon adoption.

Introduced:

Town Council referred to Planning Commission: March 20, 2018

Advertised:

Planning Commission:

Herald Progress:

March 29, 2018

Hanover Local:

April 5, 2018

Town Council:

Hanover Local:

May 2, 2018

May 9, 2018

Public Hearing:

Planning Commission:

April 11, 2018

Town Council:

May 15, 2018

Town Council Vote: 5-0

Adopted: May 15, 2018


Clerk