

February 9, 2021

Physical Development Committee – CANCELED

A G E N D A

City Council Meeting of February 9, 2021
Council Chamber | City Hall, 900 Church Street, Lynchburg, VA 24504

4:00 P.M.

WORK SESSION

- #1. Review the FY 2022 – FY 2026 Capital Improvement Plan for City Capital and City Schools projects.
- #2. Receive an update on the revenue collections received in several key City revenue sources.
- #3. Roll Call

7:30 P.M.

City Council Agenda Items

COUNCILMEMBER TWEEDY WILL GIVE THE INVOCATION

GENERAL POLICY REGARDING PUBLIC PARTICIPATION AT CITY COUNCIL MEETINGS

Each speaker shall clearly state his or her name and locality of residence.

The City Council agenda is divided into four sections.

CONSENT AGENDA: This section includes routine items. All items may be approved by one vote.

PUBLIC HEARINGS: This section includes all public hearings as required by law or as Council may direct.

Procedure:

- Staff will make a presentation.
- For zoning petitions, the applicant or his or her representative shall have ten (10) minutes to make a presentation.
- Comments will then be solicited from those in favor.
- Comments will then be solicited from those in opposition.

During the public hearing, there shall be a time limit of three (3) minutes for each individual speaker. If the speaker represents a group, there shall be a time limit of five (5) minutes. A speaker representing a group shall identify that group at the beginning of his or her remarks. A group may have only one spokesperson. After public comments have been received, for zoning petitions, the applicant or the representative of the applicant, at his or her discretion, may respond with a rebuttal. There shall be a five (5)-minute time limit for rebuttal. Upon the conclusion of public comments or the applicant's rebuttal, the public hearing will be closed and the matter referred to Council for deliberation.

PUBLIC COMMENT: Public comment shall be for the purpose of allowing members of the public to present any matter, which, in their opinion, deserves the attention of the Council. They shall not serve as a forum for debate with the Council. Individuals may speak up to three (3) minutes; or group spokesperson up to five (5) minutes. Once Council has heard a presentation from a citizen or organization on a particular subject, the citizen or organization may not make another presentation on the same subject within three (3) months of the first presentation, except by a majority vote of the members of Council present and voting.

GENERAL BUSINESS: This section includes items of a general nature to be considered by Council.

City Council may make exceptions to these rules at its discretion. Prior to a meeting, any questions which citizens may have regarding any item on the agenda may be addressed to City Council or the City Administration. The following numbers are provided for the convenience of the citizens:

CITY COUNCIL 455-3995

MAYOR 455-3995

CITY MANAGER 455-3990

A reasonable charge may be made for copying and other activities related to responding to long and involved inquiries.

CITIZENS OFTEN EXPRESS CONFLICTING AND DIVERSE POSITIONS REGARDING SPECIFIC ISSUES UNDER CONSIDERATION. TO ENCOURAGE CITIZEN PARTICIPATION AND TO AVOID INTIMIDATION TO PERSONS WHO MAY EXPRESS SOMETIMES UNPOPULAR OPINIONS, APPLAUSE, CHEERS, OR JEERS FROM THE AUDIENCE ARE NOT PERMITTED. WHEN APPEARING BEFORE CITY COUNCIL, CITIZENS MAY NOT ENGAGE IN BEHAVIOR THAT INTIMIDATES OR INSULTS OTHERS, ENGAGE IN DISRUPTIVE BEHAVIOR, USE PROFANITY OR VULGAR LANGUAGE, PROMOTE PRIVATE BUSINESS VENTURES OR CAMPAIGN FOR PUBLIC OFFICE.

* **PREVIOUSLY DISCUSSED AND/OR CONSIDERED BY CITY COUNCIL**

C O N S E N T A G E N D A

- #4. Consideration of adopting minutes from the January 12, 2021 Meeting
-

P U B L I C H E A R I N G

- #5. Consideration of adopting several ordinances dealing with telecommunications facilities and flag poles, light poles, and utility poles.
#O-21-____
#O-21-____
#O-21-____
- #6. Consideration of adopting an ordinance approving the right-of-way vacation of Advantage Court.
#O-21-____
- #7. Consideration of adopting an ordinance approving the right-of-way vacation of a portion of Chiles Circle.
#O-21-____
-

P U B L I C C O M M E N T

- #8. Hear from a citizen regarding a concern (Bennie Castle).
- #9. Hear from a citizen regarding a concern (Andrew Glover).
-

G E N E R A L B U S I N E S S

- #10. Consideration of introducing a resolution amending the FY 2021 City/Federal/State Aid Fund budget and appropriate \$24,794 with resources for a grant from the Library of Virginia to preserve several land books and marriage bonds at the Lynchburg Circuit Court Clerk's Office.
#R-21-____
- #11. Consideration of introducing a resolution to amend the FY 2021 City/Federal/State Aid Fund budget and appropriate \$121,389 provided by the Department of Criminal Justice Services for the expansion of local probation and pretrial services to include Amherst County.
#R-21-____
- #12. Consideration of a closed meeting to discuss the appointment of a member to the Horizon Behavioral Health Board and to the Economic Development Authority, pursuant to Section 2.2-3711(A.) (1) of the Code of Virginia, as amended.

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **February 9, 2021**

AGENDA ITEM #: **2**

CONSENT:
ACTION:

REGULAR:
INFORMATION: **X**

WORK SESSION: **X**

CLOSED SESSION:
(Confidential)

ITEM TITLE: FY 2021 Revenue Update

KEY ELEMENTS:

☐ Economic Development ☒ Excellent Government ☐ Natural and Built Environment ☐ Safe Community ☐ Vibrant Community

RECOMMENDATION: Receive an update on the revenue collections received in several key City revenue sources.

SUMMARY: Several key Adopted FY 2021 revenue sources were reduced to reflect the anticipated economic impacts due to the COVID-19 pandemic; revenue collections are updated to include FY 2021 Second Quarter.

PRIOR ACTION(S): Rebalancing the Proposed FY 2021 General Fund Budget Due to Economic Impact of COVID-19, City Council, April 28, 2020.

FISCAL IMPACT: As noted.

CONTACT(S): Donna Witt, Chief Financial Officer, 455-3968

ATTACHMENT(S): FY 2021 Revenue Update

REVIEWED BY: raw

018A



FY 2021 Adopted General Fund Revenue Update

City Council
February 9, 2021



COVID-19 FY 2021 Adopted Revenue Monthly Update

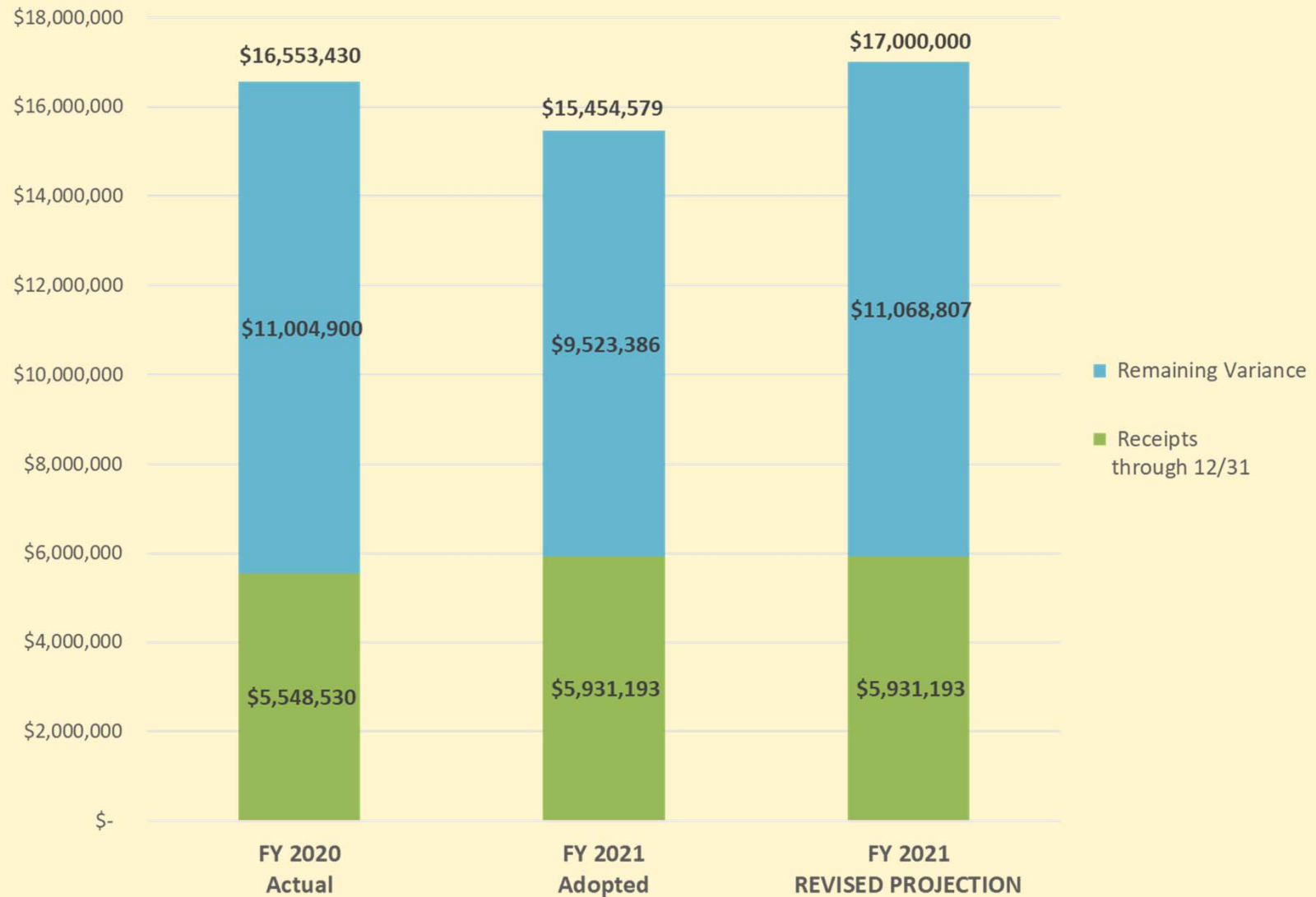
Local Sales and Use Tax

	Adopted FY 2021	Actual Collections FY 2021	Variance to Adopted Budget FY 2021
Local Sales and Use Tax	\$15,454,579	\$9,333,014	(\$6,121,565)
July	1,119,330	1,503,837	384,507
August	1,025,719	1,396,989	371,270
September	1,252,153	1,531,422	279,269
October	1,251,875	1,498,945	247,070
November	1,361,561	1,516,545	154,984
(Sales and Use Tax for December due by February 15th) December *Not Final*	1,585,420	1,885,276	299,856
(Sales and Use Tax for January due by March 15th) January	1,160,079	0	(1,160,079)
(Sales and Use Tax for February due by April 15th) February	1,196,836	0	(1,196,836)
(Sales and Use Tax for March due by May 15th) March	1,432,681	0	(1,432,681)
(Sales and Use Tax for April due by June 15th) April	1,331,840	0	(1,331,840)
(Sales and Use Tax for May due by July 15th) May	1,447,319	0	(1,447,319)
(Sales and Use Tax for June due by August 15th) June	1,289,766	0	(1,289,766)

Note: Actual collections revised as of January 31, 2021.



Local Sales and Use Tax





COVID-19 FY 2021 Adopted Revenue Monthly Update *(continued)*

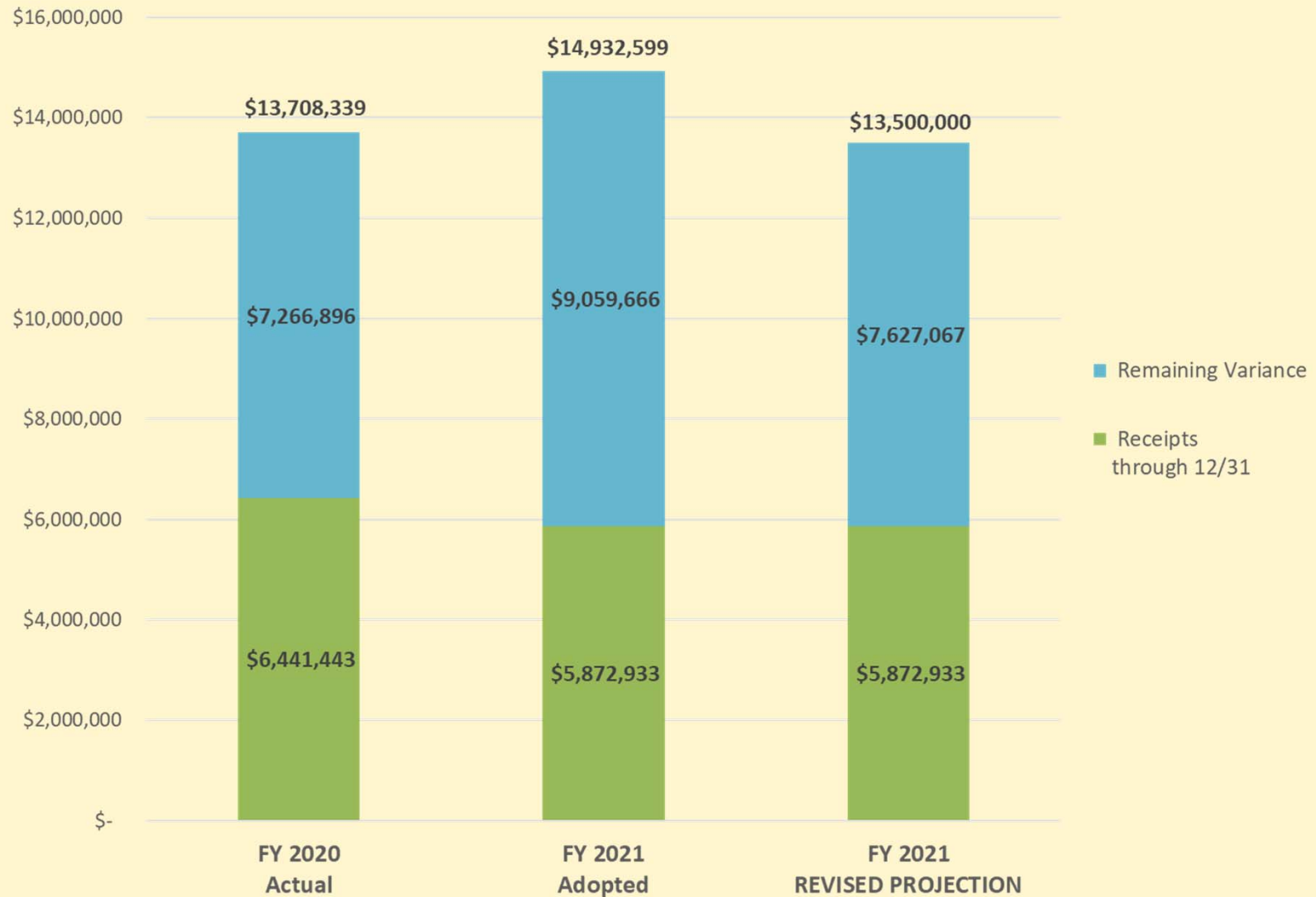
Meals Tax

	Adopted FY 2021	Actual Collections FY 2021	Variance to Adopted Budget FY 2021
Meals Tax	\$14,932,599	\$6,997,343	(\$7,935,256)
July	970,231	1,090,332	120,101
August	1,081,853	1,186,360	104,507
September	1,161,186	1,203,439	42,253
October	1,357,034	1,283,797	(73,237)
November	1,230,200	1,109,005	(121,195)
December	1,286,319	1,124,410	(161,909)
(Meals Tax for January due by February 20th) January	1,181,440	0	(1,181,440)
(Meals Tax for February due by March 20th) February	1,237,691	0	(1,237,691)
(Meals Tax for March due by April 20th) March	1,425,976	0	(1,425,976)
(Meals Tax for April due by May 20th) April	1,352,984	0	(1,352,984)
(Meals Tax for May due by June 20th) May	1,397,503	0	(1,397,503)
(Meals Tax for June due by July 20th) June	1,250,182	0	(1,250,182)

Note: Actual collections revised as of January 31, 2021.



Meals Tax





COVID-19 FY 2021 Adopted Revenue Monthly Update *(continued)*

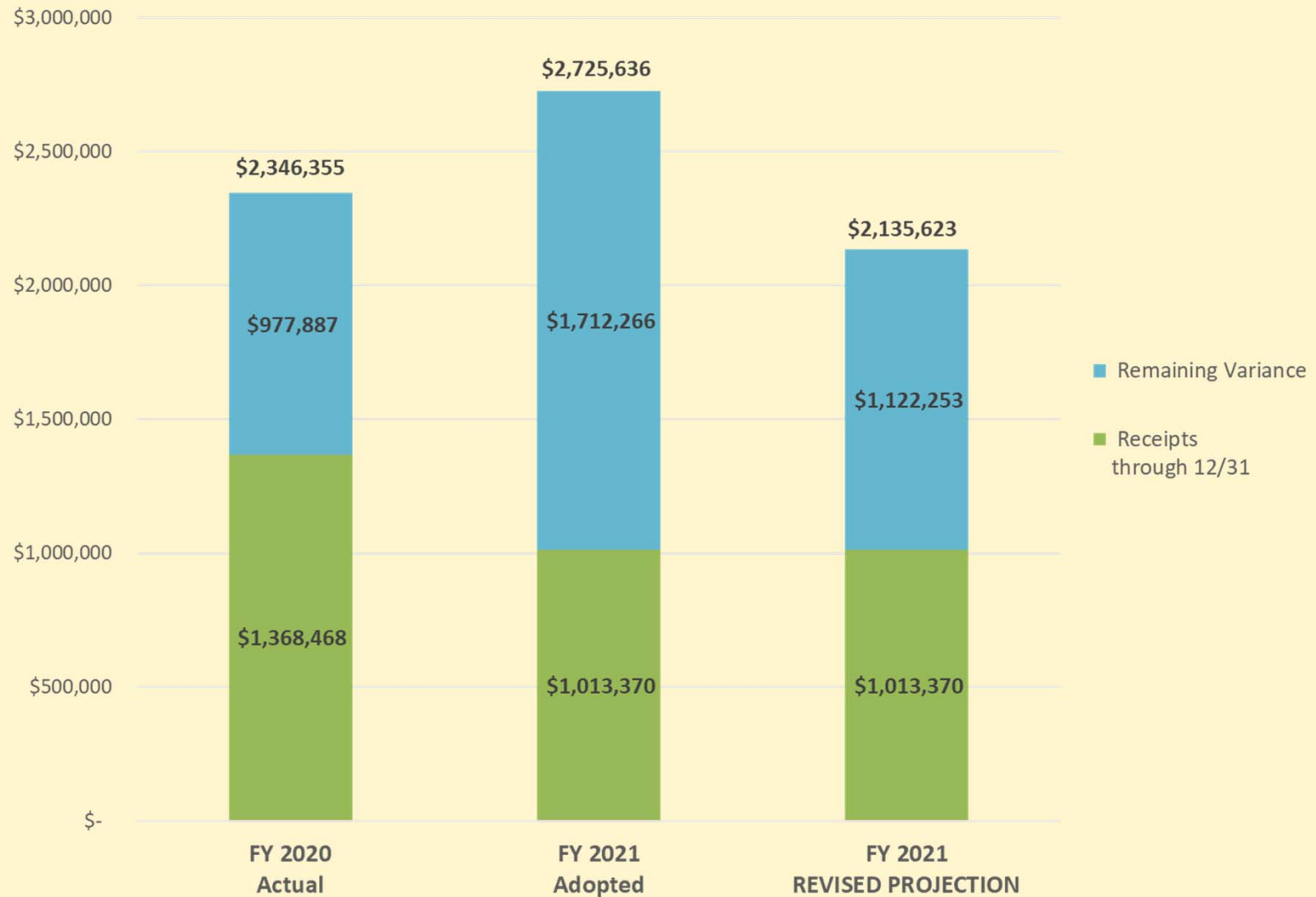
Lodging Tax

	Adopted FY 2021	Actual Collections FY 2021	Variance to Adopted Budget FY 2021
Lodging Tax	\$2,725,636	\$1,126,258	(\$1,599,378)
July	147,156	155,637	8,481
August	177,753	213,511	35,758
September	208,246	257,411	49,165
October	314,431	226,390	(88,041)
November	218,220	160,421	(57,799)
December	156,330	112,888	(43,442)
(Lodging Tax for January due by February 20th) January	211,325	0	(211,325)
(Lodging Tax for February due by March 20th) February	208,445	0	(208,445)
(Lodging Tax for March due by April 20th) March	279,608	0	(279,608)
(Lodging Tax for April due by May 20th) April	233,875	0	(233,875)
(Lodging Tax for May due by June 20th) May	300,480	0	(300,480)
(Lodging Tax for June due by July 20th) June	269,767	0	(269,767)

Note: Actual collections revised as of January 31, 2021.



Lodging Tax





COVID-19 FY 2021 Adopted Revenue Monthly Update *(continued)*

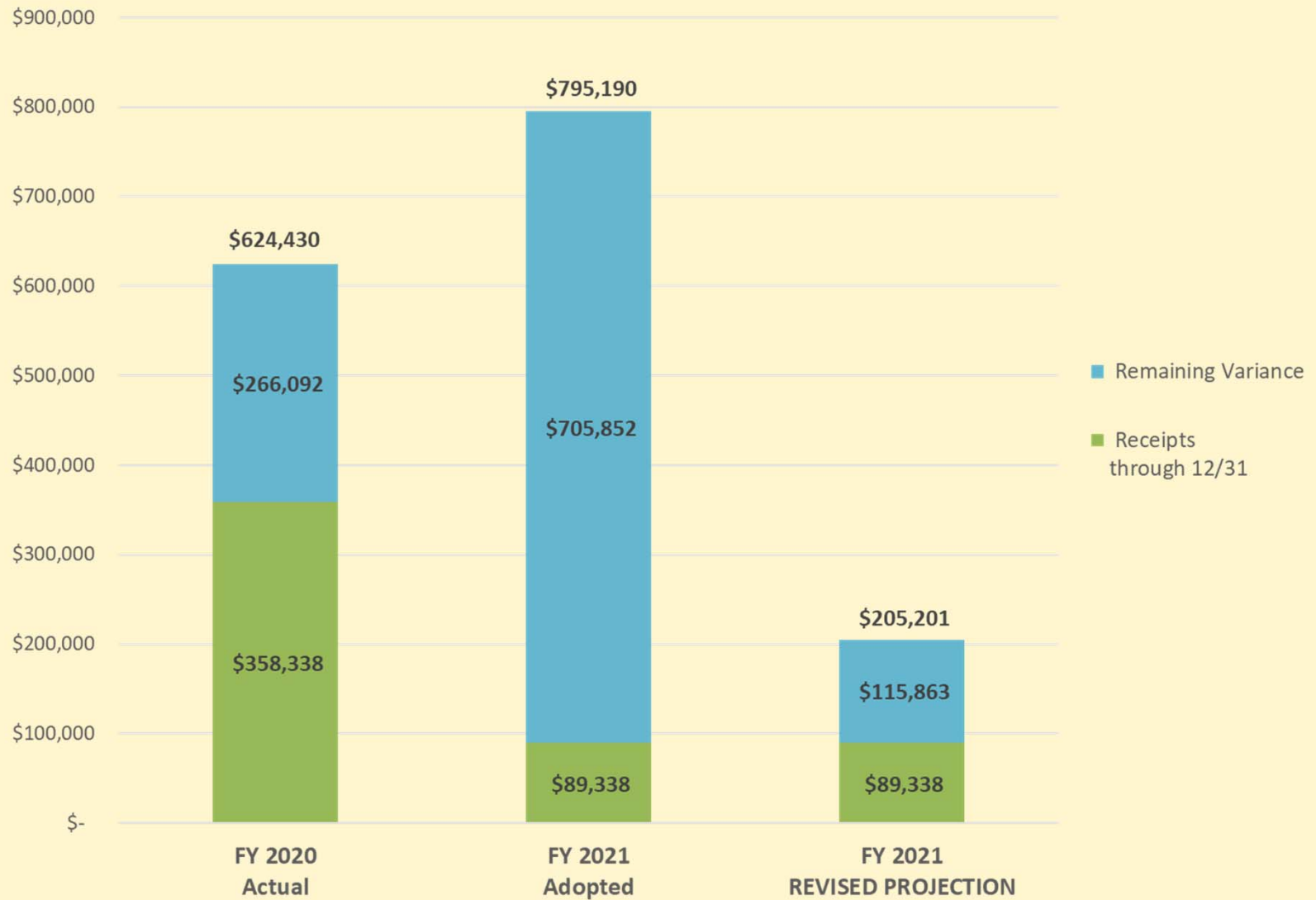
Amusement Tax

	Adopted FY 2021	Actual Collections FY 2021	Variance to Adopted Budget FY 2021
Amusement Tax	\$795,190	\$104,908	(\$690,282)
July	34,581	13,970	(20,611)
August	28,321	19,248	(9,073)
September	28,994	19,538	(9,456)
October	73,504	18,752	(54,752)
November	80,858	17,830	(63,028)
December	81,843	15,570	(66,273)
(Amusement Tax for January due by February 20th) January	88,585	0	(88,585)
(Amusement Tax for February due by March 20th) February	62,931	0	(62,931)
(Amusement Tax for March due by April 20th) March	86,769	0	(86,769)
(Amusement Tax for April due by May 20th) April	92,490	0	(92,490)
(Amusement Tax for May due by June 20th) May	63,944	0	(63,944)
(Amusement Tax for June due by July 20th) June	72,370	0	(72,370)

Note: Actual collections revised as of January 31, 2021.

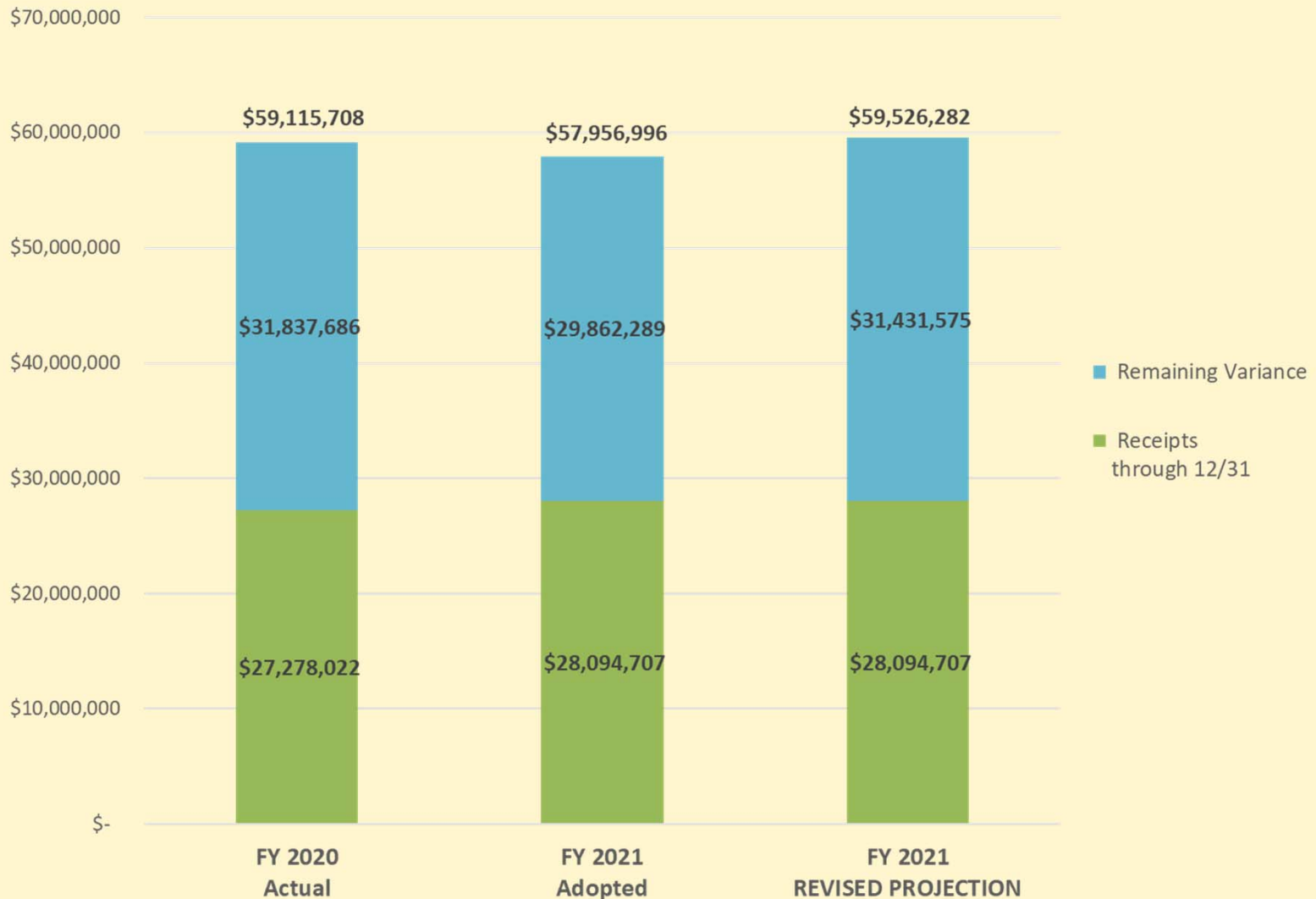


Amusement Tax





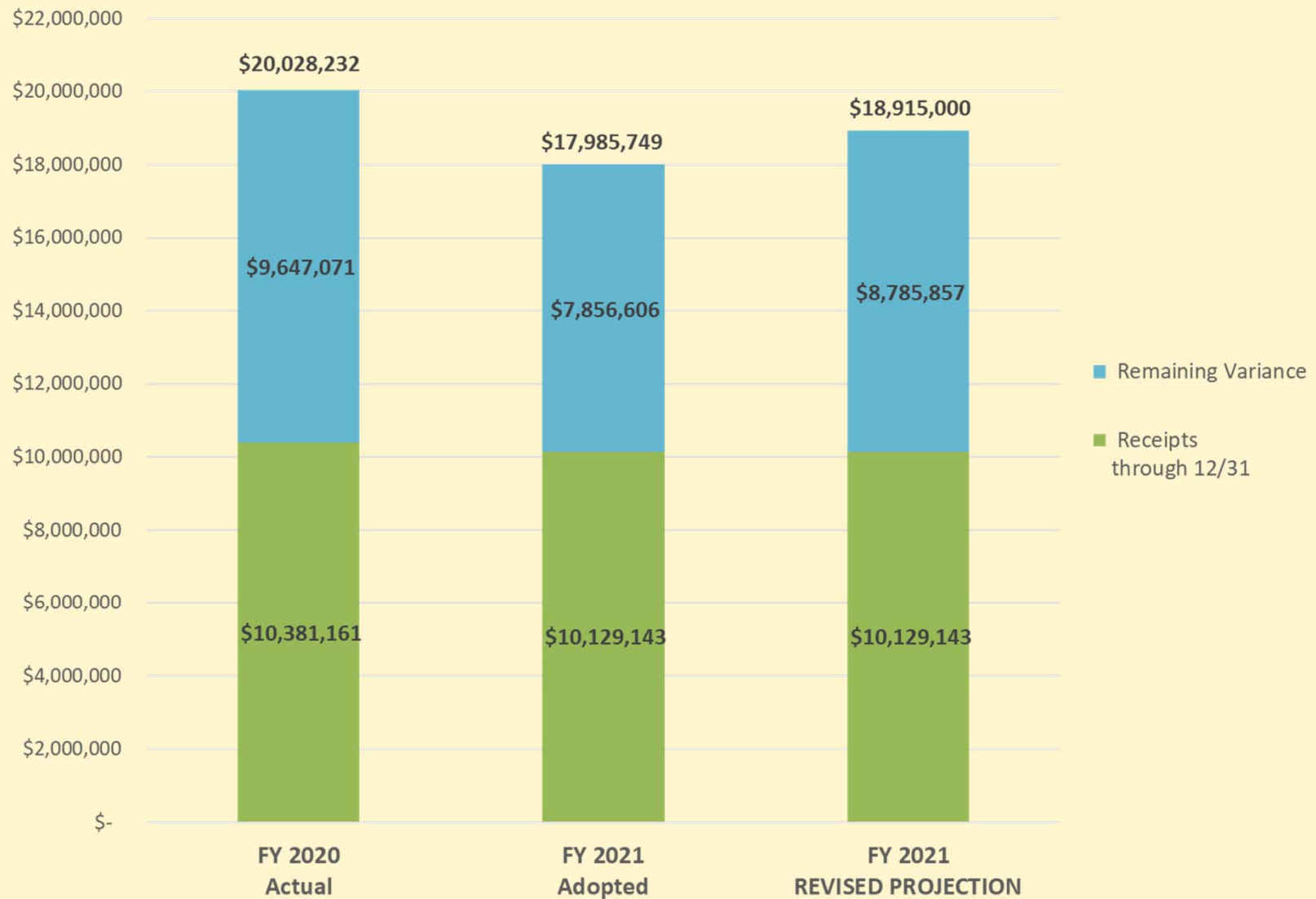
Net Real Property



Note: The FY 2021 Revised Projection reduces uncollectible from 5.0% to 2.5%.

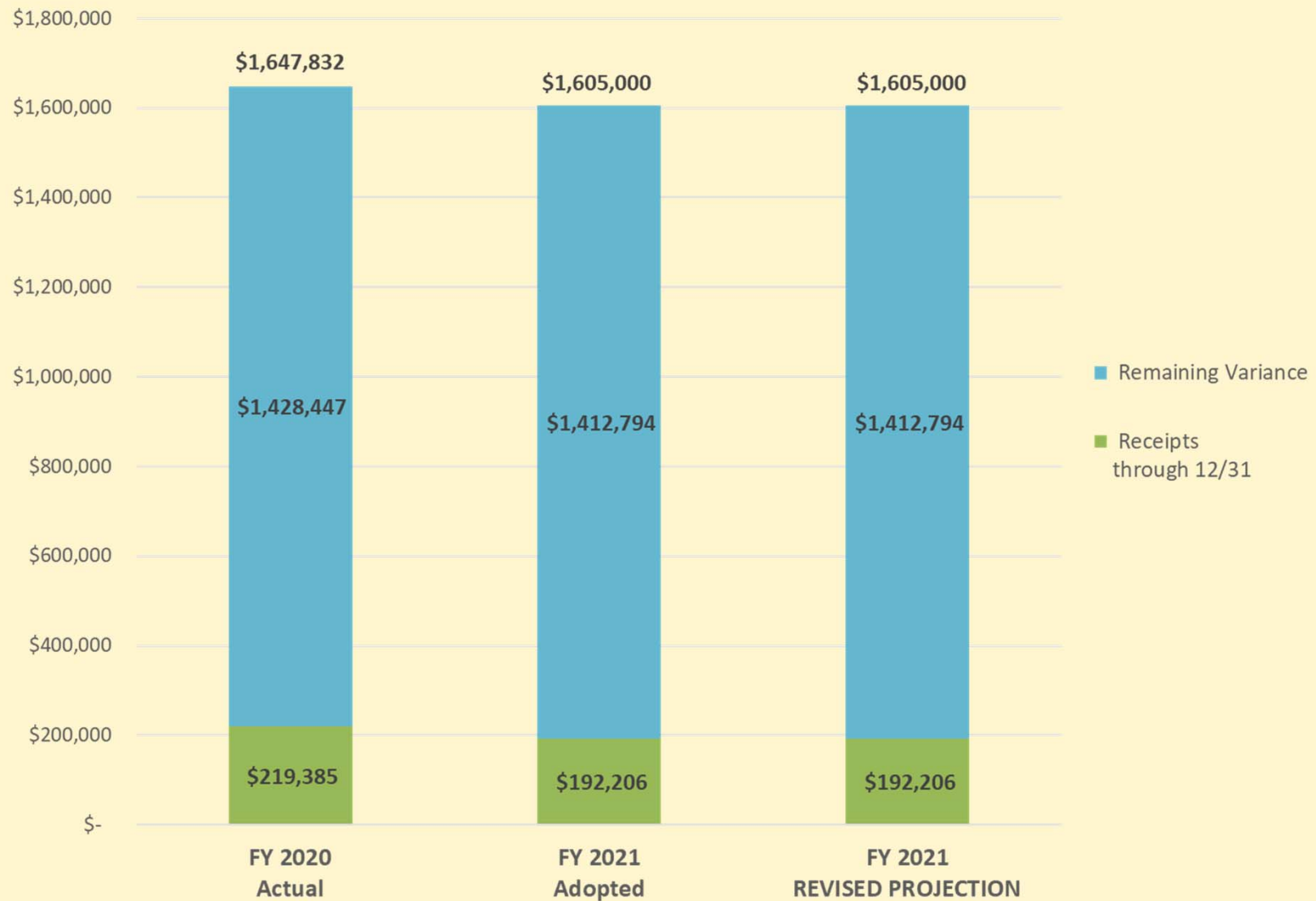


Net Personal Property Local Portion



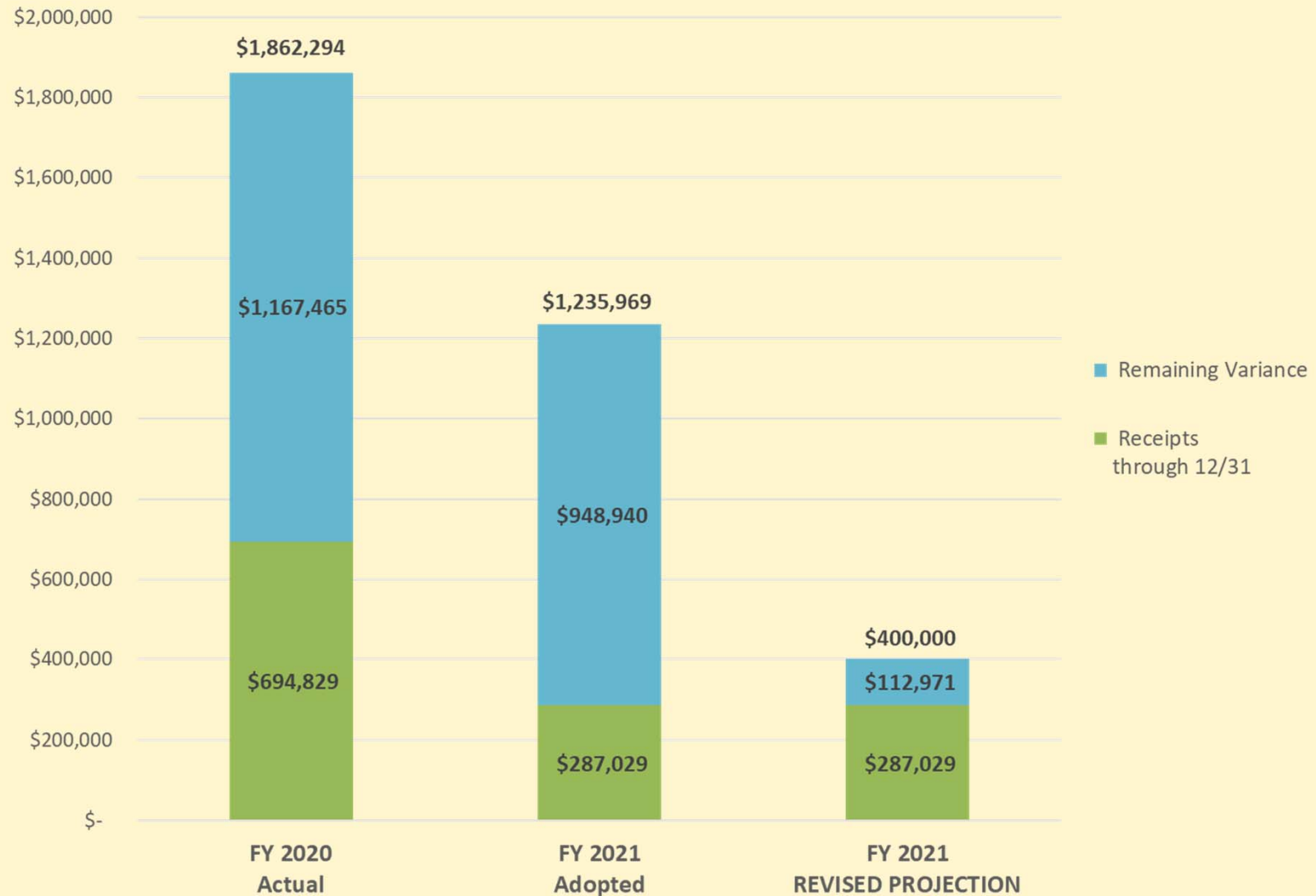


Motor Vehicle License Fees



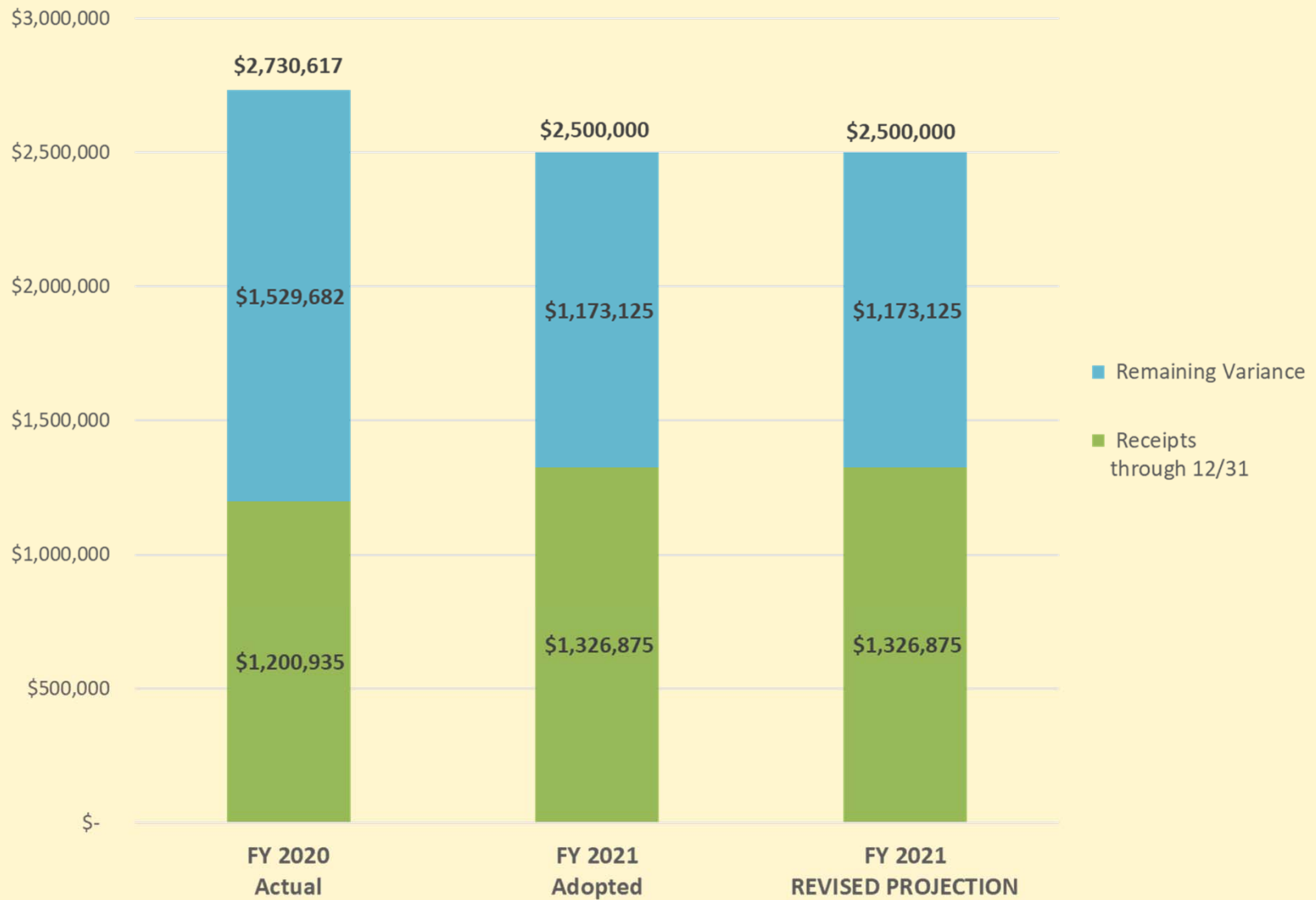


Use of Money and Property



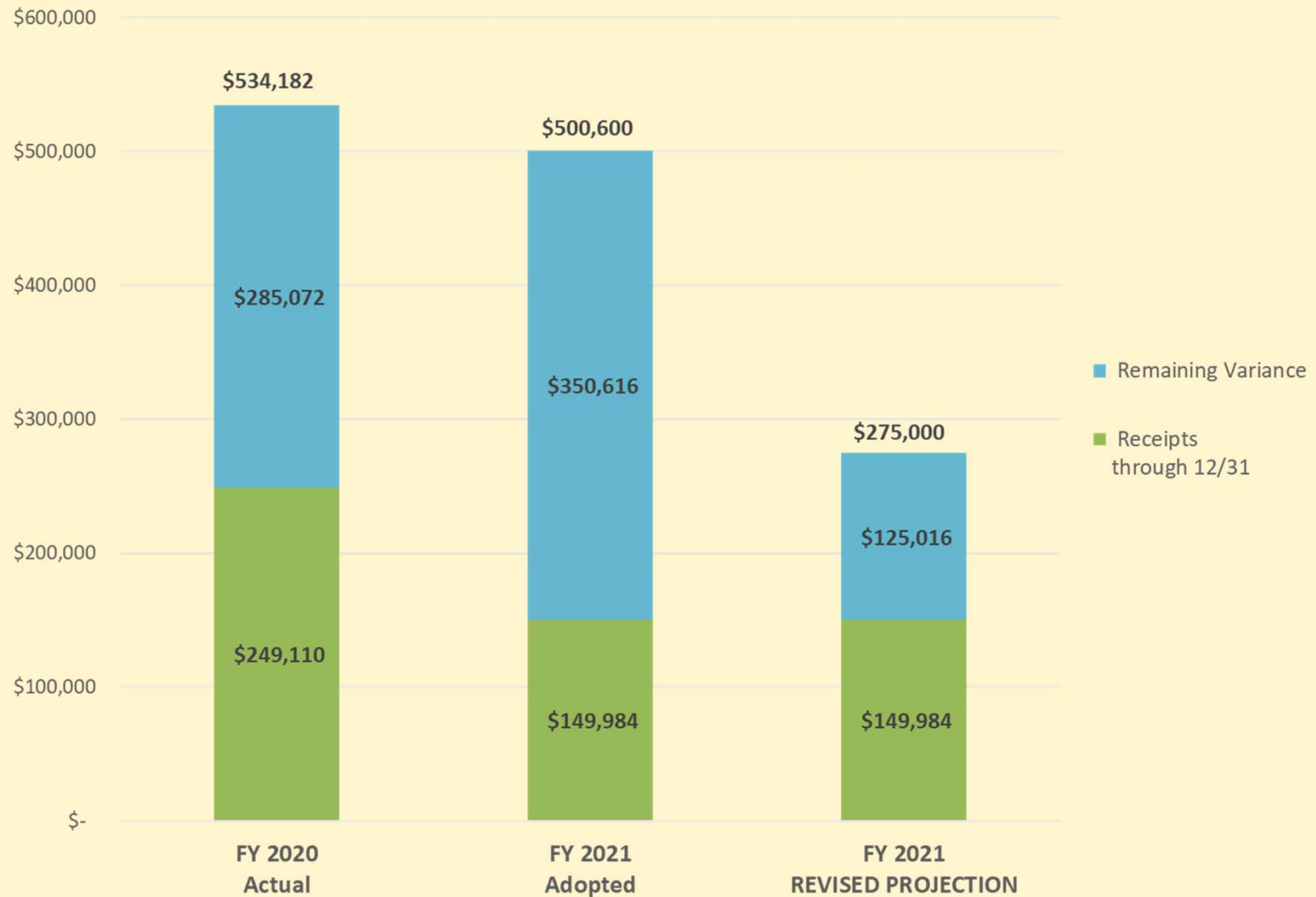


Ambulance Fee



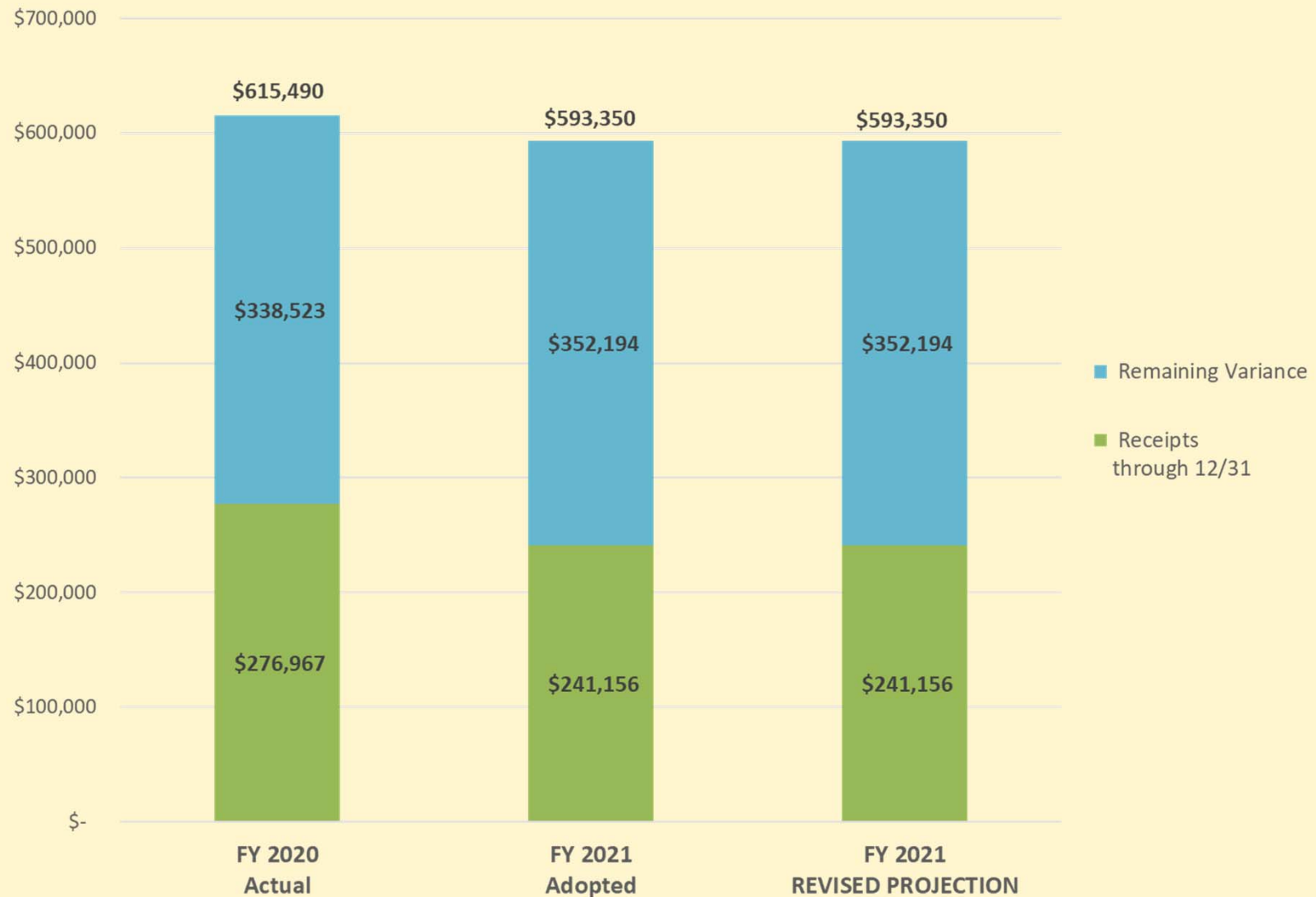


Building Inspections Permit Fee



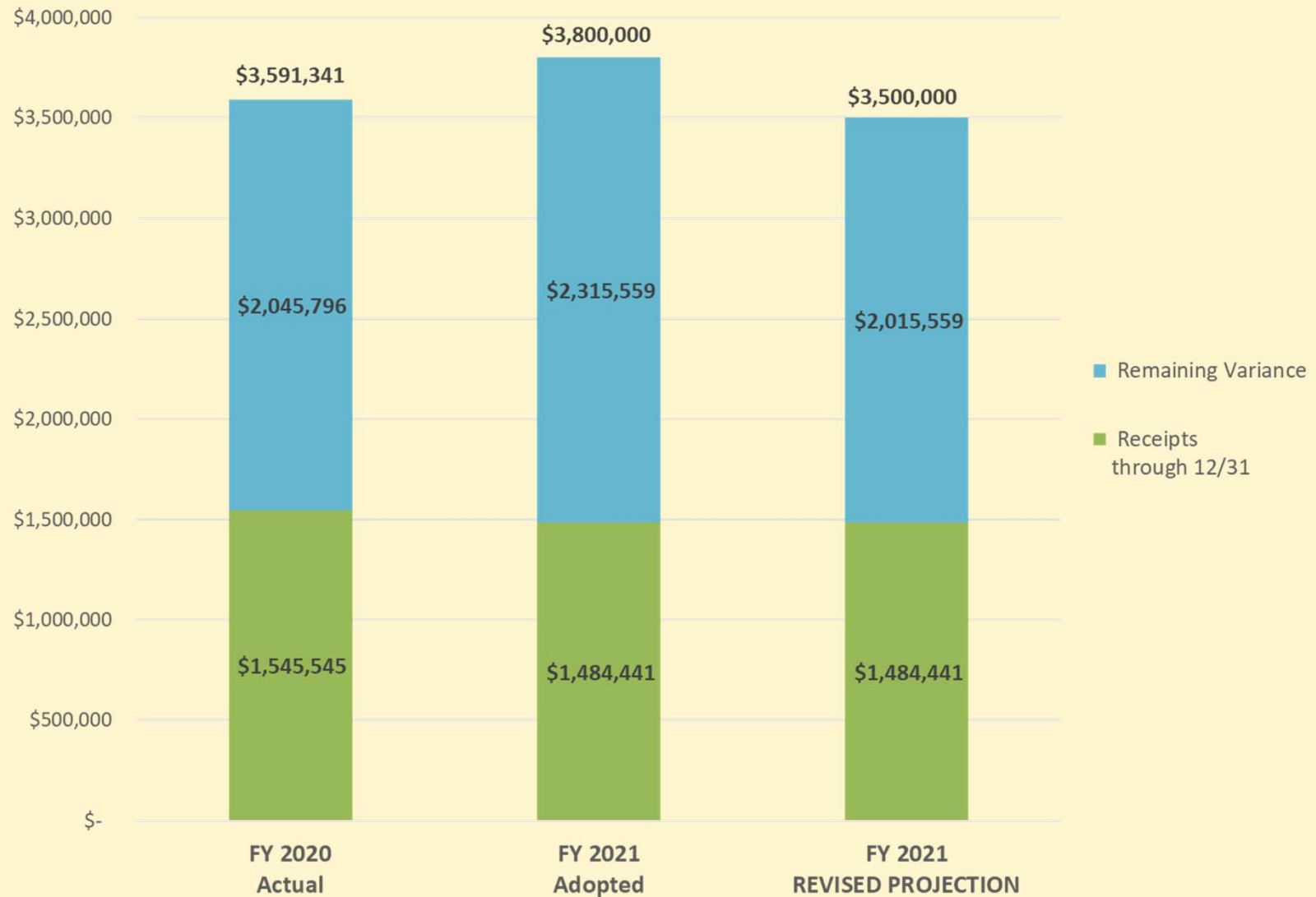


All Other Permits and Fees





Consumer Utility Tax - Electric





Consumer Utility Tax - Gas





Expenditures

Overall FY 2021 General Fund expenditures as of 12/31/2020 compared to FY 2020 for the same period are down about \$2 million.

- Reflects conservative department spending due to COVID-19
- CARES funding expenditures are included in the City/Federal/State Aid Fund



Questions, Comments, Observations

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **February 9, 2021**

AGENDA ITEM #: **1**

CONSENT:

REGULAR:

WORK SESSION: **X**

CLOSED SESSION:

ACTION:

INFORMATION: **X**

(Confidential)

ITEM TITLE: FY 2022 – FY 2026 Capital Improvement Plan Review for City Capital and City Schools Projects

KEY ELEMENTS:

☐ Economic Development ☒ Excellent Government ☐ Natural and Built Environment ☐ Safe Community ☐ Vibrant Community

RECOMMENDATION: Review the submitted FY 2022 – FY 2026 Capital Improvement Plan (CIP) for City Capital and City Schools projects.

SUMMARY: As part of the FY 2022 budget submissions, projects to be included in the FY 2022 – FY 2026 CIP for City Capital and City Schools have been received. Each year, staff reviews the submissions in conjunction with the City's financial advisors, Davenport & Co., to determine the best funding strategy. Davenport staff are not able to attend this meeting but their analysis has been completed and will be presented.

PRIOR ACTION(S):

FISCAL IMPACT: As noted in report

CONTACT(S): Donna Witt, Chief Financial Officer, 455-3968

ATTACHMENT(S): Five Year Proposed Appropriations to be Financed by the City – City Capital and School Funds

REVIEWED BY: raw

Five Year Proposed Appropriations to be Financed by the City - City Capital and School Fund

Project Title	Appropriations	Budget FY 2022	FY 2023 - 2026		Estimated Cost	Total Accumulated
	Through 12/31/2020		Planned	Estimated Net cost	Beyond Program Period	
Crossroads Lot - Deck Addition	0	0	2,775,000	2,775,000	0	2,775,000
Downtown Parking Deck Facility	0	0	2,050,000	2,050,000	11,500,000	13,550,000
Major Building Repairs and Improvements/Multiple Projects	Continuing	3,009,400	9,171,500	12,180,900	Continuing	Continuing
Parking Lot Repairs and Improvements/Multiple Projects	Continuing	251,000	800,000	1,051,000	Continuing	Continuing
Police Department Headquarters	5,700,693	0	35,000,000	35,000,000	0	40,700,693
Public Library Renovation/Reimagination	1,092,710	0	3,500,000	3,500,000	0	4,592,710
Roof Replacement/Multiple Projects	Continuing	445,000	2,090,980	2,535,980	Continuing	Continuing
Transfer Station for Refuse	0	0	550,000	550,000	4,000,000	4,550,000
Public Transit Improvements and Bus Replacements	10,144,772	5,510,103	13,041,323	18,551,426	3,466,172	32,162,370
5th Street Improvements, Phase IV	8,814,495	0	0	0	0	8,814,495
Bedford Avenue Bridge	0	3,000,000	2,000,000	5,000,000	0	5,000,000
Breezewood Drive Widening	0	6,000,000	0	6,000,000	0	6,000,000
Bridge Maintenance	Continuing	400,000	1,880,000	2,280,000	Continuing	Continuing
Campbell Avenue Signal Improvements	0	0	2,500,000	2,500,000	0	2,500,000
Culvert Replacement Program	Continuing	65,000	1,330,000	1,395,000	Continuing	Continuing
Florida Avenue Sidewalk	4,316,087	0	1,508,913	1,508,913	0	5,825,000
General Street Improvements	Continuing	850,000	3,500,000	4,350,000	Continuing	Continuing
Hill Street/Moormans Road Improvements	400,000	0	4,500,000	4,500,000	0	4,900,000
Lakeside Drive Bridge over Blackwater Creek	28,500,000	0	0	0	0	28,500,000
Lakeside Drive Improvements	0	0	2,500,000	2,500,000	0	2,500,000
Liberty Mountain Drive Realignment	0	0	4,500,000	4,500,000	0	4,500,000
Link Road/Boonsboro Road Intersection Improvements	0	0	2,000,000	2,000,000	0	2,000,000
Lynchburg Expressway/Candlers Mountain Road Interchange	0	0	65,720,720	65,720,720	0	65,720,720
Lynchburg Expressway/Grace Street Interchange Improvements	0	0	125,000	125,000	1,000,000	1,125,000
Memorial Avenue Fuel Site	0	0	650,000	650,000	0	650,000
Public Works Infrastructure Improvements	Continuing	230,000	1,040,000	1,270,000	Continuing	Continuing
Retaining Wall Replacement/Repair Program	Continuing	50,000	900,000	950,000	Continuing	Continuing
Rivermont Avenue at Bedford Avenue Intersection Improvements	485,000	0	0	0	0	485,000
Rivermont Avenue Bridge Repair	0	7,500,000	0	7,500,000	0	7,500,000
Route 501/221 One-Way Pairs	11,836,522	0	16,701,515	16,701,515	0	28,538,037
Storm Drainage System Repairs/Replacements	Continuing	135,000	700,000	835,000	Continuing	Continuing
Street Overlay Program	Continuing	2,266,368	10,000,000	12,266,368	Continuing	Continuing
Timberlake Road Bridge, East Bound Lanes	0	0	800,000	800,000	7,000,000	7,800,000
Timberlake Road Bridge, West Bound Lanes	0	0	7,800,000	7,800,000	0	7,800,000
Traffic Signal Repair and Replacement	Continuing	260,000	1,080,000	1,340,000	Continuing	Continuing
Vassar Street at Langhorne Road Intersection Improvements	350,000	0	7,800,000	7,800,000	0	8,150,000
Wards Ferry Road at CVCC Campus Drive Roundabout	0	0	11,301,008	11,301,008	0	11,301,008
Wards Ferry Road/Atlanta Avenue Turn Lanes	0	0	1,700,000	1,700,000	0	1,700,000
Wards Ferry Road/Simons Run Pedestrian Accommodations	0	0	250,000	250,000	0	250,000

Project Title	Appropriations	Estimated Cost				
	Through 12/31/2020	Budget FY 2022	FY 2023 - 2026 Planned	Five-Year Estimated Net cost	Beyond Program Period	Total Accumulated Project Cost
Downtown Development	Continuing	260,000	805,000	1,065,000	Continuing	Continuing
Future Streetscape Improvements Downtown	0	0	10,050,000	10,050,000	0	10,050,000
Parking Station (On Street)	0	0	1,000,000	1,000,000	0	1,000,000
Street and Utility Extensions to Promote Economic Development	Continuing	250,000	1,000,000	1,250,000	Continuing	Continuing
Streetscape Improvements Downtown, Phase II	5,258,052	600,000	2,051,459	2,651,459	0	7,909,511
Allen-Morrison Site Assessment/Design	0	0	250,000	250,000	0	250,000
Athletic Field Maintenance	Continuing	250,000	1,000,000	1,250,000	Continuing	Continuing
City Stadium Football Field Turf Replacement	0	0	1,650,000	1,650,000	0	1,650,000
College Park Upgrade	0	0	250,000	250,000	0	250,000
Creekside Trail Reconstruction/Flood-Damage Repair	57,000	443,000	0	443,000	0	500,000
General Parks Maintenance	Continuing	100,000	400,000	500,000	Continuing	Continuing
Lynchburg Community Market Renovations	0	82,500	4,605,000	4,687,500	0	4,687,500
Miller Park Pool Assessment/Replacement	0	0	5,990,000	5,990,000	0	5,990,000
New Dog Park	0	0	200,000	200,000	0	200,000
Parks Paving and Lighting/Reconstruction	Continuing	345,000	1,112,000	1,457,000	Continuing	Continuing
Parks Tree Replacement Program	0	100,000	400,000	500,000	0	500,000
Riverside Park Pool-Area Improvements	0	200,000	0	200,000	0	200,000
Sandbar Removal - Hollins Mill Road Trail Crossing	0	165,000	0	165,000	0	165,000
Sustainable Infrastructure Program	Continuing	100,000	400,000	500,000	Continuing	Continuing
College Lake Dam Removal	10,000,000	0	10,000,000	10,000,000	0	20,000,000
Computer Aided Dispatch Replacement	0	1,730,000	3,270,000	5,000,000	0	5,000,000
Radio Replacement	626,324	211,208	511,208	722,416	100,000	1,448,740
Lynchburg City Stadium Capital Maintenance Reserve	500,000	100,000	400,000	500,000	0	1,000,000
Snow, Street, and Bridge Reserve	Continuing	250,000	1,000,000	1,250,000	Continuing	Continuing
Athletic Complexes	0	120,000	2,250,000	2,370,000	0	2,370,000
Linkhorne Elementary Renovation & Gym Addition	0	0	13,176,000	13,176,000	0	13,176,000
Mechanical/Electrical	0	590,080	2,500,000	3,090,080	0	3,090,080
New Transportation Building - Schools	0	0	6,700,000	6,700,000	0	6,700,000
Paul Munro ES Renovation & Gym Addition	0	0	540,000	540,000	0	540,000
Paving and Fencing	0	0	650,000	650,000	0	650,000
Playground Equipment Replacement	0	0	200,000	200,000	0	200,000
Plumbing/Restroom Renovation	0	0	70,000	70,000	0	70,000
Roof Replacement/Repair	0	100,000	1,068,000	1,168,000	0	1,168,000
Sandusky Elementary School Replacement	0	0	37,000,000	37,000,000	0	37,000,000
Total Proposed FY 2022 - 2026 CIP	\$88,081,656	\$35,968,659	\$332,264,626	\$368,233,285	\$27,066,172	\$435,654,865

// A regular meeting of the Council of the City of Lynchburg was held on the 12th day of January, 2021, at 4:00 P.M. in the Council Chamber, City Hall, MaryJane Dolan, President, presiding. The following Members were present:

Present: MaryJane Dolan, Beau Wright, J. Randy Nelson, Sterling A. Wilder,

Chris Faraldi 5

Absent: Jeff S. Helgeson, Treney Tweedy 2

// In the matter of Budget, Agenda Item #1, Ms. Donna Witt, Chief Financial Officer, provided Council with a monthly update on revenue collections received in several key City revenue sources. These figures only looked at the month of November and were compared against November of 2019 revenue collections.

Sales Tax continues to trend upward coming in at about 7% above the previous November. Ms. Witt attributes this to online sales and grocery sales continuing strong. Meals Tax is down 6% compared to the previous November. Ms. Witt attributed the numbers not being worse because the month of November was a very warm month so there was more outdoor seating available. Lodging Tax is down about 23% compared to last year, however, compared to the rest of the state Lodging Tax isn't down as drastically as a lot of localities. Amusement Tax is still down 75%, but Regal Cinemas is hoping there will be enough movies released in the Spring that they will be able to open back up. Ms. Witt stated that at the first meeting in February the full 2nd Quarter will be presented.

// In the matter of Community Development – Zoning, Agenda Item #2, Council conducted a work session on zoning ordinance amendments related to telecommunication facilities. Mr. Tom Martin, City Planner, and Mr. J. Patrick Taves with Greehan, Taves, & Pandak, PLLC presented Council with a summary of the item. The City's Zoning Ordinance sections related to Telecommunication Facilities were last updated in December 1997 with minor amendments in January 2020. Amendments to Virginia Code in 2017 – 2020 and federal law regarding telecommunications facilities requires the City to update the ordinance in order to be compliant with the new regulations.

The City's comprehensive plan states that in order for the City to continue its role as an economic engine for this region, the City has to keep pace with changes to technology and telecommunications. In

order for the City to support local businesses, it will have to capitalize on those changes. The fact that the telecommunications ordinance was last updated in the year 1997 really necessitated the need for the changes to the proposed draft, which has been drafted in conjunction with Mr. Taves. The draft ordinance was forwarded to over 26 firms in the telecommunications industry back in August of 2020 for their review and only received very minor comments. The Planning Commission conducted a work session in November of 2020, then a Public Hearing in December of 2020, and unanimously recommended approval of the draft telecommunication ordinance.

The purpose of bringing the draft item to Council's work session is to allow for a detailed review and discussion. The next step will be to hold a Public Hearing. Staff briefed Council on the different components of the draft ordinance which include State and Federal mandates, types of facilities (Small Cell, Administrative Review Eligible Products (AREPs), Standard Process Projects), timelines for review, height where permitted, and setbacks.

Councilmember Faraldi asked if there is justification that flagpoles are in the same legal area as a telecommunication pole. Mr. Erwin stated that although it may seem farfetched to class these towers the same as flagpoles, it really is the best option when choosing a similar structure. Councilmember Faraldi requested clarification on whether the proposed ordinance would prohibit a company from installing a large flagpole as an attraction. Mr. Martin replied that the only new regulation in the ordinance regarding flagpoles is setbacks based on height. Mr. Erwin clarified that the ordinance does not impact the ability for businesses to put up flagpoles.

Councilmember Nelson asked what the rationale was for abandoning the former twice the height fall zone criteria. He specifically wanted to know what the validation was for including it originally. Mr. Taves stated that many years ago localities looked at these facilities and thought they were precarious and prone to falling, however, that is just not the case. The technology has changed and is not as bulky as it once was and the towers themselves are incredibly substantial. The twice the height fall zone criteria was established out of an abundance of caution and there is no evidence to support the need to have the excessive distance from a property line. Councilmember Nelson also stated concerns over the phrase "deemed complete and deemed approved". The statement carries with it some challenges for local

government in that if the process and procedures are not promptly and quickly scrutinized, applications that come in end up being deemed complete and deemed approved without any real diligence or scrutiny. On the other side of that is the concern with expanding internet access given the pandemic. The less obstacles there are to facilitating a widespread internet connection, the better everyone will be including the school division and families. Councilmember Nelson addressed a third concern, stating that Council has been advised not to base reasoning on certain aspects but to be focused on only the acceptable criteria and standards that are legitimate to deny an application. He asked specifically if there were any changes to the standards used to analyze or assess the acceptability or the non-acceptability of a project in this draft ordinance, or will Council be looking at this with the same scrutiny and the same precautions and only the setbacks and such have changed? Mr. Erwin stated that what has been done in the past is the City Attorney advises Council on the factors that can be considered and the factors that cannot be considered when Council is making a decision. The City Attorney's Office would then draft a very detailed ordinance with the specifics.

// In the matter of Roll Call, Agenda Item #3, Councilmember Faraldi wanted to extend his appreciation to law enforcement given the recent National Law Enforcement Appreciation Day; he also stated that he is actively trying to spread awareness about trash pick-up and extended a thank you to the frontline workers who are working so hard to pick up the trash and do the best with the resources on hand; he would appreciate some update from the schools about how they are moving forward. Councilmember Wilder commended staff for working so long and hard for the trash pick-up. Councilmember Tweedy praised refuse staff for implementing trash pick-up and commended the school board and leadership for doing challenging work in a challenging time. Councilmember Nelson and Vice Mayor Wright had no items. Mayor Dolan spoke about the contest to help save the angel statue at the Old City Cemetery; she also asked citizens to take the pandemic seriously and to wear a mask, wash hands, and practice social distancing.

// The meeting was recessed at 5:15 p.m.

// City Council reconvened the meeting at 7:30 p.m. The following members were present:

Present: MaryJane Dolan, Beau Wright, Jeff S. Helgeson, J. Randy Nelson, Treney Tweedy,
Sterling A. Wilder, Chris Faraldi 7

Absent: 0

Councilmember Faraldi gave the Invocation, followed by the Pledge of Allegiance.

// In the matter of Recognitions, Mayor Dolan presented Ms. Alayah Henderson with a Proclamation declaring January as Holocaust Recognition Month. Ms. Henderson is a member of a teen task force working to combat antisemitism through educating the community.

// In the matter of the Consent Agenda Item #4, copies of the minutes of the December 8, 2020 meeting have been previously furnished to Council, and on motion of Councilmember Wilder, seconded by Councilmember Tweedy, Council by the following recorded vote approved the minutes as presented:

Ayes: Dolan, Wright, Helgeson, Nelson, Tweedy, Wilder, Faraldi 7

Noes: 0

// In the matter of Water Resources, Agenda Item #5, a public hearing was held and Council considered adopting Resolution #R-21-001 requesting an exemption to the Utility Disconnect Moratorium. Mr. Tim Mitchell, Director of Water Resources, presented Council with a summary of the item.

In the beginning of March, 2020, the Department of Water Resources voluntarily suspended disconnection of water service for delinquent accounts as a direct response to the COVID-19 pandemic. During the 2020 Special Session I, the General Assembly approved Appropriations Act Amendments, Item 4-14, which included specific procedures and requirements for utility services related to the coronavirus declared state of emergency including: provisions related to customer assistance grants; utility disconnection moratorium requirements; customer repayment plans; and provisions for exemption to the disconnection moratorium. Municipal utilities may seek an exemption to the disconnection moratorium given that they: provide the accounts receivable arrearages exceeding one percent of the total annual operating revenues; make the accounting analysis showing the one percent exceedance available for public inspection; conduct a public hearing; and obtain verification from the governing body

that arrearages exceed one percent and affirming the intention to resume utility disconnections for non-payment. Upon verification, City staff recommends the resumption of utility disconnections beginning in February, 2021. In conjunction with the resumption of utility disconnections, repayment plans will also be offered to customers. Customers participating in repayment plans will not be cut-off as long as they remain current with their plan. Additionally, customers with arrearages may apply up until January 22, 2021 for funds from the COVID-19 Municipal Utility Relief Program to be applied to their outstanding water and sewer balances. Customers are encouraged to take advantage of both of these programs to help avoid disconnection for delinquent accounts. Mr. Mitchell reviewed the analysis showing that the accounts receivable arrearages exceed one percent (1.77% as of November 30, 2020) of Water and Sewer Funds' annual operating revenues.

There was no one to speak either in favor or opposition, either by phone, emails, or in-person, so the public hearing was closed and the matter rested with Council.

Councilmember Wilder asked if these funds were different funds than that of the funds the nonprofits agencies are able to use. Mr. Mitchell explained that these are different funds specifically administered by the City and customers have to fill out an application and certify that they have been affected by COVID financially in order to be eligible for the funds. Councilmember Wilder asked how much funds were allotted to the City. Mr. Mitchell reiterated that the City has been allocated about \$344,000 and to date the City has received applications for about \$86,000. Councilmember Wilder asked how much funding the nonprofits had left. Mr. Kent White, Interim Deputy City Manager, stated that the agreement with the nonprofit organizations expired in December of 2020.

Mayor Dolan clarified that she talked to Interfaith Outreach earlier in the day and confirmed that they do have funds still available from donors and not CARES funds, so that would be another resource for citizens.

Vice Mayor Wright asked how tailored the repayment plans are to individual accounts. Mr. Mitchell stated that it was somewhat at the discretion of the billings and collections office. The plan is to offer a repayment plan for up to about twelve months, but if a customer has a low balance then that repayment plan might not be the full twelve months.

Councilmember Faraldi asked how staff plans to navigate the scenario if the funds are depleted but the City still has a balance in the arrearages. Mr. Mitchell said that under that scenario, staff would encourage customers to take advantage of the repayment program so that they can become current over a period of time. Another thing that we may do is adjust the cutoff threshold initially so that staff won't be overburdened at one time.

Councilmember Tweedy asked what the ratio was for residential and business. Mr. Mitchell explained that by far the majority is residential, and businesses are eligible for the funds as well, however, the legislation directs localities to prioritize residential first. If there are relief funds left over at the end, then that may be a possibility to apply to businesses, but there is no guarantee there will be relief left over; if there are, staff will be accepting applications from businesses.

Councilmember Nelson stated that it has been made abundantly clear that citizens who are in debt for unpaid water bills are not taking advantage of money that is there to relieve them of financial woe. In the course of dealing with this, he asked if staff has been able to identify any credible obstacle that the City could undertake to relieve what is preventing citizens from applying and receiving approval? Mr. Mitchell replied that he believes staff has made the process incredibly easy, especially with the latest addition of taking applications over the phone which resulted in an increase in applications. There were some applicants who did not indicate that they were experiencing hardship due to COVID-19. Those applications were rejected; however, Billings and Collections were following up with those customers.

Mayor Dolan wanted to know what the deadline was to apply for the funds. Mr. Mitchell explained that the deadline has been extended until the end of the calendar year and any funds that remain at that time must be returned to the state by December 31 2021. Mr. Mitchell stated that staff will cease accepting applications a week prior to that date, but he anticipates the funds will be depleted before then.

Councilmember Wilder made a motion to approve the resolution, seconded by Councilmember Tweedy. With no other discussion from Council, the following vote was recorded, adopting Resolution #R-21-001:

Ayes: Dolan, Wright, Helgeson, Nelson, Tweedy, Wilder, Faraldi

7

Noes:

0

// In the matter of Community Development – Planning, Agenda Item #6, a public hearing was held for the consideration of adopting Resolution #R-21-002 granting a Conditional Use Permit (CUP) to Jefferson House, LLC to allow the construction of a five story, sixty-five unit apartment building for seniors. Mr. Tom Martin, City Planner, provided Council with a summary of the petition. Jefferson House LLC, is petitioning for a CUP at 1818 Langhorne Square to allow the construction of a sixty-five unit apartment complex in a B-3, Community Business District. The units would be deed restricted as affordable units for the elderly. If approved, a total of one hundred sixty-six units would exist with only sixty-seven parking spaces proposed for the two buildings. The Zoning Ordinance typically provides for one parking space per one residential unit but allows the City Planner to reduce the number of the spaces where mass transit is available and if the applicant provides credible information documenting that supports the reduction in parking. The petitioner has provided that there are currently forty-two parking spots serving the existing one hundred one residential units. Only twenty-five residents have cars and the other parking spaces are utilized by staff that comes in the morning and at night. The maximum usage of parking has averaged thirty-two spaces and most of the usage is by home health aides and the three staff members. Based upon the availability of mass transit, parking need demonstrated by the petitioner and the restriction to senior housing, staff believes parking will not be an issue. The Planning Commission also discussed how the project could potentially improve stormwater conveyance on the site. The Planning Commission conducted a Public Hearing on December 9, 2020, and recommended approval.

Mr. Joe Eddy, President of JE Properties, the developer of this property, addressed Council. JE Properties works mostly with affordable housing and they came across this property a couple of years when it was in default with Virginia Housing. There were a lot of capital needs like a roof problem, leaks, and an infestation and used private capital in conjunction with the City's real estate revitalization tax exemption program. This is a prime location for senior housing because it is near a hospital and the developer has already installed a sidewalk to help with access to the bus line. JE Properties is continuing to improve the property by adding additional units and will be done as a low-income tax credit project. They will apply to VHDA for the tax credits in March, with hopefully an approval in July and will begin the

project the following March. If they do not get the tax credits this year they will reapply for them the following year.

There was no one to speak in favor or opposition, either by phone, email, or in-person, so the public hearing was closed and the matter rested with Council.

Councilmember Helgeson noted that the developer stated that if they don't receive the tax credits, they will delay the project until they do. Mr. Eddy replied that the funding is through the tax credit program and if they receive the funding, that is the subsidy to allow for lower rents. Councilmember Helgeson requested clarification from Mr. Martin in regards to the following scenario: if the developer does not receive the tax credits but Council approves a CUP for the property, could the property then be sold to somebody else that may not have similar intentions with the property? He specifically cited concerns regarding the lack of parking spaces. Mr. Martin stated that the CUP would be valid for 36-months, so the developer has quite a bit of time to see if they are going to get approvals. Councilmember Helgeson asked if Council were to approve the CUP and the developer doesn't receive the funding, if the CUP would become void after the 36-months. Mr. Martin clarified that it would become void and they would have to apply again. Councilmember Helgeson asked what would happen if the developer sells the property? Mr. Martin explained that it would have to be the same type of development for the elderly and Council could add a phrase to the resolution indicating this, phrased as such, "the conditional use permit is being approved only for senior housing".

City Attorney Mr. Walter Erwin stated that they couldn't put anything significantly different from the concept plan without coming back to Council and getting permission. Councilmember Helgeson said that the concept plan could be the same, but the tenants could be different. Councilmember Helgeson made the motion to approve the resolution with the revisions Mr. Martin suggested.

Councilmember Wilder seconded the motion stating there is a need for additional housing for seniors. He also asked for clarification from Mr. Eddy regarding the renovations that are currently being done, even without the tax credit funding. Mr. Eddy clarified that yes, the renovations are still happening regardless of the expansion.

With no other discussion from Council, the following vote was recorded, approving Resolution #R-21-002:

Ayes: Dolan, Wright, Helgeson, Nelson, Tweedy, Wilder, Faraldi 7

Noes: 0

// In the matter of Community Development Block Grant (CDBG) and HOME Programs, Agenda Item #7, a public hearing was held to receive public comments regarding the goals for the development of the Fiscal Year 2022 Annual Action Plan and adopt Resolution #R-21-003 approving the goals.

Ms. Melva Walker, Grants Manager, provided Council with a brief summary of the item. The U. S. Department of Housing and Urban Development (HUD) requires state and local governments, which receive federal community development funds, to prepare a Consolidated Plan. The Consolidated Plan for Lynchburg was approved in June 2020 and covers the period from July 1, 2020 through June 30, 2024. This plan outlines the City's needs, goals, and objectives for community development (both housing and non-housing areas). HUD requires Community Development Block Grant (CDBG) and HOME Program entitlement communities to review these goals on an annual basis. City Council is seeking the input of citizens and other interested parties regarding the approved goals regarding the City's housing and non-housing community development needs common to low- and moderate-income households and neighborhoods in Lynchburg.

There was no one to speak in favor or opposition, either by phone, email, or in-person, so the public hearing was closed and the matter rested with Council.

As Chair of the Community Development Advisory Committee, Vice Mayor Wright made the motion to approve the resolution stating that the goals are thoughtful and a result of a collaborative process with members of the community.

Councilmember Wilder, who serves as the Vice Chair for the Community Development Advisory Committee seconded the motion stating that he appreciates all of the hard work from staff and is thankful to support the project and its many wraparound services.

Councilmember Helgeson stated he appreciated the work that goes into this type of plan by the Chairman, Vice Chairman, and the citizen volunteers. On the housing goals, it indicates the support of affordable housing in both the rental and the sales market. He stated that it seems a little vague as far as the word choice because rentals can be sold. He asked if the intention was to imply owner-occupied? Ms. Walker stated that the word "homeownership" was specified in the plan last year, but Council advised to change that to sales market to imply homeownership. Vice Mayor Wright clarified that Council directed staff on the wording change to represent owner-occupied as sales.

With no other discussion from Council, the following vote was recorded, approving Resolution #R-21-003:

Ayes: Dolan, Wright, Helgeson, Nelson, Tweedy, Wilder, Faraldi 7

Noes: 0

// In the matter of the City Manager's Office, Agenda Item #8, a public hearing was held to solicit feedback from the public on the potential sale of property at 97 Page Street. Interim City Manager Dr. Reid Wodicka provided Council with a brief summary of the item. The City received a request to sell the property which has been owned by the City since 1965. This is a vacant parcel that presently has no public use; that fact has been affirmed by the City's Technical Review Committee. In addition to advertising this public hearing, the property was listed on multiple listing services since September 18, 2020. The City received one offer for purchase of this property for \$10,000 with the intent of building a duplex or quadplex which is permitted by the City's zoning ordinance. The City's assessment on the property is for \$5,000. The City has received no other offers. At the conclusion of the public hearing, staff are requesting Council adopt Resolution #R-21-004 authorizing the sale of this property.

There was one citizen who spoke in favor through a statement previously provided to the Clerk of Council, which was read into the record. Mr. Tyler Brown who placed the offer on the property, displayed to Council his good intentions with the property, citing how this is intended to be a rental property that will bring funds back to the City through taxes, permits, etc., and will provide clean, affordable housing to the area.

There was no one else to speak in favor or opposition, either in-person, or through voicemails or emails, so the public hearing was closed and the matter rested with Council.

Councilmember Helgeson made the motion to approve the resolution stating that he appreciates the fact that it was listed and that ample opportunity was given for other interested parties looking to purchase and appreciates the openness and transparency. He clarified that this resolution only authorizes the sale of the property and does not have any inferred approval of the items that the buyer mentioned. If there needs to be rezoning for example, adopting this resolution does not bind Council to that. He asked staff to look into any other properties like this that could be sold and returned back to the tax rolls. Councilmember Wilder seconded the motion.

With no other discussion from Council, the following vote was recorded, approving Resolution #R-21-004:

Ayes: Dolan, Wright, Helgeson, Nelson, Tweedy, Wilder, Faraldi 7

Noes: 0

// In the matter of the City Charter, Agenda Item #9, a public hearing was held and Council considered adopting Resolution #R-21-005, requesting the General Assembly to revise the City Charter to remove limits on City Council salaries. Interim City Manager Dr. Reid Wodicka, provided Council with a brief summary of the item.

The salaries that will be paid to the Mayor, Vice Mayor, and City Councilmembers is prescribed in Section 7 of the City Charter. While this provision has been in effect since 1976, Section 15.2-1414.6 of the State Code allows City Council to set salaries that are higher than the salaries set by the City Charter, and City Council has on several occasions voted to increase their rate of pay. As such, the pay rates found within the Charter (\$2,400 for Councilmembers; \$3,000 for the Vice Mayor; and \$3,600 for the Mayor) are no longer accurate.

During the legislative agenda setting process for the 2021 General Assembly Sessions, Council voted to request that the General Assembly revise the City Charter to remove those limits from the Charter and provide City Council the option to adopt its own salaries. Presently, Council has set their

salaries for the Mayor at \$12,000, and Vice Mayor and Members of Council at \$10,000. The purpose of the public hearing is to solicit feedback on the proposal of the charter amendment. If Council chooses to adopt the resolution it will be forwarded to the General Assembly tomorrow.

There was no one to speak in favor, either in-person, or through voicemails or emails. There was one citizen who spoke in opposition through a statement previously provided to the Clerk of Council, which was read into the record. Ms. Starlette Early, resident of Ward I, urged Council to deny the recommendation of approving the resolution, indicating that City Council salaries should be set at a rate that would not place them better off than the citizens they represent, or at the expense of other needed programs for the residents. Ms. Early further urged Council to not allow the City's charter to be opened and amended by the General Assembly just to provide this governing body an opportunity to set the level of their own salaries.

With no other citizen input, the public hearing was closed and the matter rested with Council. Councilmember Faraldi stated that the justification for this language as he interprets it would allow Council to be more flexible with setting their salaries as it is not clearly defined in the Charter. More importantly, the revision is needed due to legislation in last years' legislative session that would mandate localities pay what is in their charter. He also stated that Delegate Walker has indicated that he is willing to carry this proposal to the General Assembly.

City Attorney Mr. Walter Erwin clarified that what this proposal will do is make the City Charter consistent with State law. There is a provision in the State Code that spells out what members of governing bodies can do in regard to their salaries. The provision in the City Charter is old and inconsistent with the State Code and all this proposal does is ask that the City Code be made consistent with the State Code.

Councilmember Tweedy made the motion to adopt the resolution. Vice Mayor Wright seconded the motion.

Councilmember Nelson stated that the last time this issue came up, he voted with the sentiments that were expressed by the citizen in Ward I. However, as it was pointed out the last time this was

discussed, sitting on this Council is somewhat prohibited by citizens who do not have an abundance of resources because the job does not pay enough to pay the bills. In order to give some greater incentive to the average citizen to endear them to be on Council, an increase in compensation must happen. He continued by stating that he does not want to vote for an increase for his personal salary but because it does translate into benefits for all citizens to have the potential to serve on Council. Therefore, he will be supporting the motion.

Vice Mayor Wright stated that if the State ends up making changes in the 2021 legislative session, Council could be restricted to what salary is listed in the City Charter. This proposal is just a matter of clearing up a technicality.

Mr. Erwin clarified that this amendment would not let City Council raise its salary to whatever Council wishes. There are salary limits in the State Code, and City Council salaries will be confined to them.

Mayor Dolan stated that she will be voting in favor since this motion is bringing the City Charter up to State Code and not a motion to increase Council salaries at this time.

With no other discussion, the following vote was recorded approving Resolution #R-21-005:

Ayes: Dolan, Wright, Helgeson, Nelson, Tweedy, Wilder 6

Noes: Faraldi 1

// In the matter of Public Comment, Agenda Item #10, Mr. Gary Taylor, resident of Lynchburg, asked Council to consider restructuring the Bridges to Progress Steering Committee to be an Education subcommittee to address pre-K and K-12 issues in regards to the pandemic.

// In the matter of City Council, Agenda Item #11, Council considered adopting Ordinance #O-21-006 to continue emergency procedures for the conduct of public business to ensure the continuity of City government and critical local services during the state of emergency and disaster caused by the COVID-19 pandemic.

Dr. Reid Wodicka, Interim City Manager, presented Council with a brief summary of the request. On March 24, 2020, City Council adopted a "Continuity of Government" ordinance and on April 28, 2020 adopted associated rules of procedure for City Council to follow in the event that City Council elected to hold electronic meetings. Though City Council has not chosen to conduct electronic meetings, the City's Continuity of Government ordinance provides the authority to other City boards, commissions, and authorities to hold electronic meetings. Several of those bodies have chosen to conduct electronic meetings during the pandemic. The Continuity of Government ordinance was originally adopted for an initial term of six months, which expired on September 24, 2020. On September 22, 2020, City Council elected to extend this ordinance for an additional four months, ending January 22, 2021. Unfortunately, the COVID-19 pandemic remains a reality and if City Council wishes to extend the provisions of this ordinance and associated procedures, it is necessary to adopt an additional extension. The continuance ordinance, as presented, would remain in effect until June 30, 2021, when City Council repeals the ordinance, or when the local Declaration of Local Emergency is ended, whichever occurs first. City Attorney Mr. Walter Erwin stated that this ordinance also authorizes emergency procurement for public bodies in the City that might need goods and services to deal with a pandemic.

Vice Mayor Wright made the motion to approve the ordinance, seconded by Councilmember Tweedy.

Councilmember Helgeson stated that he will not be supporting this ordinance because if Council should decide to not have meetings in which the public can attend, that should be discussed on an as-needed basis instead of declaring it for the next six months.

Mayor Dolan said that she will be supporting this ordinance because Council meets in person but with great trepidation because certain members refuse to don the proper PPE.

Councilmember Nelson stated that citizens having the ability to come in person to address their elected officials is their fundamental constitutional liberty. The power and impact of the in-person address is far more intense than if people are on a computer screen at a distant point. He strongly expressed that he does not want this Council, or any public body, to have the insulation from their public when the public has a right to bring their pleas to that body and be heard. He further commented that the language of the

ordinance is fine, however, there needs to be immense accommodations to address why the restriction is necessary and make certain that everyone is clear as to why the means to exercise that liberty should be constrained. He stated that he will be supporting this ordinance but reluctantly because there is no specific language stating the requirement for the accommodations being made for the body that is choosing to not have a public assembly.

Councilmember Faraldi stated that he has strong reservations about adopting this ordinance, citing his stance against limiting Council's engagement with the community. He further stated that members of boards and commissions are appointed by City Council and he does not believe they should limit their engagement with the community in an in-person fashion. He commented that if his voting in opposition expresses his disapproval of that then so be it. He reiterated that he has strong reservations to support this moving forward if boards and commissions are taking actions to limit their engagement with the constituency they are supposed to be representing.

Councilmember Tweedy asked Mr. Erwin if this ordinance would give individual councilmembers the right to virtually join a meeting if they felt unsafe joining in-person; Mr. Erwin replied that yes, that is the case.

Councilmember Wilder stated that he would be supporting the motion, but wants to make sure that the community is informed ahead of time.

Councilmember Faraldi stated that he does support the idea of giving options and does support the idea of having virtual meetings, however, with that there are certain limitations in which the public can be involved. For example, the public is not offered the opportunity to join a virtual meeting or to join a conference call and are being limited to writing an email or leaving a voicemail. He stated that he respects the intention of this ordinance however, he has fundamental issues with the way some of the boards and commissions have operated with engaging the community.

Mayor Dolan stated that this is not a mandate this is an option; during a pandemic, Council has a responsibility to safeguard the people that it appoints to its boards and commissions.

Councilmember Tweedy stated that it is Council's responsibility to put forth those things that will provide protective measures for the people who serve at our bequest so when they do not have parameters that would keep them safe it is my responsibility to do those things necessary to help protect them.

With no other discussion, the motion to adopt Ordinance #O-21-006 was approved with the following recorded vote:

Ayes: Dolan, Wright, Nelson, Tweedy, Wilder 5

Noes: Helgeson, Faraldi 2

// In the matter of Community Development – Planning, Agenda Item #12, Council considered adopting Resolution #R-21-007 supporting Virginia Housing Loan Funding for Miller's Rest, Phase II.

Mr. Tom Martin, City Planner, provided Council with a brief summary of the request. Mr. Austin T. Pittman with Lawson Companies has submitted a letter requesting that City Council adopt a resolution that would allow the Lawson Companies to apply for tax credit funding from Virginia Housing (formerly Virginia Housing Development Authority). The project would consist of one hundred fifteen apartment units and be located at 6100 Old Mill Road. The property is zoned R-4, High Density Residential. The proposed apartments are a permitted use in this district. City Council adopted the Analysis of Impediments to Fair Housing Choice on June 23, 2020. The document lists "location and type of affordable housing" as a factor impeding housing choice. Providing more housing choices in more areas across the City could increase the accessibility and affordability of housing in Lynchburg. The project would be a "mixed-income" community housing families earning 20% to 80% of Area Median Income (AMI). Units can be rented within the range provided the project averages 60% of AMI. The project would have the potential to provide housing for families earning between \$14,480 to \$57,920. The 2018 Median Income for the City of Lynchburg was \$43,374.

Councilmember Helgeson stated that this resolution in essence is supporting one developer over another when, normally these things are competitive, and he does not think Council should be involved

with favoring one particular developer. He also mentioned that there was no site plan or details about the development to assess the project. Councilmember Helgeson made a motion to deny the resolution.

Mr. Martin explained that providing housing in this area, which is a workforce area, would benefit the City in its commercial, industrial, and economic development. There are numerous industries in that area that workforce housing may benefit. The resolution is saying that without tax credit funding, it is unlikely that anyone else is going to come in and build affordable housing in this area. Staff assured Council that this type of ask is fairly common. Mr. Erwin stated that this resolution will serve as a letter of support to include with the application, and having a letter of support from the locality greatly enhances the chances of getting the funding.

Councilmember Faraldi asked if this project is possible without the tax credits. Mr. Pittman clarified that without the tax credit subsidy they would not be able to charge the affordable rent levels. He explained that Lawson Companies are tied to the affordable housing concept but if they don't win tax credits this year they will be able to reapply the following year. He further explained that having this resolution to include with the packet will enhance their ability to procure tax credits from Virginia Housing. Councilmember Faraldi asked for clarification on the expiration of the credits, specifically, will the developer need to reapply every year in order to charge the affordable rent levels. Mr. Pitman responded that it is a one-time thing and the affordability will last for 30-years.

With no second, the motion to deny the approval of the resolution failed. Vice Mayor Wright made the motion to approve the resolution, seconded by Councilmember Wilder. Vice Mayor Wright said that this resolution does not bind Council in any way, this merely shows support for this project. Councilmember Wilder said that the City needs affordable housing so he supports this.

With no other discussion, the motion to adopt Resolution #R-21-007 was approved with the following recorded vote:

Ayes: Dolan, Wright, Nelson, Tweedy, Wilder 5

Noes: Helgeson, Faraldi 2

// On motion of Councilmember Wilder, seconded by Councilmember Faraldi, Council, by the following recorded vote, elected to hold a closed meeting to discuss appointments for vacancies to the following Boards and Commissions: Economic Development Authority and City Employees Appeal Board pursuant to Section 2.2-3711(A.)(1) of the Code of Virginia, 1950, as amended.

With no discussion from Council, the following vote was recorded:

Ayes: Dolan, Wright, Helgeson, Nelson, Tweedy, Wilder, Faraldi 7

Noes: 0

// The meeting was reopened to the public.

// Councilmember Faraldi made the following motion:

WHEREAS, the Council of the City of Lynchburg has convened a closed meeting on this date, pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2 3712 of the Code of Virginia requires a certification by City Council that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Lynchburg certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by Council.

The motion was seconded by Councilmember Wilder, and Council, by the following recorded vote, adopted the motion:

Ayes: Dolan, Wright, Nelson, Tweedy, Wilder, Faraldi 6

Noes: 0

Absent: Helgeson 1

January 12, 2021

AGENDA ITEM #:

// On motion of Vice Mayor Wright, seconded by Councilmember Wilder, Council by the following recorded vote appointed the following members to the respective boards and commissions:

Economic Development Authority: Ms. Patricia Mosby – unexpired term ending June 30, 2024

City Employees Appeal Board: No appointments were made at this time.

Ayes: Dolan, Wright, Nelson, Tweedy, Wilder, Faraldi	6
Noes:	0
Absent: Helgeson	1

// The meeting adjourned at 9:35 p.m.

Clerk of Council

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **February 9, 2021**

AGENDA ITEM #: **5**

CONSENT:
ACTION: **X**

REGULAR: **X**
INFORMATION:

WORK SESSION:

CLOSED SESSION:
(Confidential)

ITEM TITLE: *Zoning Ordinance Amendments – Section 35.2-61.2 (d) Flag Poles, Light Poles & Utility Poles Repeal Sections 35.2-73.1 through 35.2-73.20 related to Telecommunication Towers and replace with Sections 35.2-73.1 through 35.2-73.26, Telecommunications Ordinance, Amendments to Authorized Uses in the R-C, R-1, R-2, R-3, R-4, B-1, B-3, B-4, B-5, IN-1, IN-2, I-1, I-2 and I-3 Districts.*

KEY ELEMENTS:

☒ Economic Development ☒ Excellent Government ☒ Natural and Built Environment ☐ Safe Community ☒ Vibrant Community

RECOMMENDATION(S): Adopt the following three ordinances dealing with telecommunications facilities and flag poles, light poles, and utility poles:

Ordinance #1: Adopt the proposed Zoning Ordinance amendment, as advertised, to add Section 35.2–61.2(d) with regard to flag poles, light poles, and utility poles to the City Code and to make that amendment effective upon adoption.

Ordinance #2: Adopt an ordinance repealing Chapter 35.2–73 of the City Code, which comprises Sections 35.2–73.1 through 35.2–73.20 of the current Zoning Ordinance and pertains to Telecommunications Facilities, and simultaneously adopt the proposed Zoning Ordinance amendments, as advertised, to add a new Chapter 35.2–73 to the Zoning Ordinance, which comprises Sections 35.2–73.1 through 35.2–73.26, and to make those amendments effective upon adoption.

Ordinance #3: Adopt the proposed Zoning Ordinance amendments, as advertised, to amend the exhibits in the Zoning Ordinance to reflect the “Approval Type” for wireless telecommunications transmission as “C” for Conditional Use Permit” and/or “P” for Permitted” in accordance with the new Chapter 35.2–73 Council just adopted, and to make those amendments effective upon adoption.

SUMMARY: The City’s *Zoning Ordinance* sections related to Telecommunication Facilities were last updated in December 1997 with minor amendments in January 2020. Amendments to the Virginia Code in 2017 - 2020 and federal law regarding telecommunications facilities requires the City to update the Ordinance in order to be compliant with the new regulations. City Council received an overview of the proposed ordinance amendments on January 12, 2021.

PRIOR ACTION(S):

November 11, 2020: Planning Commission work session on the proposed Zoning Ordinance Amendments.

December 9, 2020: The Planning Division recommended approval of the proposed *Zoning Ordinance* Amendments.

The Planning Commission conducted a public hearing on the proposed Zoning Ordinance amendments and recommended approval (7-0) of the proposed Zoning Ordinance Amendments.

January 12, 2021: City Council work session on the proposed Zoning Ordinance Amendments.

FISCAL IMPACT: N/A

CONTACT(S):

Tom Martin, City Planner – 455-3900
J. Patrick Taves, Greehan, Taves & Pandak, PLLC – (703) 378-5770

ATTACHMENT(S):

- Ordinance #1 – Section 35.2-61.2(d) Flag Poles, Light Poles & Utility Poles
- Ordinance #2 – Sections 35.2-73.1 – Section 35.2-73.20 Telecommunications Ordinance
- Ordinance #3 – Authorized Uses in the R-C, R-1, R-2, R-3, R-4, B-1, B-3, B-4, B-5, IN-1, IN-2, I-1, I-2 & I-3 Districts
- City Council Work Session Agenda Summary – January 12, 2021
- City Council Presentation – January 12, 2021
- Telecommunications Fact Sheet
- Planning Commission Minutes – December 9, 2020
- Planning Commission Packet – December 9, 2020
 - Planning Commission Report
 - Zoning Ordinance Amendment – Section 35.2-61.2 (d) Flag Poles, Light Poles & Utility Poles (Proposed)
 - Zoning Ordinance Amendment – Sections 35.2-73.1 through 35.2-73.26, Telecommunications Ordinance (Proposed)
 - Power Point Presentation – December 9, 2020
 - Planning Commission Memorandum – November 11, 2020
 - Power Point Presentation – November 11, 2020
- Planning Commission Sign in Sheet – December 9, 2020
- Telecommunications Legal Notice
- Existing Telecommunications Ordinance

REVIEWED BY: klw

011A

ORDINANCE:

AN ORDINANCE TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG, 1981 BY AMENDING ZONING ORDINANCE SECTION 35.2-61.2, ADDITIONAL HEIGHT REQUIREMENTS BY ADDING NEW SECTION 35.2-61.2 (D), FLAG POLES, LIGHT POLES AND UTILITY POLES.

WHEREAS, City staff has proposed and recommends approval of an Ordinance amending Zoning Ordinance Section 35.2–61.2, Additional Height Requirements, to add new Section 35.2-61.2(d), Flag Poles, Light Poles, and Utility Poles (“the proposed Ordinance”); and

WHEREAS, on November 11, 2020, the Planning Commission of the City of Lynchburg held a work session on the proposed Ordinance; and

WHEREAS, on December 9, 2020, the Planning Commission held a public hearing to consider and address the proposed Ordinance and to receive public comment on the proposed Ordinance; and

WHEREAS, after its public hearing on the proposed amendments on December 9, 2020, the Planning Commission recommended that the City Council approve the proposed Ordinance; and

WHEREAS, City Council conducted a work session on the proposed Ordinance on January 12, 2021; and

WHEREAS, on February 9, 2021, City Council held a public hearing to consider and address the proposed Ordinance and to receive public comment on the proposed Ordinance; and

WHEREAS, City Council finds that the proposed Ordinance should be adopted in order to promote the public necessity, convenience, welfare and good zoning practice.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

That Section 35.2-61.2, Additional Height Requirements of the Code of the City of Lynchburg, 1981 is hereby amended and reenacted by adding Section 35.2-61.2 (d), Flag Poles, Light Poles and Utility Poles as follows:

(d) Flag poles, Light Poles and Utility Poles

1. There shall be no setback requirement for any Flag Pole, Light Pole or Utility Pole that is thirty-five (35) feet or less in height.
2. Any Flag Pole, Light Pole, or Utility Pole greater than thirty-five (35) in height in the R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 District shall be required to set back a distance from all property lines at least the height of the pole.
3. Any Flag Pole, Light Pole, or Utility Pole greater than thirty-five (35) in height in the B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District that is on a parcel adjacent to any parcel that is

zoned R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 shall be set back a distance at least the height of the pole from the R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 District.

4. Any Flag Pole, Light Pole, or Utility Pole in the B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District that is greater than thirty-five (35) feet in height but less than fifty (50) feet in height shall be required to set back a distance from all property lines at least the minimum applicable setback for the district in which it is located.
5. Any Flag Pole, Light Pole, or Utility Pole in the B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District that is a height greater than fifty (50) feet shall be required to set back a distance from all property lines at least one-half the height of the pole.
6. Setback requirements for Flag Poles, Light Poles, and Utility Poles shall be measured from the base of the pole to the property lines of the parcel on which the pole is located.

That this ordinance shall become effective upon its adoption.

Adopted:

Certified:

Clerk of Council

ORDINANCE:

AN ORDINANCE REPEALING CHAPTER 35.2-73, WHICH COMPRISES §§ 35.2-73.1 THROUGH 35.2-73.20, AND ADOPTING A NEW CHAPTER 35.2-73, WHICH COMPRISES §§ 35.2-73.1 THROUGH 35.2-73.26, PERTAINING TO TELECOMMUNICATIONS FACILITIES.

WHEREAS, City staff has proposed and recommends approval of an Ordinance that will create a new Chapter 35.2–73 of the current City of Lynchburg Zoning Ordinance, which comprises Sections 35.2–73.1 through 35.2–73.26 and pertains to Telecommunications Facilities (“the proposed Ordinance”); and

WHEREAS, on November 11, 2020, the Planning Commission of the City of Lynchburg held a work session on the proposed Ordinance; and

WHEREAS, on December 9, 2020, the Planning Commission held a public hearing on the proposed Ordinance to consider and address the proposed Ordinance and to receive public comment; and

WHEREAS, after its public hearing on the proposed amendments on December 9, 2020, the Planning Commission recommended that the City Council approve the proposed Ordinance; and

WHEREAS, City Council conducted a work session on the proposed Ordinance on January 12, 2021; and

WHEREAS, on February 9, 2021, City Council held a public hearing to consider and address the proposed Ordinance and to receive public comment; and

WHEREAS, City Council finds that the proposed Ordinance should be adopted in order to promote the public necessity, convenience, welfare and good zoning practice.

NOW THEREFORE BE IT ORDAINED, by the City Council of the City of Lynchburg, Virginia that Chapter 35.2-73 of the current City of Lynchburg Zoning Ordinance, which comprises Sections 35.2.73.1 through 35.2-73.20, is hereby repealed.

NOW THEREFORE, BE IT FURTHER ORDAINED, by the City Council of the City of Lynchburg, Virginia, that Chapter 35.2-73 of the Code of the City of Lynchburg, Virginia, is hereby adopted as follows:

§ 35.2-73 TELECOMMUNICATIONS FACILITIES

§ 35.2-73.1 Purpose and Intent.

The purpose and intent of this chapter is to create and implement regulations and requirements for the placement, construction, modification, and removal of wireless support structures, wireless facilities, and base stations in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of a competitive wireless telecommunications marketplace in the City. Specifically, the purposes of this chapter are:

- (a) To facilitate the provision of wireless telecommunications services to the residents and businesses of the City in an orderly fashion;
- (b) To recognize and acknowledge that wireless telecommunications facilities, including their support structures and related equipment, have become a necessary part of today's personal and commercial communications networks;
- (c) To regulate the location of wireless support structures, wireless facilities, and base stations in the City;
- (d) To protect residential, commercial, and industrial areas and land uses from any significant potential adverse impact that may result from the establishment and operation of wireless support structures, wireless facilities and base stations;
- (e) To implement the provisions of the City's Comprehensive Plan with respect to the establishment of wireless support structures, wireless facilities, and base stations in the City;
- (f) To minimize, when possible, the adverse visual impact of wireless support structures, wireless facilities, and base stations through careful design, siting, landscaping, and innovative camouflaging techniques to enhance the ability of such, support structures, facilities, and base stations to be compatible with residential, commercial, and industrial uses;
- (g) To promote and encourage the co-location on and around wireless support structures of multiple wireless facilities and base stations in order to reduce, when possible, the need for additional such structures and facilities;
- (h) To promote and encourage the location of wireless support structures, wireless facilities, and base stations in commercial and industrial areas, rather than residential areas;

- (i) To ensure that wireless support structures, wireless facilities, and base stations are compatible with other land uses in the vicinity;
- (j) To allow wireless support structures, wireless facilities, and base stations as a matter of right, where appropriate, and with minimal administrative requirements when the size, design, and location of such support structures, facilities, and base stations does not result in any significant adverse impacts to other uses or any significant adverse impact to the property values of nearby properties;
- (k) To provide greater scrutiny of requests for wireless support structures, wireless facilities, and base stations when their size, design, and location may result in greater impacts on surrounding land uses and property values in order to assure that adverse impacts of such structures, facilities, and base stations and any adverse impact on the values of nearby properties are mitigated and minimized;
- (l) To encourage the providers of wireless telecommunications services to utilize smaller wireless support structures, wireless facilities, and base stations in order to reduce the overall impact of any single wireless support structure or facility on the surrounding area;
- (m) To reduce the need for larger and taller wireless support structures, wireless facilities, and base stations through the encouragement of co-location on any new structures as well as the installation, where feasible, of such facilities onto existing structures;
- (n) To avoid potential damage to the use and enjoyment of property caused by wireless support structures, wireless facilities, and base stations by ensuring that such structures, facilities, and stations are soundly, safely, and carefully designed; constructed, modified, and maintained, and, when no longer structurally sound, removed; and
- (o) To require the removal of wireless support structures, wireless facilities, and base stations that are no longer used to support wireless facilities and no longer retain any other legitimate purposes.

§ 35.2–73.2 Definitions.

As used in this Ordinance, unless the context requires a different meaning:

“Administrative review-eligible project” means a project that provides for:

1. The installation or construction of a new structure that is not more than 50 feet above ground level, provided that the structure with attached wireless facilities is (i) not more than 10 feet above the tallest existing utility pole located within 500 feet of the new structure within the same public right-of-way or within the existing line of utility poles; (ii) not located within the boundaries of a local, state, or federal historic district; (iii) not located inside the jurisdictional boundaries of a locality having expended a total amount equal to or greater than 35 percent of its general fund operating revenue, as shown in the most recent

- comprehensive annual financial report, on undergrounding projects since 1980; and (iv) designed to support small cell facilities; or
2. The co-location on any existing structure of a wireless facility that is not a small cell facility;
 3. The term “administrative review-eligible project” shall include eligible facilities requests as that term is defined by federal law in 47 Code of Federal Regulations 1.6100.

“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 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.

“City” means the City of Lynchburg, Virginia.

“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.

“Department” means the Virginia Department of Transportation.

“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 the City or the Department 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.

“New structure” means a wireless support structure that has not been installed or constructed, or approved for installation or construction, at the time a wireless services provider or wireless infrastructure provider applies to the City for any required zoning approval.

“New wireless support structure” has the same meaning as “new structure.”

“Project” means (i) the installation or construction by a wireless services provider or wireless infrastructure provider of a new structure or (ii) the co-location on any existing structure of a

wireless facility that is not a small cell facility. "Project" does not include the installation of a small cell facility by a wireless services provider or wireless infrastructure provider on an existing structure to which the provisions of Code Virginia § 15.2-2316.4 apply.

"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.

"Standard process project" means any project that is not an administrative review-eligible project.

"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)(i); "personal wireless service facilities" as defined in 47 U.S.C. § 332(C)(7)(ii); including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communications 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 is 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.

§ 35.2–73.3 Applicability.

The provisions of this chapter shall apply to all land within the jurisdictional boundaries of the City of Lynchburg, provided, however, that the provisions of this chapter shall not apply to any small cell facility within the City’s right-of-way or on any City-owned property. Small cell facilities within the City’s right-of-way or on any City-owned property are regulated by §§ 35–28, 35–28.1, 35–28.2, 35–28.3, 35–28.4, 35–28.5, 35–28.6, and 35–28.7 of the City Code.

§ 35.2–73.4 Small Cell Facilities.

- A. Review of Applications for Small Cell Facilities. No conditional use permit or its equivalent shall be required in the City for a small cell facility to be installed on an existing structure if a wireless services provider or wireless infrastructure provider has: (1) permission from the owner to co-locate equipment on that structure; and (2) has notified the City that such permission exists. A permit for the installation of a small cell facility shall be required before a small cell facility may be installed on an existing structure.
- B. Application Requirements for Small Cell Facilities. Applications filed by a wireless services provider or wireless infrastructure provider for administrative review of a small cell facility on an existing structure shall include the following:
1. A valid electronic mail address for the applicant.
 2. Written proof that the owner of the existing structure has given the applicant consent to install the small cell facility as proposed.
 3. The name, address, telephone number, and electronic mail address of the applicant. If the applicant is not the owner of the parcel(s) of land on which the wireless support structure, wireless facility, and/or base station is proposed to be located, then the applicant shall provide written consent of the owner, and the name, address, telephone number, and the electronic mail address of the owner.
 4. The valuation map number and address of the parcel of land on which the wireless support structure, wireless facility, and/or base station is proposed to be located.

5. A plan, drawn to scale, depicting the location and elevation of any small cell facility that is the subject of the application, with engineering drawings showing the actual size of the small cell facility and each component thereof, from which the City can reasonably determine whether the proposed facility meets the definition of a small cell facility.
 6. Drawings showing where and how the small cell facility is proposed to be attached to the existing structure.
 7. Written, technical evidence from a radio frequency engineer that the proposed facilities meet the standards set forth in this Ordinance, including, but not limited to, the requirements set forth in § 35.2–73.13 (Interference With Public Safety Radio Services) and will not materially interfere 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.
 8. Evidence relating to any other factors the applicant believes are relevant to the City's consideration of whether the applicant's proposed small cell facility should be approved.
 9. Payment of an application processing fee of \$100.00 each for up to five small cell facilities on a permit application, and payment of a fee of \$50 for each additional small cell facility on that permit application.
- C. Multiple Requests on a Single Application for Small Cell Facilities. Applications filed by a wireless services provider or wireless infrastructure provider for a small cell facility to be co-located on an existing structure may include multiple such permit requests on a single application.
- D. Notification of Incomplete Application for Small Cell Facilities. If an incomplete initial or resubmitted application is filed for a small cell facility to be installed on an existing structure, then the City shall notify the applicant by electronic mail that the application is incomplete and shall specify any missing information and documents in accordance with the following:
1. for an initial application, the City shall notify the applicant by electronic mail within ten (10) calendar days after receipt of a valid electronic mail address and the application that the application is incomplete and shall specify in that notification any missing information and documents; otherwise, the application shall be deemed complete; and
 2. for a resubmitted application for a small cell facility to be installed on an existing structure, the City shall notify the applicant by electronic mail within ten (10) calendar days after the application is resubmitted whether the application is incomplete and shall specify in that notification any missing information and documents; otherwise, the application shall be deemed complete.

E. Deadline for Approval or Disapproval of Small Cell Facilities. The City shall approve or disapprove any application filed by a wireless services provider or wireless infrastructure provider proposing a small cell facility to be installed on an existing structure in accordance with the following:

1. any such application shall be approved or disapproved in writing within sixty (60) calendar days after receipt of the complete application;
2. if the applicant files an incomplete initial or resubmitted application and the City notifies the applicant of its incompleteness in accordance with the applicable timeframes set forth in subsection D above (Notification of Incomplete Application for Small Cell Facilities), then the time within which the City must approve or disapprove such an initial application shall be tolled for the period from the date of the submission of the initial incomplete application to the date on which the applicant files a complete application;
3. if the applicant files an incomplete resubmitted application, the time within which the City must approve or disapprove a resubmitted application shall also be tolled for the period from the date of submission of the resubmitted incomplete;
4. application to the date on which the applicant resubmits a complete application;
5. the initial sixty (60) calendar-day period for the City to approve or disapprove an application for a small cell facility proposed to be installed on an existing structure may be extended by the City in writing for a period not to exceed an additional 30 days;
6. any such application for a small cell facility proposed to be installed on an existing structure shall be deemed approved if the City fails to act within the timeframes set forth in this section;
7. any disapproval of an application for a small cell facility on an existing structure shall be in writing and accompanied by an explanation for the disapproval; and approval of a permit for any such small cell facility application shall not be unreasonably conditioned, withheld, or delayed.

F. Grounds for Disapproval of Small Cell Facilities. The City may disapprove an application filed by a wireless services provider or wireless infrastructure provider proposing the installation of a small cell facility on an existing structure for any of 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 safety of the public or other critical public service needs;

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 City 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.
- G. Small Cell Facilities on New Structures. Any application for the installation of a small cell facility on a new structure shall require any approval that may be required by this chapter for that new structure as either an administrative review-eligible project or a standard process project.

§ 35.2–73.5 Administrative Review-Eligible Projects.

- A. Review of Administrative Review-Eligible Projects. Administrative review-eligible projects shall not require that a conditional use permit or its equivalent be obtained for the installation or construction of such a project; but administrative review shall be required for the issuance of any zoning approval, or an acknowledgment that zoning approval is not required, for such a project.
- B. Application Requirements for Administrative Review-Eligible Projects. Applications for wireless support structures, wireless facilities, and/or base stations that comprise administrative review-eligible projects shall require the following:
1. The name, address, telephone number, and electronic mail address of the applicant. If the applicant is not the owner of the land on which the wireless support structure, wireless facility, and/or base station is proposed to be located, then the applicant shall provide written consent of the owner, and the name, address, telephone number, and the electronic mail address of the owner. If the land on which the proposed wireless support structure, wireless facility, or base station is proposed to be located is, in whole or in part, within the City's right-of-way, then the applicant shall be required to secure written consent from the City for the proposed wireless support structure, wireless facility, or base station to be located within the City's right-of-way prior to filing such application and shall include such written consent as part of any such application.
 2. An affirmative written statement signed by the applicant and the owner that the applicant and the owner are aware of and agree to comply with the provisions of this Zoning Ordinance set forth in § 35.2-73.24 (Abandonment) regarding removal and dismantlement of all wireless support structures, wireless facilities, base stations, and related equipment in the event such a structure, facility, base station, or related equipment is no longer in use.

3. The valuation map number and address of the parcel of land on which the wireless support structure, wireless facility, and/or base station is proposed to be located.
 4. Written, technical evidence from a radio frequency engineer that the proposed facilities meet the standards set forth in this Ordinance, including, but not limited to, the requirements set forth in § 35.2–73.13 (Interference With Public Safety Radio Services), and will not materially interfere 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.
 5. Written, technical evidence from an electrical engineer that the proposed site of the wireless support structure, wireless facility, and/or base station does not pose a risk of explosion, fire, or other danger due to its proximity to volatile, flammable, explosive, or hazardous materials such as propane, gasoline, natural gas, or corrosive or other dangerous chemicals.
 6. A site plan, as required by § 35.2-14.2 (Site Plans) of this Ordinance.
 7. A map showing the location and height of every utility pole within 500 feet of and within the same public right-of-way or within the existing line of utility poles as the proposed wireless support structure or wireless facility.
 8. In the case of an administrative review-eligible project proposing a new structure, a detailed explanation of how the proposed new structure is designed to support small cell facilities.
 9. A copy of any approval granted by a federal agency, including any conditions imposed by that agency, regarding the proposed wireless support structure, wireless facility, and/or base station, provided, however, that this requirement shall not apply to applications for small cell facilities.
 10. Evidence relating to any other factors the applicant believes are relevant to the City's consideration of whether the applicant's proposed small cell facility should be approved.
 11. The applicable application fee for the proposed administrative review-eligible project.
 12. Evidence that the applicant has given written notice to all adjacent landowners regarding the applicant's intent to file the application at least 15 days before the filing of any application to locate a new structure on the subject property.
- C. Fee Limitations for Administrative Review-Eligible Projects. When an application for an administrative review-eligible project is filed, the following provisions shall apply to the fee that must be paid by the applicant:

1. The fee must be reasonable.
2. The fee charged by the City shall not include direct payment or reimbursement of third-party fees charged on a contingency basis or a result-based arrangement.
3. The City shall not charge market-based or value-based fees for the processing of any such application.
4. Upon request, the City shall, within a reasonable amount of time after such request, provide the applicant with the cost basis for any fee charged by the City for an administrative review-eligible project.

D. Assessment of Fees for Administrative Review-Eligible Projects. Each application for a wireless support structure, wireless facility, or base station that constitutes an administrative review-eligible project shall be accompanied by payment of a \$500 fee for the processing of the application

E. Processing Applications for Administrative Review-Eligible Projects. The following provisions set forth the process that shall apply to any application for an administrative review-eligible project:

1. Prior to accepting any application for an administrative review-eligible project, the City shall first determine that the application includes the applicant's electronic mail address. In the event the application does not include the applicant's electronic mail address, the City shall not accept it for filing
2. If the application is incomplete, but includes an electronic mail address for the applicant, then within ten (10) business days after actual receipt of the application, the City shall accept the application and notify the applicant by electronic mail that the application is incomplete and shall specify any additional information, documents and materials required to complete the application.
3. If the application is incomplete and does not include an electronic mail address for the applicant when it was filed, the City shall use reasonable means to contact the applicant and request the applicant's electronic mail address. Within ten (10) days after actual receipt of the applicant's electronic mail address, the City shall notify the applicant by electronic mail that the application is incomplete and shall specify any additional information, documents and materials required to complete the application.
4. If an incomplete initial or resubmitted application is filed for an administrative review-eligible project, then the City shall notify the applicant by electronic mail that the application is incomplete and shall specify any missing information and documents and materials in accordance with the following:
 - (a) for an initial application, the City shall notify the applicant by electronic mail within ten (10) business days after the application is submitted whether the

application is incomplete and shall specify in that notification any missing information, documents and materials; otherwise, the application will be deemed complete; and

(b) for a resubmitted application, the City shall notify the applicant by electronic mail within ten (10) days after the application is resubmitted whether the application is incomplete and shall specify in that notification any missing information, documents and materials; otherwise, the application will be deemed complete.

5. If the City fails to timely provide the applicant with notice that the initial application or a resubmitted application is incomplete in accordance with the foregoing provisions, as applicable, the application shall be deemed complete.
6. Except as provided for in subsection 7 below, the City shall approve or disapprove a complete application in accordance with the following:
 - (a) For a new structure, within 150 days after receipt of the completed application minus any days that expired from the date of filing of the application to the date any notice of incompleteness was given to the applicant by the City;
 - (b) For the modification of an existing wireless support structure or base station that involves the co-location of new transmission equipment, the removal of transmission equipment, or the replacement of transmission equipment, but does not substantially change, as that term is defined by federal law, the physical dimensions of such support structure or base station, within 60 days after receipt of the application provided, however, that this period shall be tolled during any time after which the applicant has been informed that the application is not complete and is provided with the grounds for its incompleteness by the City, and when the applicant files all requested information and items necessary to make the application complete;
 - (c) For the co-location on an existing support structure of any wireless facility that is not a small cell facility and substantially changes, as that term is defined by federal law, the physical dimensions of such support structure or any related base station, within the lesser of 90 days after receipt by the City of the completed application, minus any days that expired from the date of filing of the application to the date any notice of incompleteness was given to the applicant by the City; and
 - (d) For any wireless facility that is not a small cell facility on a new structure, within the lesser of 150 days after receipt of a completed application, minus any days that expired from the date of filing of the application to the date any notice of incompleteness was given to the applicant by the City .
7. Any period specified in subsection 6(a), 6(b), 6(c), or 6(d) above within which the City must approve or disapprove an application may be extended by written agreement of the applicant and the City.

8. A complete application for an administrative review-eligible project shall be deemed approved if the City fails to approve or disapprove such application within the applicable period specified in subsection 6(a), 6(b), 6(c), or 6(d) above or within any agreed extension thereof pursuant to subsection 7 above.
 9. If the City disapproves an application for an administrative review-eligible project:
 - (a) the City shall provide the applicant with a written statement listing all of the reasons for the disapproval; and
 - (b) if the City is aware of any modifications to the project as described in the application that if made would permit the City to approve the proposed project, the City shall identify them in the written statement provided under subsection 9(a) above. The City's subsequent disapproval of an application for a project that incorporates the modifications identified in such a written statement may be used by the applicant as evidence that the City's subsequent disapproval was arbitrary or capricious in any appeal of the City's subsequent disapproval.
 10. If an application for an administrative review-eligible project is disapproved, the City's disapproval shall:
 - (a) not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services; and
 - (b) be supported by substantial record evidence contained in a written record publicly released within 30 days following the disapproval.
- F. Limitations on Disapprovals of Administrative Review-Eligible Projects. Whenever the City receives, considers, and processes a complete application for an administrative review-eligible project, it shall not disapprove any such application on the basis of:
- (a) the applicant's business decision with respect to its designed service, customer demand, or quality of service to or from a particular site;
 - (b) the applicant's specific need for the project, including the applicant's desire to provide additional wireless coverage or capacity; or
 - (c) the wireless facility technology selected by the applicant for use at the project.
- G. Disapproval Considerations for Administrative Review-Eligible Projects. Nothing in this Ordinance shall be construed to prohibit the City from disapproving an application for an administrative review-eligible project:

1. On the basis of the fact that the proposed height of any wireless support structure, wireless facility, or wireless support structure with attached wireless facilities exceeds 50 feet above ground level, provided that the City follows a local ordinance or regulation that does not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services; or
2. That proposes to locate a new structure, or to co-locate a wireless facility in an area where all cable and public utility facilities are required to be placed underground by a date certain or encouraged to be undergrounded as part of a transportation improvement project or rezoning proceeding as set forth in objectives contained in a comprehensive plan, if:
 - (a) The undergrounding requirement or comprehensive plan objective existed at least three months prior to the submission of the application;
 - (b) The City allows the co-location of wireless facilities on existing utility poles, government-owned structures with the government's consent, existing wireless support structures, or a building within that area;
 - (c) The City allows the replacement of existing utility poles and wireless support structures with poles or support structures of the same size or similar within that area; and
 - (d) The disapproval of the application does not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services, and other providers of functionally equivalent services.

- H. Disapproval Limitation If Administrative Review-Eligible Project Does not Substantially Change Physical Dimensions. The City may not deny, and shall approve, within sixty (60) days, any administrative review-eligible project which requests any modification of an existing base station or wireless support structure that does not substantially change, as that term is defined by federal law, the physical dimensions of such support structure or base station and that involves the co-location of new transmission equipment, the removal of transmission equipment, or the replacement of transmission equipment.
- I. Disapproval Allowed If Written Notice Not Provided to Adjacent Property Owners. The City may disapprove an application for an administrative review-eligible project if the applicant has not given written notice to all adjacent property owners at least 15 days before the applicant applies to locate a new structure on the subject property.

§ 35.2–73.6 Standard Process Projects.

- A. Review of Standard Process Projects. Standard process projects may require the approval of a conditional use permit and/or a site plan for the installation or construction of such a

project, and City staff review may also be required for the issuance of any zoning permit, or an acknowledgment that zoning approval is not required, for a standard process project.

B. Application Requirements for Standard Process Projects. Applications for wireless support structures, wireless facilities, and/or base stations that constitute standard process projects shall include the following:

1. The name, address, telephone number, and electronic mail address of the applicant. If the applicant is not the owner of the land on which the wireless support structure, wireless facility, and/or base station is proposed to be located, then the applicant shall provide written consent of the owner, and the name, address, telephone number, and the electronic mail address of the owner. If the land on which the proposed wireless support structure, wireless facility, or base station is proposed to be located is, in whole or in part, within the City's right-of-way, then the applicant shall be required to secure written consent from the City for the proposed wireless support structure, wireless facility, or base station to be located within the City's right-of-way prior to filing such application and shall include such written consent as part of any such application.
2. An affirmative written statement signed by the applicant and the owner that the applicant and the owner are aware of and agree to comply with the provisions of this Zoning Ordinance set forth in § 35.2-73.24 (Abandonment) regarding removal and dismantlement of all wireless support structures, wireless facilities, base stations, and related equipment in the event such a structure, facility, base station, or related equipment is no longer in use.
3. The valuation map number and address of the parcel of land on which the wireless support structure, wireless facility, and/or base station is proposed to be located.
4. The names, addresses, and telephone numbers of the owners of and a map showing the location and height of all wireless support structures or potential wireless support structures taller than fifty (50) feet that are within a one (1) mile radius of the proposed new site for a wireless support structure, wireless facility, and/or base station, including City-owned property.
5. Written documentation that the applicant has made diligent, but unsuccessful, efforts to secure the permission to co-locate the applicant's proposed wireless facility on an existing or proposed wireless support structure owned by others, including the City, within a one-mile radius of the proposed wireless support structure, wireless facility, and/or base station.
6. Written, technical evidence from a radio frequency engineer that the proposed wireless support structure, wireless facility, base station, or project cannot be installed or co-located on another existing or proposed wireless support structure within a one (1) mile radius of the proposed site for a wireless support structure, wireless facility, or base station and must be located at the proposed site in order to meet the coverage requirements for applicant's wireless telecommunications system.

7. Written, technical evidence from a structural engineer that the proposed wireless support structure can support the wireless facilities and base stations of other carriers for the purposes of co-location.
8. Written, technical evidence from a radio frequency engineer that the proposed facilities meet the standards set forth in this Ordinance, including, but not limited to, the requirements set forth in § 35.2–73.13 (Interference With Public Safety Radio Services), and will not materially interfere 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.
9. Written, technical evidence from an electrical engineer that the proposed site of the wireless support structure, wireless facility, and/or base station does not pose a risk of explosion, fire, or other danger due to its proximity to volatile, flammable, explosive, or hazardous materials such as propane, gasoline, natural gas, or corrosive or other dangerous chemicals
10. A map of the City and the first half-mile of all bordering communities showing the design of the applicant's entire existing or proposed telecommunications network. Such map shall, at a minimum, indicate the general location of all proposed or existing sites of the applicant's wireless support structures, wireless facilities, base stations, and related equipment, the dimensions of the sites, specifications relating to the facilities, and signal area coverage.
11. Color photo simulations showing the proposed site of the proposed wireless support structure, wireless facility, base station, or project with a photo-realistic representation of the proposed structure and facility as they would appear viewed from at least four (4) substantially different vantage points on the eight (8) closest residential properties or adjacent roadways.
12. Any initial application fee required by § 35.2–73.6(D) (Fees for Standard Process Projects).
13. A site plan, including a depiction of the lot lines, setbacks, existing structures and other improvements on the property, the location of adjacent and nearby structures, the proposed location of the proposed wireless support structure, wireless facility, and base station that are the subject of the application, separation distances, proposed height of any new structure, screening and landscaping, existing and proposed, access, parking, security, zoning district(s) for the subject property and all adjacent properties, and any floodplain on the subject property.
14. A copy of any approval granted by a federal agency, including any conditions imposed by that agency, regarding the proposed wireless support structure, wireless facility, and/or base station.

15. Evidence relating to any other factors the applicant believes are relevant to the City's consideration of whether the applicant's proposed standard process project should be approved.
16. Written documentation regarding whether and how the location of the proposed wireless support structure and/or wireless facility in relation to existing structures, trees, and other visual buffers, minimizes, to the greatest extent reasonably practicable under the circumstances, any significant negative adverse impact.
17. Written documentation regarding whether and how the location of the wireless support structure and/or wireless facility will not have a significant detrimental impact on the property values of adjacent and nearby properties.
18. Written documentation regarding any other factors the applicant believes are relevant to the City's consideration of whether the applicant's proposed standard process project should be approved.
19. Evidence that the applicant has given written notice to all adjacent landowners regarding the applicant's intent to file the application at least 15 days before the filing of any application to locate a new structure on the subject property

C. Fee Limitations for Standard Process Projects. When an application for a standard process project is filed, the following provisions shall apply to the fee that must be paid by the applicant:

1. The fee must be reasonable.
2. The fee charged by the City shall not include direct payment or reimbursement of third-party fees charged on a contingency basis or a result-based arrangement.
3. The fee charged by the City shall not exceed the actual direct costs to process the application, including permits and inspection.
4. The City shall not charge market-based or value-based fees for the processing of any such application.
5. Upon request, the City shall, within a reasonable amount of time after such request, provide the applicant with the cost basis for any fee charged by the City for a standard process project.

D. Fees for Standard Process Projects. Each application for a wireless support structure, wireless facility, or base station that constitutes a standard process project shall be accompanied by payment of the following fees for the processing of the application:

1. For an application for a standard process project that requires the approval of a conditional use permit and a site plan, the initial fee shall be \$900.
 2. For an application for a standard process project that requires the approval of a site plan, but not a conditional use permit, the initial fee shall be \$500.
 3. The City reserves the right to employ an outside consultant to assist in the review of any application for a standard process project. In the event the City employs an outside consultant to review an application for a standard process project, the applicant shall reimburse the City for the reasonable expenses related to such review as an additional application fee, provided, however, that the fee limitations set forth in § 35.2–73.6(C) (Fee Limitations for Standard Process Projects) shall apply to the calculation of any such additional fee.
 4. For any standard process project that requires the approval of a conditional use permit, the applicant shall be responsible for the payment of any costs for any legal notices that may be required for the conditional use permit.
- E. Processing Applications for Standard Process Projects. The following provisions set forth the process that shall apply to any application for a standard process project:
1. Prior to accepting any application for a wireless support structure, a wireless facility, or a base station, that constitutes a standard process project, the City shall first determine that the application includes the applicant's electronic mail address. In the event the application does not include the applicant's electronic mail address, the City shall not accept it for filing
 2. If the application is incomplete, but includes an electronic mail address for the applicant, then within ten (10) business days after actual receipt of the application, the City shall notify the applicant by electronic mail if the application is incomplete and shall specify in that notification any additional information, documents, and materials required to complete the application.
 3. If the application is incomplete and does not include a valid electronic mail address for the applicant when it was filed, the City shall use reasonable means to contact the applicant and request the applicant's valid electronic mail address. Within ten (10) days after actual receipt of a valid electronic mail address for the applicant, the City shall notify the applicant by electronic mail that the application is incomplete and shall specify any additional information, documents, and materials required to complete the application.
 4. If an incomplete initial or resubmitted application is filed for a standard process project, then the City shall notify the applicant by electronic mail that the application is incomplete and shall specify any missing information, documents, and materials in accordance with the following:

- (a) for an initial application, the City shall notify the applicant by electronic mail within ten (10) business days after the application is submitted whether the application is incomplete and shall specify in that notification any missing information, documents, and materials; otherwise, the application will be deemed complete; and
 - (b) for a resubmitted application, the City shall notify the applicant by electronic mail within ten (10) days after the application is resubmitted whether the application is incomplete and shall specify in that notification any missing information, documents and materials; otherwise, the application will be deemed complete.
- 5. If the City fails to timely provide the applicant with notice that the initial application or a resubmitted application is incomplete in accordance with the foregoing provisions, as applicable, the application shall be deemed complete.
- 6. Except as provided for in subsection 7 below, the City shall approve or disapprove a complete application for a standard process project in accordance with the following:
- 7. Any period specified in subsection 6(a), 6(b), 6(c), or 6(d) above within which the City must approve or disapprove an application may be extended by written agreement of the applicant and the City.
- 8. A complete application for a standard process project shall be deemed approved if the City fails to approve or disapprove such application within the applicable period specified in subsection 6(a), 6(b), 6(c), or 6(d) above or any agreed extension thereof pursuant to subsection 7 above.
- 9. If the City disapproves an application for a standard process project:
 - (a) the City shall provide the applicant with a written statement listing all of the reasons for the disapproval; and
 - (b) if the City is aware of any modifications to the project as described in the application that if made would permit the City to approve the proposed project, the City shall identify them in the written statement provided under subsection 6(a) above. The City's subsequent disapproval of an application for a project that incorporates the modifications identified in such a written statement may be used by the applicant as evidence that the City's subsequent disapproval was arbitrary or capricious in any appeal of the City's subsequent disapproval.
- 10. If an application for a standard process project is disapproved, the City's disapproval shall:
 - (a) not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services; and.

- (b) be supported by substantial record evidence contained in a written record publicly released within 30 days following the disapproval.

F. Limitations on Disapprovals of Standard Process Projects. Whenever the City receives, considers, and processes a complete application for a standard process project, it shall not disapprove any such application on the basis of:

- (a) the applicant's business decision with respect to its designed service, customer demand, or quality of service to or from a particular site;
- (b) the applicant's specific need for the project, including the applicant's desire to provide additional wireless coverage or capacity; or
- (c) the wireless facility technology selected by the applicant for use at the project.

G. Disapproval Considerations for Standard Process Projects. Nothing in this Ordinance shall be construed to prohibit the City from disapproving an application for a standard process project:

1. On the basis of the fact that the proposed height of any wireless support structure, wireless facility, or wireless support structure with attached wireless facilities exceeds 50 feet above ground level, provided that the City follows a local ordinance or regulation that does not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services , and other providers of functionally equivalent services; or
2. That proposes to locate a new structure, or to co-locate a wireless facility in an area where all cable and public utility facilities are required to be placed underground by a date certain or encouraged to be undergrounded as part of a transportation improvement project or rezoning proceeding as set forth in objectives contained in a comprehensive plan, if:
 - (a) The undergrounding requirement or comprehensive plan objective existed at least three months prior to the submission of the application;
 - (b) The City allows the co-location of wireless facilities on existing utility poles, government-owned structures with the government's consent, existing wireless support structures, or a building within that area;
 - (c) The City allows the replacement of existing utility poles and wireless support structures with poles or support structures of the same size or similar within that area; and
 - (d) The disapproval of the application does not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers,

providers of telecommunications services, and other providers of functionally equivalent services, and other providers of functionally equivalent services.

- H. Disapproval Limitation If Standard Process Project Does not Substantially Change Physical Dimensions. The City may not deny, and shall approve, within sixty (60) days, any standard process project which requests any modification of an existing base station or wireless support structure that does not substantially change, as that term is defined by federal law, the physical dimensions of such support structure or base station and that involves the co-location of new transmission equipment, the removal of transmission equipment, or the replacement of transmission equipment.
- I. Disapproval Allowed If Written Notice Not Provided to Adjacent Property Owners. The City may disapprove an application for a standard process project if the applicant has not given written notice to all adjacent property owners at least 15 days before the applicant applies to locate a new structure on the subject property.

§ 35.2–73.7 Permitted Uses.

A. The following uses shall be permitted by right as follows:

1. Small cell facilities in all zoning districts.
2. Administrative review-eligible projects in all zoning districts.
3. Any wireless support structure and/or wireless facility that does not exceed one hundred (100) feet in height in the B–1 District.
4. Any wireless support structure and/or wireless facility that does not exceed one hundred and fifty (150) feet in height in the B–3, B–5, IN–2, I–1, I–2, or I–3 Districts.
5. Any base station associated with a lawfully existing wireless support structure and/or wireless facility, provided, however, that:
 - (a) the base station shall be located inside the wireless support structure; or
 - (b) the base station shall be located on the ground within 50 feet of the base of the wireless support structure; or
 - (c) the base station is not visible at ground level from off-site; and
 - (d) the size of the base station shall not exceed seventy-two (72) cubic feet in size and/or six (6) feet in height; and

- (e) all applicable setbacks shall be complied with.
 - 6. The co-location of a wireless facility on a lawfully existing wireless support structure in any zoning district, provided, however, that:
 - (a) the height of any such wireless support structure, wireless facility, or wireless support structure with wireless facility attached, shall not increase as a result of the co-location; and
 - (b) all applicable setbacks must be complied with.
 - B. Existing wireless support structures and wireless facilities shall be exempt from the maximum height restrictions of the districts in which they are located to the extent such structures and facilities lawfully existed on the date of adoption of this Ordinance.
- § 35.2-73.8 Conditional Use Permit Required.
- A. The following uses require the approval of a conditional use permit by the City Council:
 - 1. In the R-C, R-1, R-2, R-3, R-4, IN-1, or B-4 Districts, any standard process project that is between fifty (50) and one hundred and fifty (150) feet in height, provided, however, that no new wireless support structure and/or wireless facility in such districts shall exceed 150 feet in height;
 - 2. In the B-1 District, any standard process project in which a new wireless support structure and/or wireless facility exceeds one hundred (100) feet in height; provided, however, that the maximum height for any wireless facility and/or wireless support structure in the B-1 District shall be 150 feet;
 - 3. In the B-3, B-5, IN-2, I-1, I-2, or I-3 Districts, any standard process project in which a new wireless support structure and/or wireless facility exceeds one hundred fifty (150) feet in height;
 - 4. Any base station that is a standard process project and exceeds seventy-two cubic feet above ground and/or six feet in height;
 - 5. Any base station associated with a lawfully existing wireless support structure and/or wireless facility that is a standard process project, is not located inside the wireless support structure, is visible at ground level from off-site, and/or is not located within 50 feet of the base of the wireless support structure;
 - 6. The co-location of a wireless facility on a lawfully existing wireless support structure in any zoning district that, after the proposed co-location, would result in an increase in height of the wireless support structure and/or wireless facility, provided, however, that

no such structure and/or facility shall be allowed to increase more than fifteen (15) feet in height as a result of the approval of such a conditional use permit; and

7. Any other project that constitutes a standard process project.
- B. Whenever a conditional use permit is required for a proposed wireless structure or wireless facility, any application for such a conditional use permit shall be made to the City Planner in the manner provided in Article 2 of this Zoning Ordinance. In districts for which a conditional use permit is required, the City Council shall make its decision to approve or deny such permit in writing and in a manner consistent with applicable state and federal law.
- C. Any wireless support structure, wireless facility, or base station that is not permitted by right or upon the approval of a conditional use permit under this Ordinance shall be considered to be in violation of this Ordinance.
- D. No new wireless support structure and/or wireless facility for which a conditional use permit is approved shall exceed a maximum height of one hundred fifty (150) feet in the R-C, R-1, R-2, R-3, R-4, IN-1, or B-4 Districts.

35.2-73.9 Setbacks.

- A. There shall be no setback requirement for any wireless support structure and/or wireless facility that is thirty-five (35) feet or less in height.
- B. Any wireless support structure and/or wireless facility greater than thirty-five (35) feet in height in the R-C, R-1, R-2, R-3, R-4, IN-1, or B-4 Districts shall be required to set back a distance from all property lines at least the height of such structure and/or facility.
- C. Any wireless support structure and/or wireless facility greater than thirty-five (35) feet in height in the B-1, B-3, B-5, IN-2, I-1, I-2, or I-3 Districts that is on a parcel adjacent to any parcel that is zoned R-C, R-1, R-2, R-3, R-4, IN-1, or B-4 shall be set back a distance at least the height of such structure and/or facility from the R-C, R-1, R-2, R-3, R-4, IN-1, or B-4 District.
- D. Any wireless support structure and/or wireless facility in the B-1, B-3, B-5, IN-2, I-1, I-2, or I-3 Districts that is greater than thirty-five (35) feet in height but less than fifty (50) feet in height shall be required to set back a distance from all property lines at least the minimum applicable setback for the district in which it is located.
- E. Any wireless support structure and/or wireless facility in the B-1, B-3, B-5, IN-2, I-1, I-2, or I-3 Districts that is a height greater than fifty (50) feet shall be required to set back a distance from all property lines at least one-half the height of such structure and/or facility.

- F. Setback requirements for wireless support structures and/or wireless facilities shall be measured from the base of the structure and/or facility to the property lines of the parcel on which the structure and/or facility is located.

§35.2-73.10 Standards for Conditional Use Permits for Standard Process Projects.

In order to approve a conditional use permit for a standard process project, the City Council must find that the application for such project satisfies all of the following standards:

1. The proposed use is in substantial conformance with the provisions of the City's Comprehensive Plan.
2. The proposed use will not result in any significant adverse impact on the use and enjoyment of nearby properties.
3. The proposed use will not have any significant negative impact on the value of nearby properties.
4. The proposed use will not cause any material potential interference with other pre-existing communications facilities or with future communications facilities that have already been planned or designed for a specific location or that have been reserved for future public safety communications facilities.
5. The proposed use will not result in any significant adverse impact on public safety or other critical public service needs.
6. The proposed use must be compatible with the character of the area in which it is proposed to be located.
7. There are no existing wireless support structures within a reasonable distance from the proposed wireless support structure, wireless facility, and/or base station that are available to be used for co-location at reasonable terms and conditions without imposing technical limitations on the applicant.
8. The proposed use shall not conflict with any City ordinance adopted pursuant to Code of Virginia § 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.
9. The proposed use satisfies all other applicable requirements set forth in this chapter with respect to the location, size, design, and construction of wireless support structures, wireless facilities, and base stations.

§35.2-73.11 Use of City-Owned Property for Wireless Facilities.

The City may authorize the use of City property for wireless facilities in appropriately zoned districts in accordance with the procedures of the City charter and code. The City shall have no obligation whatsoever to allow the use of City property for such purposes and any such approval by the City shall be subject to the discretion of the City Council.

§35.2–73.12 Co-Location Availability.

An application for a standard process project may be disapproved by the City on the basis of the availability of the existence of one or more wireless support structures within a reasonable distance that could be used for co-location at reasonable terms and conditions without imposing technical limitations on the applicant.

§ 35.2–73.13 Interference With Public Safety Radio Services.

In order to ensure that the City's public safety radio services will be free from harmful or destructive interference, all applicants requesting a permit to establish or install a wireless support structure or wireless facility shall:

- A. Demonstrate compliance with good engineering practices;
- B. Not cause material potential interference to the City's existing public safety radio services or to 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; and
- C. Comply with all FCC regulations regarding susceptibility to radio frequency interference, frequency coordination requirements, general technical standards for power, antenna bandwidth limitations, frequency stability, transmitter measurements, operating requirements, and any and all other federal statutory and regulatory requirements relating to radio frequency interference (RFI), provided, however, that this subparagraph (C) shall not apply to applications for small cell facilities.

§ 35.2-73.14 Structural Requirements.

All wireless support structures and wireless facilities must be designed and certified by a structural engineer licensed in the Commonwealth of Virginia to be structurally sound and, at a minimum, in conformance with the Virginia Uniform Statewide Building Code and any other applicable standards set forth in this chapter.

§ 35.2-73.15 Method of Determining Height of A Wireless Support Structure.

Measurement of the height of a wireless support structure for the purpose of determining compliance with all requirements of this chapter shall include the wireless support structure itself and any wireless facilities associated with the wireless support structure, and any other support

features installed thereon which extend over the top of the structure itself. Structure height shall be measured from grade.

§ 35.2-73.16 Illumination.

Wireless support structures whose principal use is the facilitation of wireless telecommunications shall not be artificially lighted except as may be required by the FAA.

§ 35.2–73.17 Exterior Finish.

Wireless support structures and wireless facilities not requiring painting or marking by the FAA shall be painted a neutral color. A galvanized finish is considered a neutral color.

§ 35.2–73.18 Landscaping.

All landscaping on parcels containing wireless support structures, wireless facilities, and/or base stations shall be designed to screen the structure, facilities, base station, and related equipment to a height of at least six (6) feet from grade. This requirement may be waived at the discretion of the planning division if the base of the structure, facilities, base station, and related equipment to be screened is not located in and is not visible from any commercial or residential district or from any public street. All required landscaping shall be continually maintained in a healthy and attractive manner.

§ 35.2-73.19 Security.

All wireless support structures and wireless facilities shall be reasonably posted and secured to prevent against trespass.

§ 35.2–73.20 Access.

All parcels upon which wireless support structures are located must provide access during normal business hours to at least one (1) paved vehicular parking space on site.

§ 35.2–73.21 Maintenance.

- A. The owners and operators of all wireless support structures, wireless facilities, base stations, and related equipment shall at all times employ ordinary and reasonable care in maintaining such structures, facilities, base stations, and equipment and shall install and maintain in use nothing less than commonly accepted methods and devices for the prevention of failures and accidents which are likely to cause damage, injuries, or nuisances to the public,

provided, however, that no zoning approval of the City shall be required for routine maintenance of any existing wireless support structure or wireless facility.

- B. The owners and operators of all wireless support structures, wireless facilities, and base stations shall at all times employ ordinary and reasonable care and shall install and maintain such wireless support structures, wireless facilities, base stations, and equipment in substantial compliance with the requirements of the national electric safety code and all federal, state, and local regulations and in such manner that will not interfere with the use and enjoyment of other property.
- C. All wireless support structures, wireless facilities, base stations, and related equipment shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any person.
- D. All wireless support structures, wireless facilities, base stations, and related equipment shall be maintained in compliance with any applicable radio frequency emission standards of the FCC.
- E. In the event the use of any wireless support structure, wireless facility, base station, and related equipment is discontinued by the owner or operator thereof, or in the event the owner or operator thereof files notice with the FCC or any other federal agency of its interest in ceasing to operate any wireless support structure, wireless facility, base station, and related equipment, said owner or operator shall, within thirty (30) days, provide written notice to the City of its intent to discontinue such use and the date when such use shall be discontinued. If the facility in question, or any part thereof, is located within the City's right-of-way, then the owner or operator shall submit the foregoing written notice to the Department of Public Works. If the facility in question, or any part thereof, is located outside the City's right-of-way, then the owner or operator shall submit the foregoing written notice to the Department of Community Development.

§ 35.2-73.22 Stealth.

The City encourages, but does not require, the installation of small cell facilities and administrative review-eligible projects that employ stealth designs and blend into the environments in which they are proposed to be located. All standard process projects proposing wireless support structures and wireless facilities shall be of stealth design. For purposes of this section, the term "stealth design" refers to a wireless support structure and wireless facility that is designed in such a way as to effectively blend into the environment in which that structure is proposed to be located. Examples of stealth designs include, but are not limited to, a wireless support structure in a wooded area that is designed to look like a tree, a wireless facility that is encased in a flagpole, a wireless support structure on a church property that is designed to look like a bell tower or church steeple, and a wireless support structure in an agricultural area that is designed to look like a farm silo.

§ 35.2-73.23 Existing Wireless Support Structures.

- A. An existing wireless support structure may be modified or demolished and rebuilt to accommodate the co-location of additional wireless facilities and base stations as follows:
1. Application for a permit for any wireless facility or base station, other than a small cell facility, located, in whole or in part, within the City's right-of-way shall be made to the Department of Public Works.
 2. Application for a permit for any wireless facility or base station located, in whole or in part, outside the City's right-of-way shall be made to the Department of Community Development.
 3. The total height of the new or modified wireless support structure and any wireless facilities installed thereon shall not exceed the height of the existing wireless support structure or the maximum height allowed for wireless support structures permitted by right in the applicable zoning district under this ordinance whichever is greater.
- B. The City may not deny and shall approve any request to modify the physical dimensions of an existing wireless tower or base station if that request does not substantially increase the physical dimensions of such tower or base station and involves:
- (1) co-location of new transmission equipment;
 - (2) removal of transmission equipment; or
 - (3) replacement of transmission equipment.

§ 35.2-73.24 Abandonment.

If the City receives notice pursuant to § 35.2-73.21(E), or if any wireless support structure, wireless facility, base station, and/or related equipment shall cease to be used for a period of one hundred eighty (180) consecutive days, then for wireless support structures, wireless facilities, base stations and/or related equipment inside the City's right-of-way, the Department of Public Works shall notify the owner and/or operator of such structure, facility, base station, and related equipment, with a copy to the applicant therefor, that the site will be subject to a determination by the Department of Public Works that such site has been abandoned. In the event such structure, facility, base station, and related equipment is located outside the City's right-of-way, then the foregoing notification and determination shall be made by the Department of Community Development. The owner, operator, and/or applicant shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence, that the support structure, wireless facility, base station, and/or related equipment has been in use or under repair during the period. If the owner, operator, and/or applicant fails to show that the support structure, wireless facility, base station, and/or related equipment has been in use or under repair during the period, the Department of Public Works, or Department of Community Development, whichever applies, shall issue a final determination of abandonment for the site. Upon issuance of the City's final determination, the owner, operator, and/or applicant shall, within seventy-five (75) days, dismantle and remove the support structure, wireless facility,

base station, and related equipment. If the owner, operator, and/or applicant fails to remove the abandoned support structure, wireless facility, base station, and related equipment within seventy-five (75) days after the City's final determination of abandonment, the City and/or its agents may, at its option, enter upon the property and dismantle, remove, and lawfully dispose of the support structure, wireless facility, base station, and related equipment that has been determined by the City to have been abandoned. The City may place a lien on the property of the owner from which the abandoned support structure, wireless facility, base station, or related equipment was removed in the amount of the City's expenses in dismantling, removing, and lawfully disposing of such support structure, wireless facility, base station, and related equipment. The City also may recover from the owner, operator, and/or applicant the costs of dismantling, removing, and lawfully disposing of the support structure, wireless facility, base station, and related equipment from the owner. For purposes of this section, removal includes all physical improvements associated with the support structure, wireless facility, base station, and related equipment, including foundation and tower grounding.

§ 35.2–73.25 Miscellaneous Provisions.

- A. Voluntary Conditions Allowed. Nothing in this Ordinance shall prohibit an applicant from voluntarily submitting, and the City from accepting, any conditions that otherwise address potential visual or aesthetic effects resulting from the placement of any new structure or wireless facility, including small cell facility.
- B. Micro-Wireless Facilities Exemption. Nothing in this Ordinance shall be construed to require any permitting requirements and fees imposed by the City for 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, because the installation, placement, maintenance, or replacement of such facilities are exempt from any City-imposed permitting requirements and fees.
- C. Limitations on Review of Administrative Review-Eligible Projects and Standard Process Projects. Whenever the City receives, considers, and processes an application for an administrative review-eligible project or a standard process project, it shall not:
1. Discriminate or create a preference on the basis of the ownership by the City, of any property, structure, base station, or wireless support structure when promulgating rules or procedures for siting wireless facilities or for evaluating applications;
 2. Impose any unreasonable requirements or obligations regarding the presentation or appearance of a project, including unreasonable requirements relating to (i) the kinds of materials used or (ii) the arranging, screening, or landscaping of wireless facilities or wireless structures;
 3. Impose any requirement that an applicant purchase, subscribe to, use, or employ facilities, networks, or services owned, provided, or operated by the City, in whole or in part, by the City or by any other entity in which the City has a competitive, economic, financial, governance, or other interest;

4. Condition or require the approval of an application solely on the basis of the applicant's agreement to allow any wireless facilities provided or operated, in whole or in part, by the City, or by any other entity, to be placed at or co-located with the applicant's project;
 5. Impose a setback or fall zone requirement for a project that is larger than a setback or fall zone area that is imposed on other types of similar structures of a similar size, including utility poles;
 6. Limit the duration of the approval of an application, except the City may require that construction of the approved project shall commence within two years after final approval and be diligently pursued to completion; and
 7. Require an applicant to perform services unrelated to the project described in the application, including restoration work on any surface not disturbed by the applicant's project.
- D. Nothing in this chapter shall prohibit the City from disapproving an application submitted under a standard process project on the basis of availability of existing wireless support structures within a reasonable distance that could be used for co-location at reasonable terms and conditions without imposing technical limitations on the applicant.
- E. No zoning approval shall be required for (i) routine maintenance or (ii) the replacement of wireless facilities or wireless support structures within a six-foot perimeter with wireless facilities or wireless support structures that are substantially similar or smaller; provided, however, that the City may require a permit to work within the right-of-way for the activities described in clause (i) or (ii), if applicable.
- F. Nothing in this chapter shall prohibit the City from limiting the number of new structures or the number of wireless facilities that can be installed in a specific location.
- G. Nothing in this chapter shall be construed to require an applicant to provide proprietary, confidential, or other business information to justify the need for a project, including propagation maps and telecommunications traffic studies, or information reviewed by a federal agency as part of the approval process for the same structure and wireless facility
- H. All information submitted with an application that is a trade secret or proprietary shall be clearly marked as such when submitted to the City. The City shall not disclose publicly, or to any third party, any such proprietary information unless compelled to do so by federal, state, or local law.

§ 35.2–73.26 Reservation of Rights.

The City reserves the right to impose any other reasonable conditions it determines are necessary for the proper placement, construction, or modification of wireless support structures, wireless facilities, or base stations and/or to impose any other reasonable conditions on the

issuance of a conditional use permit for the placement or construction of, or modification to, a wireless support structure, wireless facility, or base station, provided, however, that the imposition of any such conditions must be in conformance with federal and state law and the provisions of this chapter.

This ordinance shall become effective upon adoption.

Adopted:

Certified:

Clerk of Council

ORDINANCE:

AN ORDINANCE TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG, 1981 BY AMENDING ZONING ORDINANCE EXHIBIT IV-1: AUTHORIZED USES IN R-C DISTRICT, EXHIBIT IV-3: AUTHORIZED USES IN R-1 DISTRICT, EXHIBIT IV-5: AUTHORIZED USES IN R-2 DISTRICT, EXHIBIT IV-7: AUTHORIZED USES IN R-3 DISTRICT, EXHIBIT IV-9: AUTHORIZED USES IN R-4 DISTRICT, EXHIBIT IV-12: AUTHORIZED USES IN B-1 DISTRICT, EXHIBIT IV-15: AUTHORIZED USES IN B-3 DISTRICT, EXHIBIT IV-17: AUTHORIZED USES IN B-4 DISTRICT, EXHIBIT IV-19: AUTHORIZED USES IN B-5 DISTRICT, EXHIBIT IV-21: AUTHORIZED USES IN IN-1 DISTRICT, EXHIBIT IV-23: AUTHORIZED USES IN IN-2 DISTRICT, EXHIBIT IV-24, AUTHORIZED USES IN I-1 DISTRICT, EXHIBIT IV-26: AUTHORIZED USES IN I-2 DISTRICT AND EXHIBIT IV-28: AUTHORIZED USES IN I-3 DISTRICT.

WHEREAS, City staff has proposed and recommends approval of an Ordinance that will amend certain exhibits in the current City Zoning Ordinance (Exhibit IV-1: Authorized Uses in R-C District, Exhibit IV-3: Authorized Uses in R-1 District, Exhibit IV-5: Authorized Uses in R-2 District, Exhibit IV-7: Authorized Uses in R-3 District, Exhibit IV-9: Authorized Uses in R-4 District, Exhibit IV-12: Authorized Uses in B-1 DISTRICT, Exhibit IV-15: Authorized Uses in B-3 District, Exhibit IV-17: Authorized Uses in B-4 District, Exhibit IV-19: Authorized Uses in B-5 District, Exhibit IV-21: Authorized Uses in IN-1 District, Exhibit IV-23: Authorized Uses in IN-2 District, Exhibit IV-24, Authorized Uses in I-1 District, Exhibit IV-26: Authorized Uses in I-2 District and Exhibit IV-28: Authorized Uses in I-3 District approval type for wireless telecommunications transmission) to reflect the “Approval Type” for wireless telecommunications transmission as “C” for “Conditional Use Permit” and/or “P” for “Permitted” depending on the requirements of Sections 35.2–73.1 through 35.2–73.26 of the City Zoning Ordinance related to Telecommunications Facilities (“the proposed Ordinance”); and

WHEREAS, on November 11, 2020, the Planning Commission of the City of Lynchburg held a work session on the proposed Ordinance; and

WHEREAS, on December 9, 2020, the Planning Commission held a public hearing on the proposed Ordinance to consider and address the proposed Ordinance and to receive public comment; and

WHEREAS, after its public hearing on the proposed Ordinance on December 9, 2020, the Planning Commission recommended that the City Council approve the proposed Ordinance; and

WHEREAS, City Council conducted a work session on the proposed Ordinance on January 12, 2021; and

WHEREAS, on February 9, 2021, City Council held a public hearing to consider and address the proposed Ordinance and to receive public comment on the proposed Ordinance; and

WHEREAS, City Council finds that the proposed Ordinance should be adopted in order to promote the public necessity, convenience, welfare and good zoning practice.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

That Exhibit IV-1: Authorized Uses in R-C District, Exhibit IV-3: Authorized Uses in R-1 District, Exhibit IV-5: Authorized Uses in R-2 District, Exhibit IV-7: Authorized Uses in R-3 District, Exhibit IV-9: Authorized Uses in R-4 District, Exhibit IV-12: Authorized Uses in B-1 DISTRICT, Exhibit IV-15: Authorized Uses in B-3 District, Exhibit IV-17: Authorized Uses in B-4 District, Exhibit IV-19: Authorized Uses in B-5 District, Exhibit IV-21: Authorized Uses in IN-1 District, Exhibit IV-23: Authorized Uses in IN-2 District, Exhibit IV-24, Authorized Uses in I-1 District, Exhibit IV-26: Authorized Uses in I-2 District and Exhibit IV-28: Authorized Uses in I-3 District approval type for wireless telecommunications transmission is amended as follows:

EXHIBIT IV-1: AUTHORIZED USES IN R-C DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers <u>ordinance</u>	C / <u>P</u>

EXHIBIT IV-3: AUTHORIZED USES IN R-1 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers <u>ordinance</u>	C / <u>P</u>

EXHIBIT IV-5: AUTHORIZED USES IN R-2 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers <u>ordinance</u>	C / <u>P</u>

EXHIBIT IV-7: AUTHORIZED USES IN R-3 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers <u>ordinance</u>	C / <u>P</u>

EXHIBIT IV-9: AUTHORIZED USES IN R-4 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers <u>ordinance</u>	C / <u>P</u>

EXHIBIT IV-12: AUTHORIZED USES IN B-1 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers <u>ordinance</u>	<u>C</u> / P

EXHIBIT IV-15: AUTHORIZED USES IN B-3 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers <u>ordinance</u>	<u>C</u> / P

EXHIBIT IV-17: AUTHORIZED USES IN B-4 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers <u>ordinance</u>	<u>C</u> / P

EXHIBIT IV-19: AUTHORIZED USES IN B-5 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers <u>ordinance</u>	<u>C</u> / P

EXHIBIT IV-21: AUTHORIZED USES IN IN-1 DISTRICT

Land Use	LBCS#	Description	Approval Type
<u>Wireless telecommunications transmission</u>	<u>4233</u>	<u>Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication ordinance</u>	<u>C</u> / P

EXHIBIT IV-23: AUTHORIZED USES IN IN-2 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers <u>ordinance</u>	<u>C</u> / <u>P</u>

EXHIBIT IV-24, AUTHORIZED USES IN I-1 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers <u>ordinance</u>	<u>C</u> / <u>P</u>

EXHIBIT IV-26: AUTHORIZED USES IN I-2 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers <u>ordinance</u>	<u>C</u> / <u>P</u>

EXHIBIT IV-28: AUTHORIZED USES IN I-3 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for	<u>C</u> / <u>P</u>

		telecommunication towers <u>ordinance</u>	
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That this ordinance shall become effective upon its adoption.

Adopted:

Certified:

Clerk of Council

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **January 12, 2021**

AGENDA ITEM #:

CONSENT:

REGULAR: **X**

WORK SESSION: **X**

CLOSED SESSION:

ACTION:

INFORMATION:

(Confidential)

ITEM TITLE: *Zoning Ordinance Amendments – Section 35.2-61.2 (d) Flag Poles, Light Poles & Utility Poles Repeal Sections 35.2-73.1 through 35.273.20 related to Telecommunication Towers and replace with Sections 35.2-73.1 through 35.2-73.26, Telecommunications Ordinance*

KEY ELEMENTS:

☒ Economic Development ☒ Excellent Government ☒ Natural and Built Environment ☐ Safe Community ☒ Vibrant Community

RECOMMENDATION: Conduct work session on Zoning Ordinance Amendments related to telecommunication facilities.

SUMMARY: The City's *Zoning Ordinance* sections related to Telecommunication Facilities were last updated in December 1997 with minor amendments in January 2020. Amendments to Virginia Code in 2017 - 2020 and federal law regarding telecommunications facilities requires the City to update the Ordinance in order to be compliant with the new regulations.

PRIOR ACTION(S):

November 11, 2020: Planning Commission work session on Zoning Ordinance Amendments.

December 9, 2020: The Planning Division recommended approval of the *Zoning Ordinance* Amendments.

The Planning Commission recommended approval (7-0) of the Zoning Ordinance Amendments.

FISCAL IMPACT: N/A

CONTACT(S):

Tom Martin, City Planner – 455-3900

J. Patrick Taves, Greehan, Taves & Pandak, PLLC – (703) 378-5770

ATTACHMENT(S):

- City Council Presentation – January 12, 2021
- Telecommunications Fact Sheet
- Planning Commission Minutes – December 9, 2020
- Planning Commission Packet – December 9, 2020
 - Planning Commission Report
 - Zoning Ordinance Amendment – Section 35.2-61.2 (d) Flag Poles, Light Poles & Utility Poles (Proposed)
 - Zoning Ordinance Amendment – Sections 35.2-73.1 through 35.2-73.26, Telecommunications Ordinance (Proposed)
 - Power Point Presentation – December 9, 2020
 - Planning Commission Memorandum – November 11, 2020
 - Power Point Presentation – November 11, 2020
- Planning Commission Sign in Sheet – December 9, 2020
- Telecommunications Legal Notice
- Existing Telecommunications Ordinance



Telecommunications Ordinance

J. Patrick Taves
Greehan, Taves & Pandak, PLLC

Tom Martin, AICP, City Planner

City Council
Work Session
January 12, 2021



Purpose: Discuss the proposed Telecommunications Ordinance

Outline:

- 1. State and Federal mandates**
- 2. Types of facilities – Small Cell, AREP, Standard Process Projects**
- 3. Timelines for review**
- 4. Where permitted - Height**
- 5. Setbacks**



Proposed regulations depend on the size of the facility.

Three Types of Cell Facilities:

- **SMALL CELL FACILITIES:** no more than 6 cu. ft. of volume for each antenna and no more than 28 cu. ft. of volume for all other wireless equipment
- **ADMINISTRATIVE REVIEW ELIGIBLE PROJECTS (“AREPs”):** not more than 50 ft. in height or co-location on any existing structure of a facility that is not a small cell facility
- **STANDARD PROCESS PROJECTS:** any project that is not an AREP



Different Rules for Each Type of Facility.

- **Deadlines for Completeness of Applications---applications can be “deemed complete”**
- **Fee Limitations**
- **Deadlines for Decisions---applications can be “deemed approved”**
- **Limited Grounds for Disapprovals**
- **Different Rules for Different Facilities**



Small Cell Facilities in the City's Rights-of-Way and on City Property

- **Regulated by the City's Small Cell Facility Ordinance (City Code Sections 35-28, 25-28.1, 35-28.2, 35-28.3, 35-28.4, 35-28.5, 35-28.6, and 35-28.7).**
- **The New Telecommunications Ordinance provisions do not apply to these facilities.**



Small Cell Facilities---Limited Reasons for Disapproval

City can disapprove on existing structures for only four reasons:

- 1. Material potential interference with existing or future facilities designed and planned for a specific location or reserved for public safety communications**
- 2. Safety of the public or other critical public service needs**
- 3. Aesthetic impact, but only on publicly owned or publicly controlled property---but if the City owns the property or the structure, then the City's Small Cell Facility Ordinance controls**
- 4. Conflict with a historic district ordinance, but only if that property is not eligible for a specified federal review process**



Permitted Uses:

- All Small Cell Facilities in all districts---CUPs cannot be required
- All AREPs in all districts (50 feet or less in height)---CUPs cannot be required
- Any wireless facility or structure in the B-1 District 100 feet or less
- Any wireless facility or structure in the B-3, B-5, IN-2, I-1, I-2, and I-3 Districts 150 feet or less
- Any base station for a lawfully existing wireless facility or structure meeting specified requirements
- Any co-location on an existing structure meeting specified requirements



Conditional Use Permits Can Only Be Required For Standard Process Projects:

- **Standard Process Projects between 50 and 150 feet in height in the R-C, R-1, R-2, R-3, R-4, IN-1, and B-4 Districts**
- **Standard Process Projects that exceed 100 feet in height in the B-1 District, but no greater than 150 feet**
- **Standard Process Projects that exceed 150 feet in height in the B-3, B-5, IN-2, I-1, I-2, and I-3 Districts**
- **Standard process project base stations meeting specified requirements**
- **Any co-location on an existing structure that increases the height of the facility, but any height increase is limited to no more than 15 feet**
- **Any other standard process project**



Standards for CUP's – Standard Process Projects Only:

- **Substantial conformance with the Comprehensive Plan**
- **No significant adverse impact on use and enjoyment of nearby properties**
- **No significant negative impact on property values**
- **No material potential interference with pre-existing facilities or for future planned facilities planned or designed for a specific location or any reserved for future public safety facilities***
- **No significant adverse impact on public safety or public service needs***
- **No available and existing wireless support structures nearby**
- **Not in conflict with the City historic district ordinance***
- **Satisfies all other applicable requirements**



Setbacks for Similar Structures:

- Virginia law provides that the City cannot impose a setback or fall zone requirement that is larger than the setback or fall zone requirement “that is imposed on other types of similar structures of a similar size, including utility poles.
- As a result, we propose establishing setbacks for wireless support structures that provide the same setbacks for wireless support structures as are applied to light poles, utility poles, and flag poles of a similar size.



Separate Amendment for Setbacks for Similar Structures:

- No setback for flag poles, light poles or utility poles (“poles”) that are less than 35’ in height.
- Poles greater than 35’ in height set back at a 1:1 in R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 Districts.
- Poles greater than 35’ in height in B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District and adjacent to R-C, R-1, R-2, R-3, IN-1 or B-4 District set back at 1:1
- Poles in the B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District between 35’ and 50’ must meet underlying district setback
- Poles in the B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District greater than 50’ set back at least $\frac{1}{2}$ the height of the pole.



Discussion:

Discussion

TELECOMMUNICATIONS ORDINANCE

FACT SHEET

1. Why is the City of Lynchburg proposing to amend the Telecommunications Ordinance?

The Telecommunications Ordinance was last updated in December 1997 with minor revisions in January 2000. Amendments to the Virginia Code in 2017, 2018 & 2020 and Federal Law has resulted in the need for the City to revise the Ordinance to be consistent with State & Federal Law.

2. What does the City's Comprehensive Plan state about Telecommunications Facilities?

The City's *Comprehensive Plan 2013-2030* recognizes that in order for the City to continue in its role as the economic engine for the region it must keep pace with changes in technology and telecommunications and that in order to attract businesses it must capitalize on comprehensive telecommunication services. (*p.9, 83*)

3. Who drafted the proposed Ordinance Revisions?

City staff drafted the proposed revisions in conjunction with J. Patrick Taves, Greehan, Taves & Pandak, PLLC, Fairfax, Virginia. Mr. Taves has 40+ years experience representing local governments in complex comprehensive plan, zoning and other land use issues.

4. Who has reviewed the proposed Ordinance Revisions?

The draft ordinance was forwarded to over twenty-six representatives of the telecommunications industry in August 2020. Comments received were minor in nature and have been incorporated into the draft ordinance.

The Planning Commission conducted a work session on the proposed ordinance revisions on November 11, 2020. The Planning Commission conducted a public hearing on the proposed ordinance revisions and recommend approval (7-0) on December 9, 2020.

The City Council will conduct a work session on the proposed amendments on January 12, 2021 with an anticipated public hearing on February 9, 2021.

5. Why are setbacks proposed for flag poles, light poles, and utility poles?

State and Federal law requires that telecommunication facilities be treated equally as similar structures. If setbacks are not established for flag poles, light poles and utility poles then the Zoning Ordinance can not require setbacks for telecommunication facilities.

6. How is the proposed Ordinance different from the existing ordinance?

The proposed Ordinance classifies telecommunication facilities in one of three ways and sets review timeframes for each type as required by State and Federal Law:

a. Small Cell Facilities – Permitted in all Zoning Districts

- (i) each antenna is or 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.

Small cell facilities proposed within City right-of-way or on City property are regulated by separate City Code and the proposed amendments would not apply to these facilities.



Small Cell Facility

b. Administrative Review-Eligible Project (AREP's) – Permitted in all Zoning Districts

- (i) a new structure that is not more than fifty (50) feet above the ground level or not more than ten (10) feet above the tallest existing utility pole within five hundred (500) feet.
- (ii) not located in a local, state or federal historic district
- (iii) designed to support small cell facilities
- (iv) the colocation on any existing structure that is not a small cell facility

c. Standard Process Project – Permitted or Conditional Use Permit

- (i) Any project that is not an administrative review eligible project.

PERMITTED USES BY DISTRICT & SETBACKS

The permitted uses in each Zoning District are similar to the existing Ordinance in terms of height with the primary change being related to setbacks when telecommunication facilities are not located adjacent to a Residential District, Institutional 1 District or B-4, Urban Commercial District (Downtown).

Current *Zoning Ordinance* Section 35.2-73.5 (a) 1 states: "All towers and any telecommunications facilities in any business and industrial zoning districts shall be set back on all sides a distance equal to the underlying building setback requirement in the applicable zoning district. All towers in residential zoning districts shall be set back on all sides a distance equal to the tower height. In addition, in order to preserve the aesthetics of residential areas and to maintain property values, whenever a tower is located in a residential district, the tower shall be located a distance at least equal to twice the height of the tower from any adjacent property lines. When a tower is located in a commercial district or industrial district, the tower shall be located a distance at least equal to twice the height of the tower from any residential district."

The proposed Ordinance would no longer require setbacks of twice the height of the tower or "fall zones" due to State & Federal Law that requires telecommunication facilities to be treated equally as similar structures.

R-C, R-1, R-2, R-3, R-4, IN-1 & B-4 Districts

Fifty (50) feet or less – Permitted by right

Greater than fifty (50) feet, but no greater than one hundred fifty (150) feet – CUP Required

Setback – Minimum height of the structure

Setback – Structure less than thirty-five (35) feet – 0

B-1 District

One hundred (100) feet or less – Permitted by Right

Greater than one hundred (100) feet but no greater than one hundred fifty (150) feet – CUP Required

Setback – structure less than fifty (50) feet – minimum setback of the B-1 District

Setback – structure greater than fifty (50) feet – minimum of $\frac{1}{2}$ the height of the structure

Setback – structure adjacent to R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 – minimum height of the structure

Setback – Structure less than thirty-five (35) feet – 0

B-3, B-5, IN-2, I-1, I-2 & I-3 Districts

One hundred fifty (150) feet or less – Permitted by Right

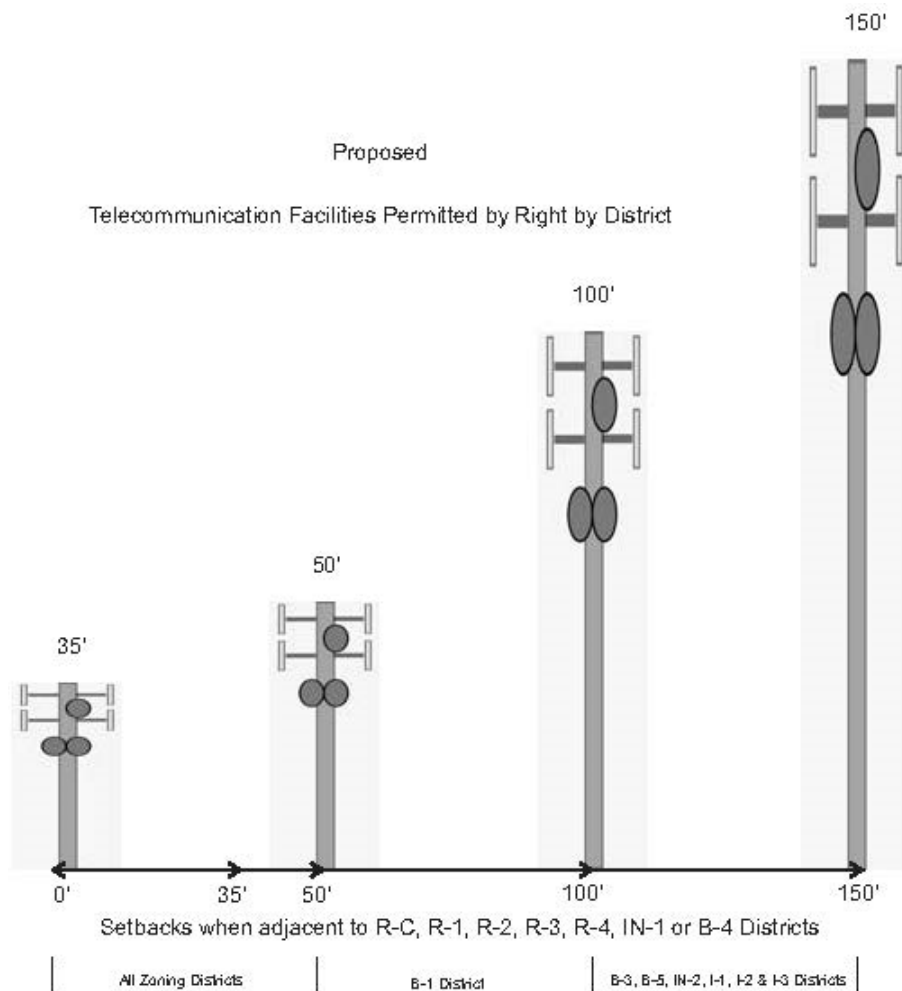
Greater than one hundred fifty (150) feet – CUP Required

Setback – structure less than fifty (50) feet – minimum setback of the District

Setback – structure greater than fifty (50) feet – minimum of $\frac{1}{2}$ the height of the structure

Setback – structure adjacent to R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 – minimum height of the structure

Setback – Structure less than thirty-five (35) feet - 0



For more information contact Tom Martin, AICP, City Planner at (434) 455-3909 or tom.martin@lynchburgva.gov.

MINUTES OF THE DECEMBER 9, 2020 PLANNING COMMISSION MEETING (MINUTES HAVE NOT BEEN APPROVED):

Consideration of amending Section 35.2-61.2 of the City of Lynchburg Zoning Ordinance Additional Height Regulations, by adding section (d) Flag Poles, Light Poles and Utility Poles.

Consideration of proposed amendments to the City of Lynchburg Zoning Ordinance that seek to repeal Zoning Ordinance Chapters 35.2-73.1 through 35.2-73.20 of the City of Lynchburg Zoning Ordinance related to Telecommunication Towers. Simultaneous with the repeal of the foregoing chapters, the proposed amendments also propose consideration of the adoption of new Zoning Ordinance Chapters 35.2-73.1 through 35.2-73.26 pertaining to Telecommunications Facilities. The proposed amendments shall be referred to herein as the "Telecommunications Facilities Ordinance."

Ms. Rachel Frischeisen, Planner II, introduced Mr. J. Patrick Taves, of Greehan, Taves & Pandak, PLLC. He has been working on this item with Mr. Tom Martin, City Planner.

Mr. Taves addressed the Commission. There are four (4) items to discuss. These include setbacks for flag poles, light poles, and utility poles, the adoption of the new telecommunications ordinance, the repeal of the existing telecommunications ordinance, and the approval types for each zoning district. Rather than amending the existing ordinance piece by piece, it will be replaced entirely by the new one. The reason for proposing these changes in this manner is that it has been almost twenty (20) years since the current ordinance was put in place. Over that time there have been many changes in State and Federal law relating to these provisions. To put it plainly, the current ordinance is woefully out of date. For example, the current law in Virginia talks about small cell facilities, administrative review eligible projects (AREPs), and standard process projects but those are terms that don't exist in the current ordinance. The proposed ordinance incorporates those provisions and lays out the requirements in respect to those provisions. Requirements for timeliness of review depending on the type of facility are similar to the concept of a "shot clock". If the City does not meet the deadlines laid out by State and Federal law, and in the proposed ordinance, the application may be deemed complete, even if it is not, or may be deemed approved, even if it should not be. The smallest types of facilities are the micro wireless facilities, and they are a subset of the small cell facilities. If they are twenty-four (24) inches in length, fifteen (15) inches in width, twelve (12) inches in height, or smaller, and have no exterior antenna greater than eleven (11) inches then no approval is required and there are no requirements that can apply. Small cell facilities have some regulations applicable to them but not a lot. The administrative review eligible projects (AREPs) are subject to administrative review but not public hearings. The standard process projects are the largest facilities and may require a Conditional Use Permit. The Virginia Code provisions on this subject are generally anti-local government. For example an application can be deemed complete even if it is not or can be deemed approved even if it shouldn't be. There is limited discretion for the City for facilities under fifty (50) feet in height. There are limitations on fees that the City can impose regardless of the City's expenses. There are limited grounds for disapproval. If the City wants to disapprove a facility, it needs to provide a written statement as to why. Usually when acts are taken by local government bodies they do not have to explain their reasoning. In the case of disapproval, the City also has to release, in writing, a substantial record of evidence within thirty (30) days of the decision. Overall, there are a lot of "hoops to jump through" in order to disapprove one of these facilities. This ordinance does not apply to small cell facilities in the right-of-way or on City property because the City has franchise agreements with respect to those types of facilities. Small cell facilities can only be disapproved for four reasons. These reasons include material potential interference with existing or future facilities designed and planned for a specific location or reserved for public safety communication, safety of the public or other critical public service needs, aesthetic impact, but only on publicly owned or publicly controlled property, and conflict with a historic district ordinance. The provisions for disapproval of small cell facilities are very narrow. Any other issues or complaints do not matter. The way the proposed ordinance has been structured is to first include the provisions required by State and Federal law. The

City has very little flexibility in regards to those. The provisions include the small cell facilities, the administrative review eligible projects (AREPs), and standard process projects. The facility is listed first and then all of the provisions that apply to that type of facility. There is some redundancy because a lot of the requirements are similar or the same for the administrative review eligible projects (AREPs) and the standard process projects. This layout makes it easier for the City, the residents, and any cell company who may be evaluating what requirements they need to meet, how quickly they need to respond, or what the flexibility is in regards to a type of facility. Small cell facilities are listed first, then administrative review eligible projects (AREPs), and finally standard process projects. Following that is permitted uses in each district and Conditional Use Permit requirements. This is where the City has more flexibility. The State and Federal requirements do not dictate what is allowed in each zoning district. This is only in regards to standard process projects though, which are over fifty (50) feet in height. A standard process project may require a Conditional Use Permit whereas small cell facilities and administrative review eligible projects (AREPs) cannot. The proposed ordinance is similar to the existing ordinance in terms of permitted uses and Conditional Use Permit requirements in each district. If a standard process project does not fall under a permitted use it may require a Conditional Use Permit. The districts fall into two (2) groupings. The first is the lower density districts which include the R-C, R-1, R-2, R-3, R-4, IN-1, and B-4 districts. The B-1 district is separate and the standard process project facility is permitted in this district if it is less than one hundred (100) feet. The second grouping is the higher density districts which include the B-3, B-5, IN-2, I-1, I-2, and I-3 districts. This grouping is where there are allowances for larger facilities. Colocation, when a facility is added to an existing structure, is encouraged. This allows for less general disruption and is more desirable than a standalone pole. If a Conditional Use Permit is required, standards can be applied. The most important standard is the one with respect to substantial conformance with the Comprehensive Plan. That is where the City has a lot of flexibility and discretion. The Comprehensive Plan is drafted before there is an application or specific issue. It is where foresight comes into play. The proposed changes do not amend the Comprehensive Plan but again, one of the standards is substantial conformance with the Comprehensive Plan. Addressing whether or not there are sufficient standards and projection for the future in the Comprehensive Plan may be needed. The statute requires that the City not have a setback or fall zone that exceeds the setback or fall zone established for similar structures. Flag poles, light poles, and utility poles are similar structures to wireless telecommunication facilities in height and appearance. There are no existing setback requirements for flag poles, light poles, or utility poles. The standards have to be established. It is proposed that structures that are thirty-five (35) feet in height or less have no setback requirements. The lower density districts require the height of the structure, if greater than thirty-five (35) feet as the setback. If the property the facility or pole is on is next to a lower density district, the setback must be from the lower density district, wherever that may be. In the higher density districts for structures between thirty-five (35) and fifty (50) feet the minimum setback is the requirement and that is already built into the ordinance. If it is greater than fifty (50) feet, the setback is one half the height of the structure. The proposed setbacks will set standards for flag poles, light poles, utility poles, and telecommunication facilities. As a reminder there are four (4) items for the Commission's consideration. The first is the adoption of the regulation of setbacks for the flag poles, light poles, and utility poles. Once that is established, setbacks for telecommunication facilities can be established. The second would be the adoption of the new telecommunications ordinance. Once that is adopted, the existing ordinance can be repealed, which is the third item. The fourth item is the revisions of the approval types for the various districts. That will automatically happen though when and if the telecommunications ordinance is adopted.

Chair Rogers asked if there was anyone present who wished to speak in favor of the petition. When no one stepped forward he asked if there was anyone present who wished to speak in opposition to the petition. When no one stepped forward again he closed the public hearing.

Chair Rogers stated that the presentation was informative. The proposed changes seem necessary.

Mr. Taves noted that the proposed ordinance regarding the provisions dictated by State and Federal law are necessary but the following portion regarding the provisions for permitted and conditional use offers more flexibility. Those provisions regarding permitted uses and Conditional Use Permit uses are modelled after the current City ordinance.

Commissioner Marion stated that Mr. Taves seems well informed. She then asked if the proposed ordinance has been tested in other localities.

Mr. Taves responded that for this particular ordinance, provisions regarding small cell facilities, administrative review eligible projects (AREPs), and standard process projects are in State code. He is comfortable with and recommends the adoption of this ordinance so the City can come into the 21st century with respect to wireless telecommunication facilities. Historically, there has been a tendency for local governments to abuse the zoning purview with respect to these types of facilities. People generally don't like the idea of them but "by the same token" this is the 21st century and people expect the delivery of service. Again, he recommends strongly the adoption of this ordinance so the City can be in compliance with State code. He noted that he has dealt with telecommunication facilities for twenty-five (25) to thirty (30) years and has litigated many cases. During the review process, the proposed ordinance was sent to telecommunication companies, the users and beneficiaries of this ordinance, for feedback. Only very minor questions came back and there is no opposition at the present hearing.

Commissioner Bowden stated that it is an evolving process. This is the beginning of that evolution and will establish a framework to work with moving forward. What can be planned for at this point is covered.

Mr. Taves shared agreement. There is little flexibility regarding what the State or Federal law dictates. The rest, regarding whether or not to permit something, whether or not to require a Conditional Use Permit, what the standard should be, is always an evolving process. That is why he recommends evaluating the Comprehensive Plan. At this point though, he feels that this is the best proposal.

Commissioner Bowden noted that in the application of this ordinance the places that might provide the most pushback are going to be the "edges of Lynchburg". There are already telecommunication facilities Downtown and they can be placed on existing buildings. The "edges" though may be more rural and may not have received that type of development yet. Those places are more likely to involve installation of towers and discuss aesthetics. Establishing standards now will allow for protection down the road.

Mr. Taves shared agreement.

Commissioner Bowden stated that the proposed setbacks make sense. That will probably be needed in relatively developed areas. He also noted that he can't imagine anything else to do given the limited maneuverability to disapprove the facilities.

Mr. Taves responded that the State and Federal law do not mandate which districts must allow standard process projects to be permitted or by Conditional Use Permit. Different localities have different zoning districts. They have already done that with respect to small cell facilities and administrative review eligible projects (AREPs) though since those cannot require a Conditional Use Permit and must be approved if they meet the application requirements for the type of facility in question. He then recommended that as time goes by, in two (2) or three (3) years, this should be reviewed to see how these provisions have worked. If necessary, the City can adopt new provisions. The proposed changes should be implemented and evaluated from there.

Commissioner Perault added that the Comprehensive Plan should also be revisited once these provisions have "had time to settle". There's no rush to change the Comprehensive Plan now if changes

will be required in a few years. This should be implemented now and reviewed in a few years in conjunction with necessary changes to the Comprehensive Plan.

Commissioner Bowden shared agreement and noted that the Comprehensive Plan should be consistent with what the City wants to accomplish.

Commissioner Marion recalled that in a previous meeting concerning a cell tower, discussion of the tower went on for a long time because numerous neighbors came to complain. She then asked if the proposed changes would limit that due to lack of ability of the City to disapprove.

Mr. Taves responded that he would have to disagree. He worked on that project (Langhorne Road) for the City and drafted a denial motion for that. That project was a large monopole and a standard process project. It wasn't an administrative review eligible project (AREP) or a small cell facility. It was a facility to which the City could lawfully apply Conditional Use Permit requirements. That is where the City has flexibility. The proposed ordinance does not increase the ability of the City to disapprove small cell facilities or administrative review eligible projects (AREPs) though. The standards for Conditional Use Permits include having no significant adverse impact on use and enjoyment of nearby properties and no negative impact on property values. Those points were used in the denial of that project. If the Comprehensive Plan is amended, more tools can be added to evaluate such proposals in order to assure that such decisions are not made "in the heat of the moment."

Chair Rogers stated that he feels that the Commission still has tools and the ability to help lead planning the community. He noted that these proposed changes discuss facilities like the small cell facilities and the administrative review eligible projects (AREPs) that they probably haven't seen much of yet but will see more of in the future. There are blank areas in the City that don't yet have service. The increase in these types of facilities will be a good thing because they are limited in their impacts and appearance in comparison to standard process projects. These facilities are vital infrastructure especially as fewer people use landlines and the need for such facilities may be a matter of public safety at times.

Discussion on how to proceed with a motion ensued.

Mr. Taves suggested that the motion include the verbiage "as advertised" which would incorporate the comprehensive information included in the legal notice. He then referenced the following specifically from the legal notice: "In accordance with the adoption of the proposed amendments, the "Approval Type" for "wireless telecommunications transmission" that is stated in each exhibit/chart for each applicable zoning district (for example, please see Exhibit IV-1 for the R-C District) shall be revised in order to state the "Approval Type" ("C" for "Conditional Use Permit" and/or "P" for "Permitted") for each zoning district consistent with the terms of the proposed amendments." Thus, if under the proposed amendments a wireless telecommunications facility may be allowed with a Conditional Use Permit ("C") or may be Permitted ("P"), depending on the circumstances, then the "Approval Type" in the exhibit/chart for each district shall be stated as follows: "P/C". If such facilities are only allowed by Conditional Use Permit, a "C" will be inserted in the applicable exhibit, and if such facilities are only Permitted, a "P" will be inserted in the applicable exhibit."

Commissioner Bowden made the following motion, seconded by Commissioner Johnson, and approved by the following vote:

"Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of amending the Zoning Ordinance by adopting Section 35.2-61.2 (d) Flag Poles, Light Poles & Utility Poles and approval of repealing Sections, 35.2-73.1 through 35.2-73.20 related to Telecommunication Towers and replacing with Sections 35.2-73.1 through 35.2-73.26, Telecommunications Ordinance as

referenced in the attached legal notice that was advertised prior to the public hearing."

AYES:	Bowden, Johnson, Light, Lowe, Marion, Perault, and Rogers	7
NOES:		0
ABSTENTIONS:		0
ABSENT:		0

The Department of Community Development

City Hall, Lynchburg, VA 24504 **434-455-3900**

To: Planning Commission
From: Planning Division
Date: December 9, 2020
Re: ***Zoning Ordinance* Amendments:**
Section 35.2-61.2 (d) Flag Poles, Light Poles & Utility Poles
Repeal Sections, 35.2-73.1 through 35.2-73.20 related to Telecommunication Towers
and replace with Sections 35.2-73.1 through 35.2-73.26, Telecommunications
Ordinance

I. PETITIONER

City of Lynchburg, 900 Church Street, Lynchburg, Virginia 24504

Representative(s): J. Patrick Taves, Greehan, Taves & Pandak, PLLC, Tom Martin, AICP,
City Planner

Property Owner:

N/A

II. LOCATION

The *Zoning Ordinance* amendments would apply to any telecommunication facility in the R-C, R-1, R-2, R-3, R-4, B-1, B-3, B-4, IN-1, IN-2, I-1, I-2 or I-3 Districts

III. PURPOSE

The purpose of the amendments is to bring the City's *Zoning Ordinance* into compliance with State & Federal Law.

IV. SUMMARY

- The City's *Comprehensive Plan 2013-2030* recognizes that in order for the City to continue in its role as the economic engine for the region it must keep pace with changes in technology and telecommunications and that in order to attract businesses it must capitalize on comprehensive telecommunication services. (*p.9, 83*)
- The City's Telecommunications Ordinance was last updated in December 1997 with minor revisions in January 2000.
- Amendments to the Virginia Code in 2017, 2018 & 2020 regarding telecommunication facilities established new terminology and rules.
- Federal Law on telecommunication facilities is evolving.
- The Telecommunication Ordinance would establish three type of facilities: Small Cell Facilities, Administrative Review-Eligible Projects (AREP's) and Standard Process Projects
- The Telecommunications Ordinance would establish review procedures for each type of telecommunication facility.
- Setbacks for similar structures such as flag poles, light poles and utility poles must be established to be compliant with State & Federal Law.
- Small Cell Facilities located in the City's right-of-way or on City property regulated by separate City Code and proposed amendments do not apply to these facilities.

The Planning Division recommends approval of the Zoning Ordinance Amendments.**V. FINDINGS OF FACT**

1. **Comprehensive Plan.** The City's Comprehensive Plan 2013-2030 recognizes that in order for the City to continue in its role as the economic engine for the region it must keep pace with changes in technology and telecommunications and that in order to attract businesses it must capitalize on comprehensive telecommunication services. (*p.9, 83*)

The purpose and intent of the proposed amendments is to facilitate the provision of telecommunication services, recognizing that telecommunication facilities are a necessary part of communication networks while protecting property from adverse impacts.
2. **Zoning.** The Telecommunications Ordinance was last updated in December 1997 with minor revisions in January 2000.
3. **Proffers:** N/A
4. **Board of Zoning Appeals (BZA).** N/A
5. **Surrounding Area.** N/A
6. **Site Description.** N/A
7. **Proposed Use of Property.** N/A
8. **Traffic, Parking and Public Transit.** N/A
9. **Stormwater Management.** N/A
10. **Emergency Services:** The Telecommunication Ordinance would require technical evidence from a radio frequency engineer that proposed facilities would not interfere with pre-existing or future communication facilities for Public Safety Radio Services.
11. **Impact.** The proposed Zoning Ordinance Amendments would establish regulations for telecommunication facilities in the City of Lynchburg.

Small Cell Facilities – Permitted in all Zoning Districts

- (i) each antenna is or could fit in 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.

Administrative Review-Eligible Project (AREP's) – Permitted in all Zoning Districts

- (i) a new structure that is not more than fifty (50) feet above the ground level or not more than ten (10) feet above the tallest existing utility pole within five hundred (500) feet.
- (ii) not located in a local, state or federal historic district
- (iii) designed to support small cell facilities
- (iv) the colocation on any existing structure that is not a small cell facility

Standard Process Project – Permitted or Conditional Use Permit

- (i) any project that is not an administrative review eligible project

PERMITTED USES BY DISTRICT & SETBACKS**R-C, R-1, R-2, R-3, R-4, IN-1 & B-4 Districts**

Fifty (50) feet or less – Permitted by right

Greater than fifty (50) feet, but no greater than one hundred fifty (150) feet – CUP Required

Setback – Minimum height of the structure

Setback – Structure less than thirty-five (35) feet - 0

B-1 District

One hundred (100) feet or less – Permitted by Right

Greater than one hundred (100) feet but no greater than one hundred fifty (150) feet – CUP Required

Setback – structure less than fifty (50) feet – minimum setback of the B-1 District

Setback – structure greater than fifty (50) feet – minimum of ½ the height of the structure

Setback – structure adjacent to R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 – minimum height of the structure

Setback – Structure less than thirty-five (35) feet - 0

B-3, B-5, IN-2, I-1, I-2 & I-3 Districts

One hundred fifty (150) feet or less – Permitted by Right

Greater than one hundred fifty (150) feet – CUP Required

Setback – structure less than fifty (50) feet – minimum setback of the District

Setback – structure greater than fifty (50) feet – minimum of ½ the height of the structure

Setback – structure adjacent to R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 – minimum height of the structure

Setback – Structure less than thirty-five (35) feet - 0

12. **Technical Review Committee.** N/A

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of amending the Zoning Ordinance by adopting Section 35.2-61.2 (d) Flag Poles, Light Poles & Utility Poles and approval of repealing Sections, 35.2-73.1 through 35.2-73.20 related to Telecommunication Towers and replacing with Sections 35.2-73.1 through 35.2-73.26, Telecommunications Ordinance

This matter is respectfully offered for your consideration.



William T. Martin, AICP
City Planner

pc: Dr. Reid Wodicka, Interim City Manager
Mr. Kent L. White, Interim Deputy City Manager
Mr. Walter C. Erwin, City Attorney
Mr. J. Lee Newland, City Engineer
Ms. Cynthia Kozerow, Lynchburg Police Department
Battalion Chief Thomas Goode, Fire Marshal
Mr. Doug Saunders, Building Official
Mr. Kevin Henry, Zoning Administrator
Mr. J. Patrick Taves, Greehan, Taves & Pandak, PLLC

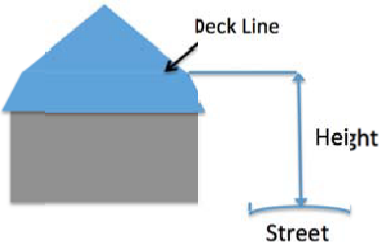
VII. ATTACHMENTS

- 1. Zoning Ordinance Amendment - Section 35.2-61.2 (d) Flag Poles, Light Poles & Utility Poles**
- 2. Zoning Ordinance Amendment - Sections 35.2-73.1 through 35.2-73.26, Telecommunications Ordinance**
- 3. Power Point Presentation – December 9, 2020**
- 4. Planning Commission Memorandum – November 11, 2020**
- 5. Power Point Presentation – November 11, 2020**

35.2-61.2 Additional Height Regulations

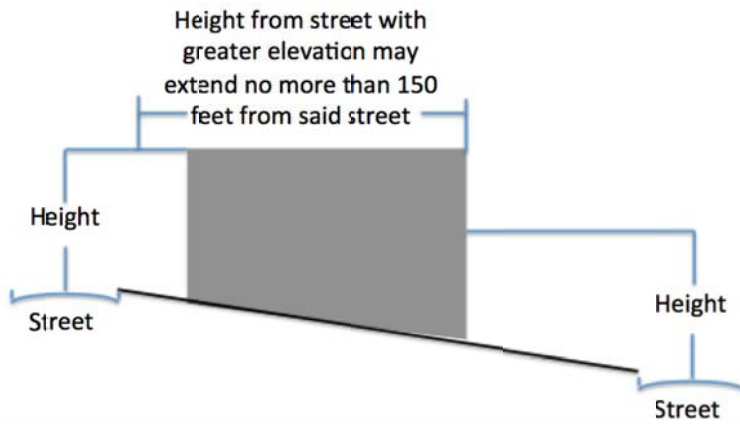
(a) Measurement of Height

1. **Building Height.** Building height is the vertical distance measured from the crown of the street opposite the middle of the front of the building to:

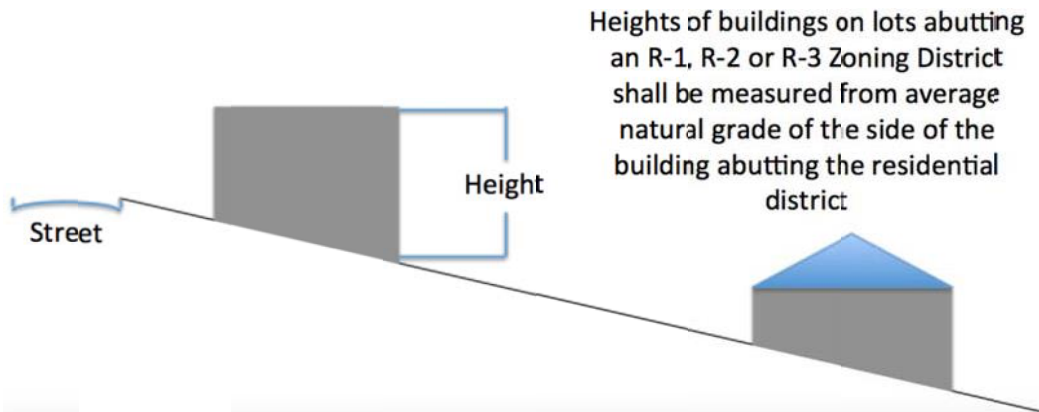
a. The highest point of roof surface of a flat roof	
b. The deck line of a mansard roof	
c. The mean eight level between eaves and ridge of a gable, hip or gambrel roof	

2. Exceptions to Measurement of Building Height

- a. **Buildings with Large Setbacks.** Where a building is set back from the street line thirty-five (35) feet or more, building height shall be measured from the average elevation of finished ground surface along the front of the building.
- b. **Large Corner Lots.** On corner lots exceeding twenty thousand (20,000) square feet in area, the height of the building may be measured from the crown of either street at the midpoint of the building facing the applicable street.
- c. **Through Lots.** For lots extending through from street to street, the height may be measured from the crown of either street at the midpoint of the building facing the applicable street, provided that the maximum height that would be permitted based on the lower street shall extend back from the right-of-way of such street not less than one hundred fifty (150) feet (see following illustration).



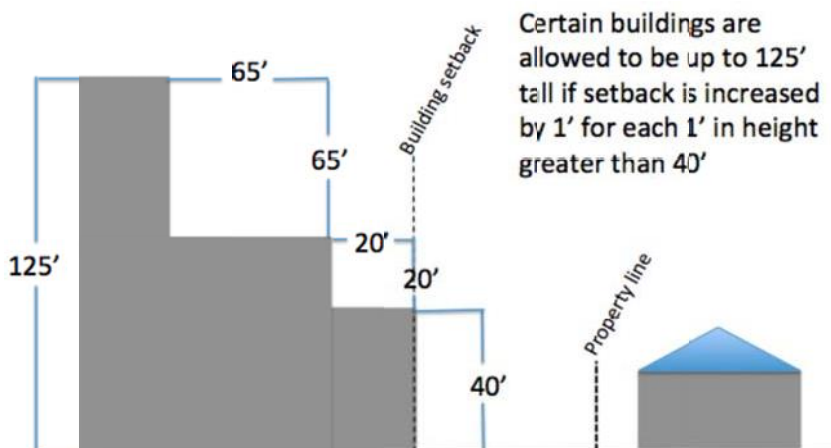
- d. **Properties Abutting R-1, R-2 or R-3 Districts.** For lots in any R-4, B-3, B-5, IN-1, I- 1, I-2 or I-3 district abutting property zoned R-1, R-2 or R-3, height shall be measured from natural grade at the horizontal midpoint of the building wall facing each abutting residential property and shall apply to any portion of the building located within one-hundred-feet (100) feet of the property line (see following illustration). In no case shall a building be required to be less than twenty (20) feet in height at the front building line.



(b) Height Exceptions for Certain Structures

1. The height limitations shall not apply to the following features projecting above the roof line: flag poles, church spires/steeple, belfries, cupolas and domes not used for human occupancy, chimneys, ventilators, skylights, water tanks, bulkheads or similar features, radio and television antennas for the use of residents of dwelling units in apartments, and necessary mechanical appurtenances (including, but not limited to solar energy panels and related appurtenances, plumbing vents, exhaust vents, HVAC equipment, electrical connections, lighting rods and telecommunications connections) usually carried above the roof level provided that:
 - a. Such a feature shall be erected only to a height necessary to accomplish the purpose it is intended to serve, but in no case more than fifteen (15) feet above its lowest point of contact with the roof.
 - b. The total area covered by such features shall not exceed in horizontal cross-sectional area fifteen (15) percent of the area of the plane of roof upon which they are located.
 - c. Such features as water tanks, cooling towers and bulkheads, but not solar energy panels and related appurtenances, shall be enclosed within walls constructed of the same material as the main walls of the building on which they are located.
2. Parapet walls may extend not more than five (5) feet above the limiting height of the building on which they rest.
3. No sign, name plate, display or advertising device of any kind whatsoever shall be inscribed upon or attached to any chimney, tower, tank or other structure which extends above the district height limitations.

- (c) **Tall Buildings in the R-4, B-1, B-3 and IN-1 Districts.** In the R-4, B-1, B-3 and IN-1 districts, apartment buildings, public or semi-public buildings such as a religious institution, school, library, hospital, may be erected to not more than one hundred twenty-five (125) feet in height; provided that the portion of such building more than forty (40) feet in height shall set back from the street, lot or required setback line, one (1) foot for each one (1) foot of such additional height (see following illustration).



(d) Flag poles, Light Poles and Utility Poles

1. There shall be no setback requirement for any Flag Pole, Light Pole or Utility Pole that is thirty-five (35) feet or less in height.
2. Any Flag Pole, Light Pole, or Utility Pole greater than thirty-five (35) in height in the R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 District shall be required to set back a distance from all property lines at least the height of the pole.
3. Any Flag Pole, Light Pole, or Utility Pole greater than thirty-five (35) in height in the B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District that is on a parcel adjacent to any parcel that is zoned R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 shall be set back a distance at least the height of the pole from the R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 District.
4. Any Flag Pole, Light Pole, or Utility Pole in the B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District that is greater than thirty-five (35) feet in height but less than fifty (50) feet in height shall be required to set back a distance from all property lines at least the minimum applicable setback for the district in which it is located.
5. Any Flag Pole, Light Pole, or Utility Pole in the B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District that is a height greater than fifty (50) feet shall be required to set back a distance from all property lines at least one-half the height of the pole.
6. Setback requirements for Flag Poles, Light Poles, and Utility Poles shall be measured from the base of the pole to the property lines of the parcel on which the pole is located.

ORDINANCE NO. ____ - ____

AN ORDINANCE REPEALING CHAPTER 35.2-73, WHICH COMPRISES §§ 35.2-73.1 THROUGH 35.2-73.20, AND ADOPTING A NEW CHAPTER 35.2-73, WHICH COMPRISES §§ 35.2-73.1 THROUGH 35.2-73.26, PERTAINING TO TELECOMMUNICATIONS FACILITIES.

BE IT ORDAINED, by the City Council of the City of Lynchburg, Virginia, that Chapter 35.2-73 of the Code of the City of Lynchburg, Virginia, is hereby adopted as follows:

§ 35.2-73 TELECOMMUNICATIONS FACILITIES

§ 35.2-73.1 Purpose and Intent.

The purpose and intent of this chapter is to create and implement regulations and requirements for the placement, construction, modification, and removal of wireless support structures, wireless facilities, and base stations in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of a competitive wireless telecommunications marketplace in the City. Specifically, the purposes of this chapter are:

- (a) To facilitate the provision of wireless telecommunications services to the residents and businesses of the City in an orderly fashion;
- (b) To recognize and acknowledge that wireless telecommunications facilities, including their support structures and related equipment, have become a necessary part of today's personal and commercial communications networks;
- (c) To regulate the location of wireless support structures, wireless facilities, and base stations in the City;
- (d) To protect residential, commercial, and industrial areas and land uses from any significant potential adverse impact that may result from the establishment and operation of wireless support structures, wireless facilities and base stations;

- 1 (e) To implement the provisions of the City's Comprehensive Plan with respect to the
2 establishment of wireless support structures, wireless facilities, and base stations in
3 the City;
- 4 (f) To minimize, when possible, the adverse visual impact of wireless support
5 structures, wireless facilities, and base stations through careful design, siting,
6 landscaping, and innovative camouflaging techniques to enhance the ability of such,
7 support structures, facilities, and base stations to be compatible with residential,
8 commercial, and industrial uses;
- 9 (g) To promote and encourage the co-location on and around wireless support
10 structures of multiple wireless facilities and base stations in order to reduce, when
11 possible, the need for additional such structures and facilities;
- 12 (h) To promote and encourage the location of wireless support structures, wireless
13 facilities, and base stations in commercial and industrial areas, rather than
14 residential areas;
- 15 (i) To ensure that wireless support structures, wireless facilities, and base stations are
16 compatible with other land uses in the vicinity;
- 17 (j) To allow wireless support structures, wireless facilities, and base stations as a
18 matter of right, where appropriate, and with minimal administrative requirements
19 when the size, design, and location of such support structures, facilities, and base
20 stations does not result in any significant adverse impacts to other uses or any
21 significant adverse impact to the property values of nearby properties;
- 22 (k) To provide greater scrutiny of requests for wireless support structures, wireless
23 facilities, and base stations when their size, design, and location may result in
24 greater impacts on surrounding land uses and property values in order to assure that
25 adverse impacts of such structures, facilities, and base stations and any adverse
26 impact on the values of nearby properties are mitigated and minimized;
- 27 (l) To encourage the providers of wireless telecommunications services to utilize
28 smaller wireless support structures, wireless facilities, and base stations in order to
29 reduce the overall impact of any single wireless support structure or facility on the
30 surrounding area;
- 31 (m) To reduce the need for larger and taller wireless support structures, wireless
32 facilities, and base stations through the encouragement of co-location on any new
33 structures as well as the installation, where feasible, of such facilities onto existing
34 structures;

1 (n) To avoid potential damage to the use and enjoyment of property caused by wireless
2 support structures, wireless facilities, and base stations by ensuring that such
3 structures, facilities, and stations are soundly, safely, and carefully designed;
4 constructed, modified, and maintained, and, when no longer structurally sound,
5 removed; and

6 (o) To require the removal of wireless support structures, wireless facilities, and base
7 stations that are no longer used to support wireless facilities and no longer retain
8 any other legitimate purposes.

9 § 35.2–73.2 Definitions.

10 As used in this Ordinance, unless the context requires a different meaning:

11 “Administrative review-eligible project” means a project that provides for:

12 1. The installation or construction of a new structure that is not more than 50 feet above
13 ground level, provided that the structure with attached wireless facilities is (i) not more than 10
14 feet above the tallest existing utility pole located within 500 feet of the new structure within the
15 same public right-of-way or within the existing line of utility poles; (ii) not located within the
16 boundaries of a local, state, or federal historic district; (iii) not located inside the jurisdictional
17 boundaries of a locality having expended a total amount equal to or greater than 35 percent of its
18 general fund operating revenue, as shown in the most recent comprehensive annual financial
19 report, on undergrounding projects since 1980; and (iv) designed to support small cell facilities;
20 or

21 2. The co-location on any existing structure of a wireless facility that is not a small cell
22 facility;

23 3. The term “administrative review-eligible project” shall include eligible facilities requests
24 as that term is defined by federal law in 47 Code of Federal Regulations 1.6100.

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

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

31 “City” means the City of Lynchburg, Virginia.

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

4 “Department” means the Virginia Department of Transportation.

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

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

14 “New structure” means a wireless support structure that has not been installed or constructed, or
15 approved for installation or construction, at the time a wireless services provider or wireless
16 infrastructure provider applies to the City for any required zoning approval.

17 “New wireless support structure” has the same meaning as “new structure.”

18 “Project” means (i) the installation or construction by a wireless services provider or wireless
19 infrastructure provider of a new structure or (ii) the co-location on any existing structure of a
20 wireless facility that is not a small cell facility. “Project” does not include the installation of a
21 small cell facility by a wireless services provider or wireless infrastructure provider on an
22 existing structure to which the provisions of Code Virginia § 15.2-2316.4 apply.

23 “Small cell facility” means a wireless facility that meets both of the following qualifications:

24 (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the
25 case of an antenna that has exposed elements, the antenna and all of its exposed elements could
26 fit within an imaginary enclosure of no more than six cubic feet; and

27 (ii) all other wireless equipment associated with the facility has a cumulative volume of
28 no more than 28 cubic feet, or such higher limit as is established by the Federal Communications
29 Commission.

30 The following types of associated equipment are not included in the calculation of
31 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.

“Standard process project” means any project that is not an administrative review-eligible project.

“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)(i); “personal wireless service facilities” as defined in 47 U.S.C. § 332(C)(7)(ii); including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communications 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 is 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.

§ 35.2–73.3 Applicability.

The provisions of this chapter shall apply to all land within the jurisdictional boundaries of the City of Lynchburg, provided, however, that the provisions of this chapter shall not apply to any

1 small cell facility within the City's right-of-way or on any City-owned property. Small cell
2 facilities within the City's right-of-way or on any City-owned property are regulated by §§ 35–
3 28, 35–28.1, 35–28.2, 35–28.3, 35–28.4, 35–28.5, 35–28.6, and 35–28.7 of the City Code.

4
5 § 35.2–73.4 Small Cell Facilities.

6 A. Review of Applications for Small Cell Facilities. No conditional use permit or
7 its equivalent shall be required in the City for a small cell facility to be installed on an existing
8 structure if a wireless services provider or wireless infrastructure provider has: (1) permission
9 from the owner to co-locate equipment on that structure; and (2) has notified the City that such
10 permission exists. A permit for the installation of a small cell facility shall be required before a
11 small cell facility may be installed on an existing structure.

12 B. Application Requirements for Small Cell Facilities. Applications filed by
13 a wireless services provider or wireless infrastructure provider for administrative review of a
14 small cell facility on an existing structure shall include the following:

15 1. A valid electronic mail address for the applicant.

16 2. Written proof that the owner of the existing structure has given the applicant
17 consent to install the small cell facility as proposed.

18 3. The name, address, telephone number, and electronic mail address of the
19 applicant. If the applicant is not the owner of the parcel(s) of land on which the wireless
20 support structure, wireless facility, and/or base station is proposed to be located, then the
21 applicant shall provide written consent of the owner, and the name, address, telephone
22 number, and the electronic mail address of the owner.

23 4. The valuation map number and address of the parcel of land on which the wireless
24 support structure, wireless facility, and/or base station is proposed to be located.

25 5. A plan, drawn to scale, depicting the location and elevation of any small cell
26 facility that is the subject of the application, with engineering drawings showing the actual
27 size of the small cell facility and each component thereof, from which the City can
28 reasonably determine whether the proposed facility meets the definition of a small cell
29 facility.

30 6. Drawings showing where and how the small cell facility is proposed to be
31 attached to the existing structure.

1 7. Written, technical evidence from a radio frequency engineer that the proposed
2 facilities meet the standards set forth in this Ordinance, including, but not limited to, the
3 requirements set forth in § 35.2–73.13 (Interference With Public Safety Radio Services)
4 and will not materially interfere with other pre-existing communications facilities or with
5 future communications facilities that have already been designed and planned for a
6 specific location or that have been reserved for future public safety communications
7 facilities.

8 8. Evidence relating to any other factors the applicant believes are relevant to the
9 City's consideration of whether the applicant's proposed small cell facility should be
10 approved.

11 9. Payment of an application processing fee of \$100.00 each for up to five small cell
12 facilities on a permit application, and payment of a fee of \$50 for each additional small cell
13 facility on that permit application.

14 C. Multiple Requests on a Single Application for Small Cell Facilities. Applications
15 filed by a wireless services provider or wireless infrastructure provider for a small cell facility to
16 be co-located on an existing structure may include multiple such permit requests on a single
17 application.

18 D. Notification of Incomplete Application for Small Cell Facilities. If an
19 incomplete initial or resubmitted application is filed for a small cell facility to be installed on an
20 existing structure, then the City shall notify the applicant by electronic mail that the application
21 is incomplete and shall specify any missing information and documents in accordance with the
22 following:

23 1. for an initial application, the City shall notify the applicant by electronic
24 mail within ten (10) calendar days after receipt of a valid electronic mail address and the
25 application that the application is incomplete and shall specify in that notification any
26 missing information and documents; otherwise, the application shall be deemed
27 complete; and

28 2. for a resubmitted application for a small cell facility to be installed on an
29 existing structure, the City shall notify the applicant by electronic mail within ten (10)
30 calendar days after the application is resubmitted whether the application is incomplete
31 and shall specify in that notification any missing information and documents; otherwise,
32 the application shall be deemed complete.

33 E. Deadline for Approval or Disapproval of Small Cell Facilities. The City shall
34 approve or disapprove any application filed by a wireless services provider or wireless
35 infrastructure provider proposing a small cell facility to be installed on an existing structure in
36 accordance with the following:

1 1. any such application shall be approved or disapproved in writing within
2 sixty (60) calendar days after receipt of the complete application;

3 2. if the applicant files an incomplete initial or resubmitted application and
4 the City notifies the applicant of its incompleteness in accordance with the applicable
5 timeframes set forth in subsection D above (Notification of Incomplete Application for
6 Small Cell Facilities), then the time within which the City must approve or disapprove
7 such an initial application shall be tolled for the period from the date of the submission of
8 the initial incomplete application to the date on which the applicant files a complete
9 application;

10 3. if the applicant files an incomplete resubmitted application, the time
11 within which the City must approve or disapprove a resubmitted application shall also be
12 tolled for the period from the date of submission of the resubmitted incomplete
13 application to the date on which the applicant resubmits a complete application;

14 4. the initial sixty (60) calendar-day period for the City to approve or
15 disapprove an application for a small cell facility proposed to be installed on an existing
16 structure may be extended by the City in writing for a period not to exceed an additional
17 30 days;

18 5. any such application for a small cell facility proposed to be installed on an
19 existing structure shall be deemed approved if the City fails to act within the timeframes
20 set forth in this section;

21 6. any disapproval of an application for a small cell facility on an existing
22 structures shall be in writing and accompanied by an explanation for the disapproval; and

23 7. approval of a permit for any such small cell facility application shall not
24 be unreasonably conditioned, withheld, or delayed.

25 F. Grounds for Disapproval of Small Cell Facilities. The City may disapprove an
26 application filed by a wireless services provider or wireless infrastructure provider proposing the
27 installation of a small cell facility on an existing structure for any of the following reasons:

28 1. Material potential interference with other pre-existing communications
29 facilities or with future communications facilities that have already been designed and
30 planned for a specific location or that have been reserved for future public safety
31 communications facilities;

32 2. The safety of the public or other critical public service needs;

1 3. Only in the case of an installation on or in publicly owned or publicly
2 controlled property, excluding privately owned structures where the applicant has an
3 agreement for attachment to the structure, aesthetic impact or the absence of all required
4 approvals from all departments, authorities, and agencies with jurisdiction over such
5 property;

6 4. Conflict with a City ordinance adopted pursuant to § 15.2-2306, or
7 pursuant to local charter on a historic property that is not eligible for the review process
8 established under 54 U.S.C § 306108.

9 G. Small Cell Facilities on New Structures. Any application for the installation
10 of a small cell facility on a new structure shall require any approval that may be required by this
11 chapter for that new structure as either an administrative review-eligible project or a standard
12 process project.

13 § 35.2–73.5 Administrative Review-Eligible Projects.

14 A. Review of Administrative Review-Eligible Projects. Administrative
15 review-eligible projects shall not require that a conditional use permit or its equivalent be
16 obtained for the installation or construction of such a project; but administrative review shall be
17 required for the issuance of any zoning approval, or an acknowledgment that zoning approval is
18 not required, for such a project.

19 B. Application Requirements for Administrative Review-Eligible Projects.
20 Applications for wireless support structures, wireless facilities, and/or base stations that
21 comprise administrative review-eligible projects shall require the following:

22 1. The name, address, telephone number, and electronic mail address of the
23 applicant. If the applicant is not the owner of the land on which the wireless support
24 structure, wireless facility, and/or base station is proposed to be located, then the
25 applicant shall provide written consent of the owner, and the name, address, telephone
26 number, and the electronic mail address of the owner. If the land on which the proposed
27 wireless support structure, wireless facility, or base station is proposed to be located is, in
28 whole or in part, within the City’s right-of-way, then the applicant shall be required to
29 secure written consent from the City for the proposed wireless support structure, wireless
30 facility, or base station to be located within the City’s right-of-way prior to filing such
31 application and shall include such written consent as part of any such application.

32 2. An affirmative written statement signed by the applicant and the owner
33 that the applicant and the owner are aware of and agree to comply with the provisions of
34 this Zoning Ordinance set forth in § 35.2-73.24 (Abandonment) regarding removal and
35 dismantlement of all wireless support structures, wireless facilities, base stations, and

1 related equipment in the event such a structure, facility, base station, or related equipment
2 is no longer in use.

3 3. The valuation map number and address of the parcel of land on which the
4 wireless support structure, wireless facility, and/or base station is proposed to be located.

5 4. Written, technical evidence from a radio frequency engineer that the
6 proposed facilities meet the standards set forth in this Ordinance, including, but not
7 limited to, the requirements set forth in § 35.2–73.13 (Interference With Public Safety
8 Radio Services), and will not materially interfere with other pre-existing communications
9 facilities or with future communications facilities that have already been designed and
10 planned for a specific location or that have been reserved for future public safety
11 communications facilities.

12 5. Written, technical evidence from an electrical engineer that the proposed
13 site of the wireless support structure, wireless facility, and/or base station does not pose a
14 risk of explosion, fire, or other danger due to its proximity to volatile, flammable,
15 explosive, or hazardous materials such as propane, gasoline, natural gas, or corrosive or
16 other dangerous chemicals.

17 6. A site plan, as required by § 35.2-14.2 (Site Plans) of this Ordinance.

18 7. A map showing the location and height of every utility pole within 500
19 feet of and within the same public right-of-way or within the existing line of utility poles
20 as the proposed wireless support structure or wireless facility.

21 8. In the case of an administrative review-eligible project proposing a new
22 structure, a detailed explanation of how the proposed new structure is designed to support
23 small cell facilities.

24 9. A copy of any approval granted by a federal agency, including any
25 conditions imposed by that agency, regarding the proposed wireless support structure,
26 wireless facility, and/or base station, provided, however, that this requirement shall not
27 apply to applications for small cell facilities.

28 10. Evidence relating to any other factors the applicant believes are relevant to
29 the City's consideration of whether the applicant's proposed small cell facility should be
30 approved.

31 11. The applicable application fee for the proposed administrative review-
32 eligible project.

12. Evidence that the applicant has given written notice to all adjacent landowners regarding the applicant's intent to file the application at least 15 days before the filing of any application to locate a new structure on the subject property.

C. Fee Limitations for Administrative Review-Eligible Projects. When an application for an administrative review-eligible project is filed, the following provisions shall apply to the fee that must be paid by the applicant:

1. The fee must be reasonable.

2. The fee charged by the City shall not include direct payment or reimbursement of third-party fees charged on a contingency basis or a result-based arrangement.

3. The City shall not charge market-based or value-based fees for the processing of any such application.

4. Upon request, the City shall, within a reasonable amount of time after such request, provide the applicant with the cost basis for any fee charged by the City for an administrative review-eligible project.

D. Assessment of Fees for Administrative Review-Eligible Projects. Each application for a wireless support structure, wireless facility, or base station that constitutes an administrative review-eligible project shall be accompanied by payment of a \$500 fee for the processing of the application

E. Processing Applications for Administrative Review-Eligible Projects. The following provisions set forth the process that shall apply to any application for an administrative review-eligible project:

1. Prior to accepting any application for an administrative review-eligible project, the City shall first determine that the application includes the applicant's electronic mail address. In the event the application does not include the applicant's electronic mail address, the City shall not accept it for filing

2. If the application is incomplete, but includes an electronic mail address for the applicant, then within ten (10) business days after actual receipt of the application, the City shall accept the application and notify the applicant by electronic mail that the application is incomplete and shall specify any additional information, documents and materials required to complete the application.

1 3. If the application is incomplete and does not include an electronic mail
2 address for the applicant when it was filed, the City shall use reasonable means to contact
3 the applicant and request the applicant's electronic mail address. Within ten (10) days
4 after actual receipt of the applicant's electronic mail address, the City shall notify the
5 applicant by electronic mail that the application is incomplete and shall specify any
6 additional information, documents and materials required to complete the application.

7 4. If an incomplete initial or resubmitted application is filed for an
8 administrative review-eligible project, then the City shall notify the applicant by
9 electronic mail that the application is incomplete and shall specify any missing
10 information and documents and materials in accordance with the following:

11 (a) for an initial application, the City shall notify the applicant by
12 electronic mail within ten (10) business days after the application is submitted
13 whether the application is incomplete and shall specify in that notification any
14 missing information, documents and materials; otherwise, the application will be
15 deemed complete; and

16 (b) for a resubmitted application, the City shall notify the applicant by
17 electronic mail within ten (10) days after the application is resubmitted whether
18 the application is incomplete and shall specify in that notification any missing
19 information, documents and materials; otherwise, the application will be deemed
20 complete.

21 5. If the City fails to timely provide the applicant with notice that the initial
22 application or a resubmitted application is incomplete in accordance with the foregoing
23 provisions, as applicable, the application shall be deemed complete.

24 6. Except as provided for in subsection 7 below, the City shall approve or
25 disapprove a complete application in accordance with the following:

26 (a) For a new structure, within 150 days after receipt of the completed
27 application minus any days that expired from the date of filing of the application to the
28 date any notice of incompleteness was given to the applicant by the City;

29 (b) For the modification of an existing wireless support structure or
30 base station that involves the co-location of new transmission equipment, the removal of
31 transmission equipment, or the replacement of transmission equipment, but does not
32 substantially change, as that term is defined by federal law, the physical dimensions of
33 such support structure or base station, within 60 days after receipt of the application
34 provided, however, that this period shall be tolled during any time after which the
35 applicant has been informed that the application is not complete and is provided with the

1 grounds for its incompleteness by the City, and when the applicant files all requested
2 information and items necessary to make the application complete;

3 (c) For the co-location on an existing support structure of any wireless
4 facility that is not a small cell facility and substantially changes, as that term is defined by
5 federal law, the physical dimensions of such support structure or any related base station,
6 within the lesser of 90 days after receipt by the City of the completed application, minus
7 any days that expired from the date of filing of the application to the date any notice of
8 incompleteness was given to the applicant by the City; and

9 (d) For any wireless facility that is not a small cell facility on a new
10 structure, within the lesser of 150 days after receipt of a completed application, minus
11 any days that expired from the date of filing of the application to the date any notice of
12 incompleteness was given to the applicant by the City .

13 7. Any period specified in subsection 6(a), 6(b), 6(c), or 6(d) above within
14 which the City must approve or disapprove an application may be extended by written
15 agreement of the applicant and the City.

16 8. A complete application for an administrative review-eligible project shall
17 be deemed approved if the City fails to approve or disapprove such application within the
18 applicable period specified in subsection 6(a), 6(b), 6(c), or 6(d) above or within any
19 agreed extension thereof pursuant to subsection 7 above.

20 9. If the City disapproves an application for an administrative review-eligible
21 project:

22 (a) the City shall provide the applicant with a written statement listing
23 all of the reasons for the disapproval; and

24 (b) if the City is aware of any modifications to the project as described
25 in the application that if made would permit the City to approve the proposed
26 project, the City shall identify them in the written statement provided under
27 subsection 9(a) above. The City's subsequent disapproval of an application for a
28 project that incorporates the modifications identified in such a written statement
29 may be used by the applicant as evidence that the City's subsequent disapproval
30 was arbitrary or capricious in any appeal of the City's subsequent disapproval.

31 10. If an application for an administrative review-eligible project is
32 disapproved, the City's disapproval shall:

1 (a) not unreasonably discriminate between the applicant and other
2 wireless services providers, wireless infrastructure providers, providers of telecommunications
3 services, and other providers of functionally equivalent services; and

4 (b) be supported by substantial record evidence contained in a written
5 record publicly released within 30 days following the disapproval.

6 F. Limitations on Disapprovals of Administrative Review-Eligible Projects.

7 Whenever the City receives, considers, and processes a complete application for an
8 administrative review-eligible project, it shall not disapprove any such application on the basis
9 of:

10 (a) the applicant's business decision with respect to its designed
11 service, customer demand, or quality of service to or from a particular site;

12 (b) the applicant's specific need for the project, including the
13 applicant's desire to provide additional wireless coverage or capacity; or

14 (c) the wireless facility technology selected by the applicant for use at
15 the project.

16 G. Disapproval Considerations for Administrative Review-Eligible Projects.

17 Nothing in this Ordinance shall be construed to prohibit the City from disapproving an
18 application for an administrative review-eligible project:

19 1. On the basis of the fact that the proposed height of any wireless support
20 structure, wireless facility, or wireless support structure with attached wireless facilities exceeds
21 50 feet above ground level, provided that the City follows a local ordinance or regulation that
22 does not unreasonably discriminate between the applicant and other wireless services providers,
23 wireless infrastructure providers, providers of telecommunications services , and other providers
24 of functionally equivalent services; or

25 2. That proposes to locate a new structure, or to co-locate a wireless facility
26 in an area where all cable and public utility facilities are required to be placed
27 underground by a date certain or encouraged to be undergrounded as part of a
28 transportation improvement project or rezoning proceeding as set forth in objectives
29 contained in a comprehensive plan, if:

30 (a) The undergrounding requirement or comprehensive plan objective
31 existed at least three months prior to the submission of the application;

1 (b) The City allows the co-location of wireless facilities on existing
2 utility poles, government-owned structures with the government's consent,
3 existing wireless support structures, or a building within that area;

4 (c) The City allows the replacement of existing utility poles and
5 wireless support structures with poles or support structures of the same size or
6 similar within that area; and

7 (d) The disapproval of the application does not unreasonably
8 discriminate between the applicant and other wireless services providers, wireless
9 infrastructure providers, providers of telecommunications services, and other
10 providers of functionally equivalent services, and other providers of functionally
11 equivalent services.

12 H. Disapproval Limitation If Administrative Review-Eligible Project Does not
13 Substantially Change Physical Dimensions. The City may not deny, and shall approve, within
14 sixty (60) days, any administrative review-eligible project which requests any modification of an
15 existing base station or wireless support structure that does not substantially change, as that term
16 is defined by federal law, the physical dimensions of such support structure or base station and
17 that involves the co-location of new transmission equipment, the removal of transmission
18 equipment, or the replacement of transmission equipment.

19 I. Disapproval Allowed If Written Notice Not Provided to Adjacent Property
20 Owners. The City may disapprove an application for an administrative review-eligible project if
21 the applicant has not given written notice to all adjacent property owners at least 15 days before
22 the applicant applies to locate a new structure on the subject property.

23 § 35.2–73.6 Standard Process Projects.

24 A. Review of Standard Process Projects. Standard process projects may
25 require the approval of a conditional use permit and/or a site plan for the installation or
26 construction of such a project, and City staff review may also be required for the issuance of any
27 zoning permit, or an acknowledgment that zoning approval is not required, for a standard process
28 project.

29 B. Application Requirements for Standard Process Projects. Applications for
30 wireless support structures, wireless facilities, and/or base stations that constitute standard
31 process projects shall include the following:

32 1. The name, address, telephone number, and electronic mail address of the
33 applicant. If the applicant is not the owner of the land on which the wireless support
34 structure, wireless facility, and/or base station is proposed to be located, then the
35 applicant shall provide written consent of the owner, and the name, address, telephone

1 number, and the electronic mail address of the owner. If the land on which the proposed
2 wireless support structure, wireless facility, or base station is proposed to be located is, in
3 whole or in part, within the City's right-of-way, then the applicant shall be required to
4 secure written consent from the City for the proposed wireless support structure, wireless
5 facility, or base station to be located within the City's right-of-way prior to filing such
6 application and shall include such written consent as part of any such application.

7 2. An affirmative written statement signed by the applicant and the owner
8 that the applicant and the owner are aware of and agree to comply with the provisions of
9 this Zoning Ordinance set forth in § 35.2-73.24 (Abandonment) regarding removal and
10 dismantlement of all wireless support structures, wireless facilities, base stations, and
11 related equipment in the event such a structure, facility, base station, or related equipment
12 is no longer in use.

13 3. The valuation map number and address of the parcel of land on which the
14 wireless support structure, wireless facility, and/or base station is proposed to be located.

15 4. The names, addresses, and telephone numbers of the owners of and a map
16 showing the location and height of all wireless support structures or potential wireless
17 support structures taller than fifty (50) feet that are within a one (1) mile radius of the
18 proposed new site for a wireless support structure, wireless facility, and/or base station,
19 including City-owned property.

20 5. Written documentation that the applicant has made diligent, but
21 unsuccessful, efforts to secure the permission to co-locate the applicant's proposed
22 wireless facility on an existing or proposed wireless support structure owned by others,
23 including the City, within a one-mile radius of the proposed wireless support structure,
24 wireless facility, and/or base station.

25 6. Written, technical evidence from a radio frequency engineer that the
26 proposed wireless support structure, wireless facility, base station, or project cannot be
27 installed or co-located on another existing or proposed wireless support structure within a
28 one (1) mile radius of the proposed site for a wireless support structure, wireless facility,
29 or base station and must be located at the proposed site in order to meet the coverage
30 requirements for applicant's wireless telecommunications system.

31 7. Written, technical evidence from a structural engineer that the proposed
32 wireless support structure can support the wireless facilities and base stations of other
33 carriers for the purposes of co-location.

34 8. Written, technical evidence from a radio frequency engineer that the
35 proposed facilities meet the standards set forth in this Ordinance, including, but not
36 limited to, the requirements set forth in § 35.2-73.13 (Interference With Public Safety

1 Radio Services), and will not materially interfere with other pre-existing communications
2 facilities or with future communications facilities that have already been designed and
3 planned for a specific location or that have been reserved for future public safety
4 communications facilities.

5 9. Written, technical evidence from an electrical engineer that the proposed
6 site of the wireless support structure, wireless facility, and/or base station does not pose a
7 risk of explosion, fire, or other danger due to its proximity to volatile, flammable,
8 explosive, or hazardous materials such as propane, gasoline, natural gas, or corrosive or
9 other dangerous chemicals.

10 10. A map of the City and the first half-mile of all bordering communities
11 showing the design of the applicant's entire existing or proposed telecommunications
12 network. Such map shall, at a minimum, indicate the general location of all proposed or
13 existing sites of the applicant's wireless support structures, wireless facilities, base
14 stations, and related equipment, the dimensions of the sites, specifications relating to the
15 facilities, and signal area coverage.

16 11. Color photo simulations showing the proposed site of the proposed
17 wireless support structure, wireless facility, base station, or project with a photo-realistic
18 representation of the proposed structure and facility as they would appear viewed from at
19 least four (4) substantially different vantage points on the eight (8) closest residential
20 properties or adjacent roadways..

21 12. Any initial application fee required by § 35.2–73.6(D) (Fees for Standard
22 Process Projects).

23 13. A site plan, including a depiction of the lot lines, setbacks, existing
24 structures and other improvements on the property, the location of adjacent and nearby
25 structures, the proposed location of the proposed wireless support structure, wireless
26 facility, and base station that are the subject of the application, separation distances,
27 proposed height of any new structure, screening and landscaping, existing and proposed,
28 access, parking, security, zoning district(s) for the subject property and all adjacent
29 properties, and any floodplain on the subject property.

30 14. A copy of any approval granted by a federal agency, including any
31 conditions imposed by that agency, regarding the proposed wireless support structure,
32 wireless facility, and/or base station.

33 15. Evidence relating to any other factors the applicant believes are relevant to
34 the City's consideration of whether the applicant's proposed standard process project
35 should be approved.

1 16. Written documentation regarding whether and how the location of the
2 proposed wireless support structure and/or wireless facility in relation to existing
3 structures, trees, and other visual buffers, minimizes, to the greatest extent reasonably
4 practicable under the circumstances, any significant negative adverse impact.

5 17. Written documentation regarding whether and how the location of the
6 wireless support structure and/or wireless facility will not have a significant detrimental
7 impact on the property values of adjacent and nearby properties.

8 18. Written documentation regarding any other factors the applicant believes
9 are relevant to the City's consideration of whether the applicant's proposed standard
10 process project should be approved.

11 19. Evidence that the applicant has given written notice to all adjacent
12 landowners regarding the applicant's intent to file the application at least 15 days before
13 the filing of any application to locate a new structure on the subject property

14 C. Fee Limitations for Standard Process Projects. When an application for a
15 standard process project is filed, the following provisions shall apply to the fee that must
16 be paid by the applicant:

17 1. The fee must be reasonable.

18 2. The fee charged by the City shall not include direct payment or
19 reimbursement of third-party fees charged on a contingency basis or a result-based
20 arrangement.

21 3. The fee charged by the City shall not exceed the actual direct costs to
22 process the application, including permits and inspection.

23 4. The City shall not charge market-based or value-based fees for the
24 processing of any such application.

25 5. Upon request, the City shall, within a reasonable amount of time after such
26 request, provide the applicant with the cost basis for any fee charged by the City for a
27 standard process project.

28 D. Fees for Standard Process Projects. Each application for a wireless support
29 structure, wireless facility, or base station that constitutes a standard process project shall be
30 accompanied by payment of the following fees for the processing of the application:

1 1. For an application for a standard process project that requires the approval
2 of a conditional use permit and a site plan, the initial fee shall be \$900.

3 2. For an application for a standard process project that requires the approval
4 of a site plan, but not a conditional use permit, the initial fee shall be \$500.

5 3. The City reserves the right to employ an outside consultant to assist in the
6 review of any application for a standard process project. In the event the City employs an
7 outside consultant to review an application for a standard process project, the applicant
8 shall reimburse the City for the reasonable expenses related to such review as an
9 additional application fee, provided, however, that the fee limitations set forth in § 35.2–
10 73.6(C) (Fee Limitations for Standard Process Projects) shall apply to the calculation of
11 any such additional fee.

12 4. For any standard process project that requires the approval of a conditional
13 use permit, the applicant shall be responsible for the payment of any costs for any legal
14 notices that may be required for the conditional use permit.

15 E. Processing Applications for Standard Process Projects. The following
16 provisions set forth the process that shall apply to any application for a standard process project:

17 1. Prior to accepting any application for a wireless support structure, a
18 wireless facility, or a base station, that constitutes a standard process project, the City
19 shall first determine that the application includes the applicant's electronic mail address.
20 In the event the application does not include the applicant's electronic mail address, the
21 City shall not accept it for filing

22 2. If the application is incomplete, but includes an electronic mail address for
23 the applicant, then within ten (10) business days after actual receipt of the application, the
24 City shall notify the applicant by electronic mail if the application is incomplete and shall
25 specify in that notification any additional information, documents, and materials required
26 to complete the application.

27 3. If the application is incomplete and does not include a valid electronic
28 mail address for the applicant when it was filed, the City shall use reasonable means to
29 contact the applicant and request the applicant's valid electronic mail address. Within ten
30 (10) days after actual receipt of a valid electronic mail address for the applicant, the City
31 shall notify the applicant by electronic mail that the application is incomplete and shall
32 specify any additional information, documents, and materials required to complete the
33 application.

34 4. If an incomplete initial or resubmitted application is filed for a standard
35 process project, then the City shall notify the applicant by electronic mail that the

1 application is incomplete and shall specify any missing information, documents, and
2 materials in accordance with the following:

3 (a) for an initial application, the City shall notify the applicant by
4 electronic mail within ten (10) business days after the application is submitted
5 whether the application is incomplete and shall specify in that notification any
6 missing information, documents, and materials; otherwise, the application will be
7 deemed complete; and

8 (b) for a resubmitted application, the City shall notify the applicant by
9 electronic mail within ten (10) days after the application is resubmitted whether
10 the application is incomplete and shall specify in that notification any missing
11 information, documents and materials; otherwise, the application will be deemed
12 complete.

13 5. If the City fails to timely provide the applicant with notice that the initial
14 application or a resubmitted application is incomplete in accordance with the foregoing
15 provisions, as applicable, the application shall be deemed complete.

16 6. Except as provided for in subsection 7 below, the City shall approve or
17 disapprove a complete application for a standard process project in accordance with the
18 following:

19 (a) For a new structure, within the lesser of 150 days after receipt of
20 the completed application minus any days that expired from the date of filing of the
21 application to the date any notice of incompleteness was given to the applicant by the
22 City ;

23 (b) For the modification of an existing wireless support structure or
24 base station that involves the co-location of new transmission equipment, the removal of
25 transmission equipment, or the replacement of transmission equipment, but does not
26 substantially change, as that term is defined by federal law, the physical dimensions of
27 such support structure or base station, within 60 days after receipt of the application
28 provided, however, that this period shall be tolled during any time after which the
29 applicant has been informed that the application is not complete and is provided with the
30 grounds for its incompleteness by the City, and when the applicant files all requested
31 information and items necessary to make the application complete;

32 (c) For the co-location on an existing wireless support structure of any
33 wireless facility that is not a small cell facility and substantially changes, as that term is
34 defined by federal law, the physical dimensions of such support structure or any related
35 base station, within the lesser of 90 days after receipt by the City of the completed

1 application minus any days that expired from the date of filing of the application to the
2 date any notice of incompleteness was given to the applicant by the City; and

3 (d) For any standard process project that is not a small cell facility on
4 a new structure, within the lesser of 150 days after receipt of a completed application
5 minus any days that expired from the date of filing of the application to the date any
6 notice of incompleteness was given to the applicant by the City .

7 7. Any period specified in subsection 6(a), 6(b), 6(c), or 6(d) above within
8 which the City must approve or disapprove an application may be extended by written
9 agreement of the applicant and the City.

10 8. A complete application for a standard process project shall be deemed
11 approved if the City fails to approve or disapprove such application within the applicable
12 period specified in subsection 6(a), 6(b), 6(c), or 6(d) above or any agreed extension
13 thereof pursuant to subsection 7 above.

14 9. If the City disapproves an application for a standard process project:

15 (a) the City shall provide the applicant with a written statement listing
16 all of the reasons for the disapproval; and

17 (b) if the City is aware of any modifications to the project as described
18 in the application that if made would permit the City to approve the proposed
19 project, the City shall identify them in the written statement provided under
20 subsection 6(a) above. The City's subsequent disapproval of an application for a
21 project that incorporates the modifications identified in such a written statement
22 may be used by the applicant as evidence that the City's subsequent disapproval
23 was arbitrary or capricious in any appeal of the City's subsequent disapproval.

24 10. If an application for a standard process project is disapproved, the City's
25 disapproval shall:

26 (a) not unreasonably discriminate between the applicant and other
27 wireless services providers, wireless infrastructure providers, providers of telecommunications
28 services, and other providers of functionally equivalent services; and.

29 (b) be supported by substantial record evidence contained in a written
30 record publicly released within 30 days following the disapproval.

1 F. Limitations on Disapprovals of Standard Process Projects. Whenever the City
2 receives, considers, and processes a complete application for a standard process project, it shall
3 not disapprove any such application on the basis of:

4 (a) the applicant's business decision with respect to its designed
5 service, customer demand, or quality of service to or from a particular site;

6 (b) the applicant's specific need for the project, including the
7 applicant's desire to provide additional wireless coverage or capacity; or

8 (c) the wireless facility technology selected by the applicant for use at
9 the project.

10 G. Disapproval Considerations for Standard Process Projects. Nothing in this
11 Ordinance shall be construed to prohibit the City from disapproving an application for a standard
12 process project:

13 1. On the basis of the fact that the proposed height of any wireless support
14 structure, wireless facility, or wireless support structure with attached wireless facilities exceeds
15 50 feet above ground level, provided that the City follows a local ordinance or regulation that
16 does not unreasonably discriminate between the applicant and other wireless services providers,
17 wireless infrastructure providers, providers of telecommunications services , and other providers
18 of functionally equivalent services; or

19 2. That proposes to locate a new structure, or to co-locate a wireless facility
20 in an area where all cable and public utility facilities are required to be placed
21 underground by a date certain or encouraged to be undergrounded as part of a
22 transportation improvement project or rezoning proceeding as set forth in objectives
23 contained in a comprehensive plan, if:

24 (a) The undergrounding requirement or comprehensive plan objective
25 existed at least three months prior to the submission of the application;

26 (b) The City allows the co-location of wireless facilities on existing
27 utility poles, government-owned structures with the government's consent,
28 existing wireless support structures, or a building within that area;

29 (c) The City allows the replacement of existing utility poles and
30 wireless support structures with poles or support structures of the same size or
31 similar within that area; and

(d) The disapproval of the application does not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services, and other providers of functionally equivalent services.

H. Disapproval Limitation If Standard Process Project Does not Substantially Change Physical Dimensions. The City may not deny, and shall approve, within sixty (60) days, any standard process project which requests any modification of an existing base station or wireless support structure that does not substantially change, as that term is defined by federal law, the physical dimensions of such support structure or base station and that involves the co-location of new transmission equipment, the removal of transmission equipment, or the replacement of transmission equipment.

I. Disapproval Allowed If Written Notice Not Provided to Adjacent Property Owners. The City may disapprove an application for a standard process project if the applicant has not given written notice to all adjacent property owners at least 15 days before the applicant applies to locate a new structure on the subject property.

§ 35.2–73.7 Permitted Uses.

A. The following uses shall be permitted by right as follows:

1. Small cell facilities in all zoning districts.
2. Administrative review-eligible projects in all zoning districts.
3. Any wireless support structure and/or wireless facility that does not exceed one hundred (100) feet in height in the B–1 District.
4. Any wireless support structure and/or wireless facility that does not exceed one hundred and fifty (150) feet in height in the B–3, B–5, IN–2, I–1, I–2, or I–3 Districts.
5. Any base station associated with a lawfully existing wireless support structure and/or wireless facility, provided, however, that:

(a) the base station shall be located inside the wireless support structure; or

(b) the base station shall be located on the ground within 50 feet of the base of the wireless support structure; or

1 (c) the base station is not visible at ground level from off-site; and

2 (d) the size of the base station shall not exceed seventy-two (72) cubic
3 feet in size and/or six (6) feet in height; and

4 (e) all applicable setbacks shall be complied with.

5 6. The co-location of a wireless facility on a lawfully existing wireless
6 support structure in any zoning district, provided, however, that:

7 (a) the height of any such wireless support structure, wireless facility,
8 or wireless support structure with wireless facility attached, shall not increase as a result
9 of the co-location; and

10 (b) all applicable setbacks must be complied with.

11 B. Existing wireless support structures and wireless facilities shall be exempt from
12 the maximum height restrictions of the districts in which they are located to the extent such
13 structures and facilities lawfully existed on the date of adoption of this Ordinance.

14 § 35.2-73.8 Conditional Use Permit Required.

15 A. The following uses require the approval of a conditional use permit by the City
16 Council:

17 1. In the R-C, R-1, R-2, R-3, R-4, IN-1, or B-4 Districts, any standard
18 process project that is between fifty (50) and one hundred and fifty (150) feet in height,
19 provided, however, that no new wireless support structure and/or wireless facility in such
20 districts shall exceed 150 feet in height;

21 2. In the B-1 District, any standard process project in which a new wireless
22 support structure and/or wireless facility exceeds one hundred (100) feet in height;
23 provided, however, that the maximum height for any wireless facility and/or wireless
24 support structure in the B-1 District shall be 150 feet;

25 3. In the B-3, B-5, IN-2, I-1, I-2, or I-3 Districts, any standard process
26 project in which a new wireless support structure and/or wireless facility exceeds one
27 hundred fifty (150) feet in height;

28 4. Any base station that is a standard process project and exceeds seventy-
29 two cubic feet above ground and/or six feet in height;

1 5. Any base station associated with a lawfully existing wireless support
2 structure and/or wireless facility that is a standard process project, is not located inside
3 the wireless support structure, is visible at ground level from off-site, and/or is not
4 located within 50 feet of the base of the wireless support structure;

5 6. The co-location of a wireless facility on a lawfully existing wireless
6 support structure in any zoning district that, after the proposed co-location, would result
7 in an increase in height of the wireless support structure and/or wireless facility,
8 provided, however, that no such structure and/or facility shall be allowed to increase
9 more than fifteen (15) feet in height as a result of the approval of such a conditional use
10 permit; and

11 7. Any other project that constitutes a standard process project.

12 B. Whenever a conditional use permit is required for a proposed wireless structure or
13 wireless facility, any application for such a conditional use permit shall be made to the City
14 Planner in the manner provided in Article 2 of this Zoning Ordinance. In districts for which a
15 conditional use permit is required, the City Council shall make its decision to approve or deny
16 such permit in writing and in a manner consistent with applicable state and federal law.

17 C. Any wireless support structure, wireless facility, or base station that is not
18 permitted by right or upon the approval of a conditional use permit under this Ordinance shall be
19 considered to be in violation of this Ordinance.

20 D. No new wireless support structure and/or wireless facility for which a conditional
21 use permit is approved shall exceed a maximum height of one hundred fifty (150) feet in
22 the R-C, R-1, R-2, R-3, R-4, IN-1, or B-4 Districts.

23 35.2-73.9 Setbacks.

24 A. There shall be no setback requirement for any wireless support structure and/or
25 wireless facility that is thirty-five (35) feet or less in height.

26 B. Any wireless support structure and/or wireless facility greater than thirty-five (35)
27 feet in height in the R-C, R-1, R-2, R-3, R-4, IN-1, or B-4 Districts shall be required to set
28 back a distance from all property lines at least the height of such structure and/or facility.

29 C. Any wireless support structure and/or wireless facility greater than thirty-five (35)
30 feet in height in the B-1, B-3, B-5, IN-2, I-1, I-2, or I-3 Districts that is on a parcel adjacent to
31 any parcel that is zoned R-C, R-1, R-2, R-3, R-4, IN-1, or B-4 shall be set back a distance at
32 least the height of such structure and/or facility from the R-C, R-1, R-2, R-3, R-4, IN-1, or B-
33 4 District.

1 D. Any wireless support structure and/or wireless facility in the B-1, B-3, B-5, IN-
2 2, I-1, I-2, or I-3 Districts that is greater than thirty-five (35) feet in height but less than fifty
3 (50) feet in height shall be required to set back a distance from all property lines at least the
4 minimum applicable setback for the district in which it is located.

5 E. Any wireless support structure and/or wireless facility in the B-1, B-3, B-5, IN-
6 2, I-1, I-2, or I-3 Districts that is a height greater than fifty (50) feet shall be required to set
7 back a distance from all property lines at least one-half the height of such structure and/or
8 facility.

9 F. Setback requirements for wireless support structures and/or wireless facilities
10 shall be measured from the base of the structure and/or facility to the property lines of the parcel
11 on which the structure and/or facility is located.

12 §35.2-73.10 Standards for Conditional Use Permits for Standard Process Projects.

13 In order to approve a conditional use permit for a standard process project, the City
14 Council must find that the application for such project satisfies all of the following standards:

15 1. The proposed use is in substantial conformance with the provisions of the
16 City's Comprehensive Plan.

17 2. The proposed use will not result in any significant adverse impact on the
18 use and enjoyment of nearby properties.

19 3. The proposed use will not have any significant negative impact on the
20 value of nearby properties.

21 4. The proposed use will not cause any material potential interference with
22 other pre-existing communications facilities or with future communications facilities that
23 have already been planned or designed for a specific location or that have been reserved
24 for future public safety communications facilities.

25 5. The proposed use will not result in any significant adverse impact on
26 public safety or other critical public service needs.

27 6. The proposed use must be compatible with the character of the area in
28 which it is proposed to be located.

29 7. There are no existing wireless support structures within a reasonable
30 distance from the proposed wireless support structure, wireless facility, and/or base

1 station that are available to be used for co-location at reasonable terms and conditions
2 without imposing technical limitations on the applicant.

3 8. The proposed use shall not conflict with any City ordinance adopted
4 pursuant to Code of Virginia § 15.2-2306, or pursuant to local charter on a historic
5 property that is not eligible for the review process established under 54 U.S.C. § 306108.

6 9. The proposed use satisfies all other applicable requirements set forth in
7 this chapter with respect to the location, size, design, and construction of wireless support
8 structures, wireless facilities, and base stations.

9 §35.2-73.11 Use of City-Owned Property for Wireless Facilities.

10 The City may authorize the use of City property for wireless facilities in appropriately
11 zoned districts in accordance with the procedures of the City charter and code. The City shall
12 have no obligation whatsoever to allow the use of City property for such purposes and any such
13 approval by the City shall be subject to the discretion of the City Council.

14 §35.2-73.12 Co-Location Availability.

15 An application for a standard process project may be disapproved by the City on
16 the basis of the availability of the existence of one or more wireless support structures within a
17 reasonable distance that could be used for co-location at reasonable terms and conditions without
18 imposing technical limitations on the applicant.

19 § 35.2-73.13 Interference With Public Safety Radio Services.

20 In order to ensure that the City's public safety radio services will be free from
21 harmful or destructive interference, all applicants requesting a permit to establish or install a
22 wireless support structure or wireless facility shall:

- 23 A. Demonstrate compliance with good engineering practices;
- 24 B. Not cause material potential interference to the City's existing
25 public safety radio services or to future communications facilities
26 that have already been designed and planned for a specific location
27 or that have been reserved for future public safety communications
28 facilities; and
- 29 C. Comply with all FCC regulations regarding susceptibility to radio
30 frequency interference, frequency coordination requirements,
31 general technical standards for power, antenna bandwidth

1 limitations, frequency stability, transmitter measurements,
2 operating requirements, and any and all other federal statutory and
3 regulatory requirements relating to radio frequency interference
4 (RFI), provided, however, that this subparagraph (C) shall not
5 apply to applications for small cell facilities.

6 § 35.2-73.14 Structural Requirements.

7 All wireless support structures and wireless facilities must be designed and certified by a
8 structural engineer licensed in the Commonwealth of Virginia to be structurally sound
9 and, at a minimum, in conformance with the Virginia Uniform Statewide Building Code
10 and any other applicable standards set forth in this chapter.

11 § 35.2-73.15 Method of Determining Height of A Wireless Support Structure.

12 Measurement of the height of a wireless support structure for the purpose of determining
13 compliance with all requirements of this chapter shall include the wireless support structure itself
14 and any wireless facilities associated with the wireless support structure, and any other support
15 features installed thereon which extend over the top of the structure itself. Structure height shall
16 be measured from grade.

17 § 35.2-73.16 Illumination.

18 Wireless support structures whose principal use is the facilitation of wireless
19 telecommunications shall not be artificially lighted except as may be required by the FAA.

20 § 35.2-73.17 Exterior Finish.

21 Wireless support structures and wireless facilities not requiring painting or marking by
22 the FAA shall be painted a neutral color. A galvanized finish is considered a neutral color.

23 § 35.2-73.18 Landscaping.

24 All landscaping on parcels containing wireless support structures, wireless facilities,
25 and/or base stations shall be designed to screen the structure, facilities, base station, and related
26 equipment to a height of at least six (6) feet from grade. This requirement may be waived at the
27 discretion of the planning division if the base of the structure, facilities, base station, and related
28 equipment to be screened is not located in and is not visible from any commercial or residential
29 district or from any public street. All required landscaping shall be continually maintained in a
30 healthy and attractive manner.

1 § 35.2-73.19 Security.

2 All wireless support structures and wireless facilities shall be reasonably posted and
3 secured to prevent against trespass.

4 § 35.2-73.20 Access.

5 All parcels upon which wireless support structures are located must provide access during
6 normal business hours to at least one (1) paved vehicular parking space on site.

7 § 35.2-73.21 Maintenance.

8 A. The owners and operators of all wireless support structures, wireless facilities,
9 base stations, and related equipment shall at all times employ ordinary and reasonable care in
10 maintaining such structures, facilities, base stations, and equipment and shall install and maintain
11 in use nothing less than commonly accepted methods and devices for the prevention of failures
12 and accidents which are likely to cause damage, injuries, or nuisances to the public, provided,
13 however, that no zoning approval of the City shall be required for routine maintenance of any
14 existing wireless support structure or wireless facility.

15 B. The owners and operators of all wireless support structures, wireless facilities,
16 and base stations shall at all times employ ordinary and reasonable care and shall install and
17 maintain such wireless support structures, wireless facilities, base stations, and equipment in
18 substantial compliance with the requirements of the national electric safety code and all federal,
19 state, and local regulations and in such manner that will not interfere with the use and enjoyment
20 of other property.

21 C. All wireless support structures, wireless facilities, base stations, and related
22 equipment shall at all times be kept and maintained in good condition, order, and repair so that
23 the same shall not menace or endanger the life or property of any person.

24 D. All wireless support structures, wireless facilities, base stations, and related
25 equipment shall be maintained in compliance with any applicable radio frequency emission
26 standards of the FCC.

27 E. In the event the use of any wireless support structure, wireless facility, base
28 station, and related equipment is discontinued by the owner or operator thereof, or in the event
29 the owner or operator thereof files notice with the FCC or any other federal agency of its interest
30 in ceasing to operate any wireless support structure, wireless facility, base station, and related
31 equipment, said owner or operator shall, within thirty (30) days, provide written notice to the
32 City of its intent to discontinue such use and the date when such use shall be discontinued. If the
33 facility in question, or any part thereof, is located within the City's right-of-way, then the owner

1 or operator shall submit the foregoing written notice to the Department of Public Works. If the
2 facility in question, or any part thereof, is located outside the City's right-of-way, then the owner
3 or operator shall submit the foregoing written notice to the Department of Community
4 Development.

5 § 35.2-73.22 Stealth.

6 The City encourages, but does not require, the installation of small cell facilities and
7 administrative review-eligible projects that employ stealth designs and blend into the
8 environments in which they are proposed to be located. All standard process projects proposing
9 wireless support structures and wireless facilities shall be of stealth design. For purposes of this
10 section, the term "stealth design" refers to a wireless support structure and wireless facility that is
11 designed in such a way as to effectively blend into the environment in which that structure is
12 proposed to be located. Examples of stealth designs include, but are not limited to, a wireless
13 support structure in a wooded area that is designed to look like a tree, a wireless facility that is
14 encased in a flagpole, a wireless support structure on a church property that is designed to look
15 like a bell tower or church steeple, and a wireless support structure in an agricultural area that is
16 designed to look like a farm silo.

17 § 35.2-73.23 Existing Wireless Support Structures.

18 A. An existing wireless support structure may be modified or demolished and rebuilt
19 to accommodate the co-location of additional wireless facilities and base stations as follows:

20 1. Application for a permit for any wireless facility or base station, other than
21 a small cell facility, located, in whole or in part, within the City's right-of-way shall be made to
22 the Department of Public Works.

23 2. Application for a permit for any wireless facility or base station located, in
24 whole or in part, outside the City's right-of-way shall be made to the Department of Community
25 Development.

26 3. The total height of the new or modified wireless support structure and any
27 wireless facilities installed thereon shall not exceed the height of the existing wireless
28 support structure or the maximum height allowed for wireless support structures
29 permitted by right in the applicable zoning district under this ordinance whichever is
30 greater.

31 B. The City may not deny and shall approve any request to modify the physical
32 dimensions of an existing wireless tower or base station if that request does not substantially
33 increase the physical dimensions of such tower or base station and involves:

- (1) co-location of new transmission equipment;
- (2) removal of transmission equipment; or
- (3) replacement of transmission equipment.

§ 35.2–73.24 Abandonment.

If the City receives notice pursuant to § 35.2-73.21(E), or if any wireless support structure, wireless facility, base station, and/or related equipment shall cease to be used for a period of one hundred eighty (180) consecutive days, then for wireless support structures, wireless facilities, base stations and/or related equipment inside the City's right-of-way, the Department of Public Works shall notify the owner and/or operator of such structure, facility, base station, and related equipment, with a copy to the applicant therefor, that the site will be subject to a determination by the Department of Public Works that such site has been abandoned. In the event such structure, facility, base station, and related equipment is located outside the City's right-of-way, then the foregoing notification and determination shall be made by the Department of Community Development. The owner, operator, and/or applicant shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence, that the support structure, wireless facility, base station, and/or related equipment has been in use or under repair during the period. If the owner, operator, and/or applicant fails to show that the support structure, wireless facility, base station, and/or related equipment has been in use or under repair during the period, the Department of Public Works, or Department of Community Development, whichever applies, shall issue a final determination of abandonment for the site. Upon issuance of the City's final determination, the owner, operator, and/or applicant shall, within seventy-five (75) days, dismantle and remove the support structure, wireless facility, base station, and related equipment. If the owner, operator, and/or applicant fails to remove the abandoned support structure, wireless facility, base station, and related equipment within seventy-five (75) days after the City's final determination of abandonment, the City and/or its agents may, at its option, enter upon the property and dismantle, remove, and lawfully dispose of the support structure, wireless facility, base station, and related equipment that has been determined by the City to have been abandoned. The City may place a lien on the property of the owner from which the abandoned support structure, wireless facility, base station, or related equipment was removed in the amount of the City's expenses in dismantling, removing, and lawfully disposing of such support structure, wireless facility, base station, and related equipment. The City also may recover from the owner, operator, and/or applicant the costs of dismantling, removing, and lawfully disposing of the support structure, wireless facility, base station, and related equipment from the owner. For purposes of this section, removal includes all physical improvements associated with the support structure, wireless facility, base station, and related equipment, including foundation and tower grounding.

§ 35.2–73.25 Miscellaneous Provisions.

1 A. Voluntary Conditions Allowed. Nothing in this Ordinance shall prohibit an
2 applicant from voluntarily submitting, and the City from accepting, any
3 conditions that otherwise address potential visual or aesthetic effects resulting
4 from the placement of any new structure or wireless facility, including small cell
5 facility.

6 B. Micro-Wireless Facilities Exemption. Nothing in this Ordinance shall be
7 construed to require any permitting requirements and fees imposed by the City for
8 the installation, placement, maintenance, or replacement of micro-wireless
9 facilities that are suspended on cables or lines that are strung between existing
10 utility poles in compliance with national safety codes, because the installation,
11 placement, maintenance, or replacement of such facilities are exempt from any
12 City-imposed permitting requirements and fees.

13 C. Limitations on Review of Administrative Review-Eligible Projects and Standard
14 Process Projects. Whenever the City receives, considers, and processes an
15 application for an administrative review-eligible project or a standard process
16 project, it shall not:

17 1. Discriminate or create a preference on the basis of the ownership by the
18 City, of any property, structure, base station, or wireless support structure
19 when promulgating rules or procedures for siting wireless facilities or for
20 evaluating applications;

21 2. Impose any unreasonable requirements or obligations regarding the
22 presentation or appearance of a project, including unreasonable
23 requirements relating to (i) the kinds of materials used or (ii) the
24 arranging, screening, or landscaping of wireless facilities or wireless
25 structures;

26 3. Impose any requirement that an applicant purchase, subscribe to, use, or
27 employ facilities, networks, or services owned, provided, or operated by
28 the City, in whole or in part, by the City or by any other entity in which
29 the City has a competitive, economic, financial, governance, or other
30 interest;

31 4. Condition or require the approval of an application solely on the basis of
32 the applicant's agreement to allow any wireless facilities provided or
33 operated, in whole or in part, by the City, or by any other entity, to be
34 placed at or co-located with the applicant's project;

1 5. Impose a setback or fall zone requirement for a project that is larger than a
2 setback or fall zone area that is imposed on other types of similar
3 structures of a similar size, including utility poles;

4 6. Limit the duration of the approval of an application, except the City may
5 require that construction of the approved project shall commence within
6 two years after final approval and be diligently pursued to completion; and

7 7. Require an applicant to perform services unrelated to the project described
8 in the application, including restoration work on any surface not disturbed
9 by the applicant's project.

10 D. Nothing in this chapter shall prohibit the City from disapproving an application
11 submitted under a standard process project on the basis of availability of existing
12 wireless support structures within a reasonable distance that could be used for co-
13 location at reasonable terms and conditions without imposing technical limitations
14 on the applicant.

15 E. No zoning approval shall be required for (i) routine maintenance or (ii) the
16 replacement of wireless facilities or wireless support structures within a six-foot
17 perimeter with wireless facilities or wireless support structures that are
18 substantially similar or smaller; provided, however, that the City may require a
19 permit to work within the right-of-way for the activities described in clause (i) or
20 (ii), if applicable.

21 F. Nothing in this chapter shall prohibit the City from limiting the number of new
22 structures or the number of wireless facilities that can be installed in a specific
23 location.

24 G. Nothing in this chapter shall be construed to require an applicant to provide
25 proprietary, confidential, or other business information to justify the need for a
26 project, including propagation maps and telecommunications traffic studies, or
27 information reviewed by a federal agency as part of the approval process for the
28 same structure and wireless facility

29 H. All information submitted with an application that is a trade secret or proprietary
30 shall be clearly marked as such when submitted to the City. The City shall not
31 disclose publicly, or to any third party, any such proprietary information unless
32 compelled to do so by federal, state, or local law.

33 § 35.2–73.26 Reservation of Rights.

1 The City reserves the right to impose any other reasonable conditions it determines are necessary
2 for the proper placement, construction, or modification of wireless support structures, wireless
3 facilities, or base stations and/or to impose any other reasonable conditions on the issuance of a
4 conditional use permit for the placement or construction of, or modification to, a wireless support
5 structure, wireless facility, or base station, provided, however, that the imposition of any such
6 conditions must be in conformance with federal and state law and the provisions of this chapter.

7 This ordinance shall become effective upon adoption.
8

9 PLANNING COMMISSION PUBLIC HEARING: xxxx xx, 2020

10 CITY COUNCIL PUBLIC HEARING: _____
11

12 ENACTED: _____
13

14 ATTEST:
15

16 _____
17 City Clerk
18
19



Telecommunications Ordinance

J. Patrick Taves

Greehan, Taves & Pandak, PLLC

Tom Martin, AICP City Planner

Planning Commission

Public Hearing

December 9, 2020



Purpose: Discuss the proposed Telecommunications Ordinance

Outline:

- 1. State and Federal mandates**
- 2. Types of facilities – Small Cell, AREP, Standard Process Projects**
- 3. Timelines for review**
- 4. Where permitted - Height**
- 5. Setbacks**



Proposed regulations depend on the size of the facility.

Three Types of Cell Facilities:

- **SMALL CELL FACILITIES:** no more than 6 cu. ft. of volume for each antenna and no more than 28 cu. ft. of volume for all other wireless equipment
- **ADMINISTRATIVE REVIEW ELIGIBLE PROJECTS (“AREPs”):** not more than 50 ft. in height or co-location on any existing structure of a facility that is not a small cell facility
- **STANDARD PROCESS PROJECTS:** any project that is not an AREP



Different Rules for Each Type of Facility.

- **Deadlines for Completeness of Applications---applications can be “deemed complete”**
- **Fee Limitations**
- **Deadlines for Decisions---applications can be “deemed approved”**
- **Limited Grounds for Disapprovals**
- **Different Rules for Different Facilities**



Small Cell Facilities in the City's Rights-of-Way and on City Property

- **Regulated by the City's Small Cell Facility Ordinance (City Code Sections 35-28, 25-28.1, 35-28.2, 35-28.3, 35-28.4, 35-28.5, 35-28.6, and 35-28.7).**
- **The New Telecommunications Ordinance provisions do not apply to these facilities.**



Small Cell Facilities---Limited Reasons for Disapproval

City can disapprove on existing structures for only four reasons:

- 1. Material potential interference with existing or future facilities designed and planned for a specific location or reserved for public safety communications**
- 2. Safety of the public or other critical public service needs**
- 3. Aesthetic impact, but only on publicly owned or publicly controlled property---but if the City owns the property or the structure, then the City's Small Cell Facility Ordinance controls**
- 4. Conflict with a historic district ordinance, but only if that property is not eligible for a specified federal review process**



Permitted Uses:

- All Small Cell Facilities in all districts---CUPs cannot be required
- All AREPs in all districts (50 feet or less in height)---CUPs cannot be required
- Any wireless facility or structure in the B-1 District 100 feet or less
- Any wireless facility or structure in the B-3, B-5, IN-2, I-1, I-2, and I-3 Districts 150 feet or less
- Any base station for a lawfully existing wireless facility or structure meeting specified requirements
- Any co-location on an existing structure meeting specified requirements



Conditional Use Permits Can Only Be Required For Standard Process Projects:

- **Standard Process Projects between 50 and 150 feet in height in the R-C, R-1, R-2, R-3, R-4, IN-1, and B-4 Districts**
- **Standard Process Projects that exceed 100 feet in height in the B-1 District, but no greater than 150 feet**
- **Standard Process Projects that exceed 150 feet in height in the B-3, B-5, IN-2, I-1, I-2, and I-3 Districts**
- **Standard process project base stations meeting specified requirements**
- **Any co-location on an existing structure that increases the height of the facility, but any height increase is limited to no more than 15 feet**
- **Any other standard process project**



Standards for CUP's – Standard Process Projects Only:

- **Substantial conformance with the Comprehensive Plan**
- **No significant adverse impact on use and enjoyment of nearby properties**
- **No significant negative impact on property values**
- **No material potential interference with pre-existing facilities or for future planned facilities planned or designed for a specific location or any reserved for future public safety facilities***
- **No significant adverse impact on public safety or public service needs***
- **No available and existing wireless support structures nearby**
- **Not in conflict with the City historic district ordinance***
- **Satisfies all other applicable requirements**



Setbacks for Similar Structures:

- Virginia law provides that the City cannot impose a setback or fall zone requirement that is larger than the setback or fall zone requirement “that is imposed on other types of similar structures of a similar size, including utility poles.
- As a result, we propose establishing setbacks for wireless support structures that provide the same setbacks for wireless support structures as are applied to light poles, utility poles, and flag poles of a similar size.



Separate Amendment for Setbacks for Similar Structures:

- **No setback for flag poles, light poles or utility poles (“poles”) that are less than 35’ in height.**
- **Poles greater than 35’ in height set back at a 1:1 in R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 Districts.**
- **Poles greater than 35’ in height in B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District and adjacent to R-C, R-1, R-2, R-3, IN-1 or B-4 District set back at 1:1**
- **Poles in the B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District between 35’ and 50’ must meet underlying district setback**
- **Poles in the B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District greater than 50’ set back at least $\frac{1}{2}$ the height of the pole.**



Discussion:

Discussion



Memorandum

Planning Division • Community Development

900 Church Street
Lynchburg, Virginia 24504
P 434-455-3900

To: Planning Commission

From: Tom Martin, AICP, City Planner

CC: Reid Woodicka, Interim City Manager, Kent White, Interim Deputy City Manager, Walter Erwin, City Attorney, Kevin Henry, Zoning Administrator

Date: November 11, 2020

Re: Telecommunications Ordinance Revisions – Work Session

The City's Telecommunications Ordinance was last updated December 1997 with minor amendments in January 2000. The current ordinance is no longer compliant with State or Federal Laws.

The proposed Telecommunications Ordinance was drafted with the assistance of J. Patrick Taves, Greehan, Taves & Pandek, PLLC. Mr. Taves will be in attendance at the November 11, 2020 Planning Commission work session to discuss the proposed amendments to the Telecommunications Ordinance.

If you have questions, please contact me at (434) 455-3909 or tom.martin@lynchburgva.gov.

Attachments:

- Telecommunications Ordinance Slides
- Draft Telecommunications Ordinance
- Draft Revisions to Section 35.2-61.2



Telecommunications Ordinance

J. Patrick Taves
Greehan, Taves & Pandak, PLLC

Tom Martin, AICP City Planner

Planning Commission
Work Session
November 11, 2020



Purpose and Outline

Purpose: Discuss required updates to the Telecommunications Ordinance

Outline:

- 1. Reasons for updates**
- 2. Types of facilities – Small Cell, AREP, Standard Process Projects**
- 3. Timelines for review**
- 4. Where permitted - Height**
- 5. Setbacks**



Why does the City need a new Telecommunications Ordinance?

- **Last overhaul of the City's Telecommunications Ordinance was in December 1997 with minor amendments in January 2000**
- **Amendments to the Virginia Code in 2017, 2018, and 2020 regarding telecom facilities---new terminology and rules.**
- **Federal law on telecom facilities is evolving.**



What are some of the changes that are needed?

Three Types of Cell Facilities:

- **Small cell facilities**
- **Administrative review-eligible projects (“AREPs”)**
- **Standard process projects**



Other Changes

- **Deadlines for Completeness of Applications**
- **Fee Limitations**
- **Deadlines for Decisions**
- **Different Rules for Different Facilities**



Small Cell Facilities**:

- “. . . 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 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 that has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission.



Small Cell Facilities May be Larger Than You Think:

Associated equipment does not include:

- electric meter
- concealment
- telecommunications demarcation boxes
- back-up power systems
- grounding equipment
- power transfer switches
- cut-off switches
- vertical cable runs for the connection of power and other services

So it could really be more than 28 cubic feet!



**** Really Small Facilities are Exempt:**

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.”

Va. Code Section 15.2-2316.4(C) provides that micro-wireless facilities are exempt from locality-imposed permitting requirements and fees if “suspended on cables or lines that are strung between existing utility poles” in compliance with national safety codes.



Small Cell Facilities in the City's Rights-of-Way and on City Property

- **Regulated by the City's Small Cell Facility Ordinance (City Code Sections 35-28, 25-28.1, 35-28.2, 35-28.3, 35-28.4, 35-28.5, 35-28.6, and 35-28.7.**
- **The New Telecommunications Ordinance provisions do not apply to these facilities.**



Small Cell Facility Requirements, Part 1:

- **CUPs cannot be required**
- **Application can be deemed complete if City acts late**
- **Fee limitations**
- **City has 60 days to approve or disapprove**
- **City can unilaterally extend by 30 days in writing**
- **Any disapproval must be in writing and state the reasons**
- **Application deemed approved if City acts late**



Small Cell Facility Requirements, Part 2:

City can disapprove on existing structures for only four reasons:

- 1. Material potential interference with existing or future facilities designed and planned for a specific location or reserved for public safety communications**
- 2. Safety of the public or other critical public service needs**
- 3. Aesthetic impact, but only on publicly owned or publicly controlled property---but if the City owns the structure, then the City's Small Cell Facility Ordinance controls**
- 4. Conflict with a historic district ordinance, but only if that property is not eligible for a specified federal review process**



Administrative Review-Eligible Projects (“AREPs):

“a project that provides for:

- 1. The installation or construction of a new structure that is not more than 50 feet above the ground level, provided that the structure with attached wireless facilities is (i) not more than 10 feet above the tallest existing utility pole located within 500 feet of the new structure within the same public right-of-way or within the existing line of utility poles; (ii) not located inside the jurisdictional boundaries of a local, state, or federal historic district; . . . (iv) designed to support small cell facilities; or**
- 2. The co-location on any existing structure of a wireless facility that is not a small cell facility.”**



AREPs, Part 1:

- CUPs cannot be required
- Application can be deemed complete if City acts late (10 days)
- Fee limits:
 - shall not exceed \$500
 - must be reasonable
 - no market-based or value-based fees
 - no direct payment or reimbursement of 3rd party fees
- City can extend by 30 days in writing with applicant's agreement
- Any disapproval must be in writing and state the reasons



AREPs, Part 2:

- 150 days to act on an application for a new structure
- 60 days to act on an application for a modification, a co-location, removal or replacement of equipment if application does not substantially change the physical dimensions of the structure
- 90 days to act on the co-location on an existing structure of any wireless facility that is not a small cell facility and substantially changes the physical dimensions
- 150 days to act on any wireless facility that is not a small cell facility on a new structure
- Applications are deemed approved if the City does not act timely



AREPs, Part 3:

- Disapproval of AREPs not allowed on the basis of:
 - applicant's decision re: its designed service, customer demand, or quality of service
 - applicant's specific need for the project
 - the wireless technology involved
- If an AREP is disapproved, the City must:
 - provide a written statement stating all reasons
 - state in writing any modifications that would permit the City to approve the project
 - not unreasonably discriminate between providers
 - publicly release within 30 days substantial record evidence in writing that supports the action



AREPs, Part 4:

- If the AREP requests:
 - a. the modification of an existing wireless support structure; or
 - b. co-location of new transmission equipment; or
 - c. removal or replacement of transmission equipment; and
- that request does not substantially change the physical dimensions, then the City may not deny it and shall approve it within 60 days
- What does “SUBSTANTIAL CHANGE” mean?
 - For a new antenna array outside the R-O-W, the FCC says it is not a “substantial change” if there is no more than 20 feet of separation from the top of the nearest existing antenna to the bottom of the proposed new antenna



AREPs, Part 5:

- **Disapprovals**---Disapproval of AREPs are allowed:
 - if the proposed height exceeds 50 feet and the City follows a local ordinance that does not unreasonably discriminate between providers
- **Aesthetics**---Nothing prohibits an applicant from voluntarily submitting, and the City from accepting, any conditions that address potential visual or aesthetic effects resulting from the placement of a new structure or facility
- **2020 Bone to Localities**---The City can disapprove an AREP if the applicant has failed to give written notice to all adjacent property owners within at least 15 days before filing the application (this provision also applies to Standard Process Projects)



Standard Process Projects:

- **“. . . Any project that is not an administrative review-eligible project.”**



Standard Process Projects, Part 1:

- CUPs can be required
- Fee limits:
 - must be reasonable
 - cannot exceed City's actual direct costs
 - no market-based or value-based fees
 - no direct payment or 3rd party fees
- Application deemed complete if City acts late
- Can be disapproved on the basis of availability of an existing wireless support structure within a reasonable distance
- Any disapproval must be in writing and state the reasons



Standard Process Projects, Part 2:

THESE ARE THE SAME AS THE REQUIREMENTS FOR AREPS:

- 150 days to act on an application for a new structure
- 60 days to act on an application for a modification, a co-location, removal or replacement of equipment if application does not substantially change the physical dimensions of the structure
- 90 days to act on the co-location on an existing structure of any wireless facility that is not a small cell facility and substantially changes the physical dimensions
- applications are deemed approved if the City does not act timely
- the Applicant can agree to extend deadline, but City cannot extend unilaterally



Standard Process Projects, Part 3:

SAME REQUIREMENTS AS FOR AREPS:

- **Disapproval of Standard Process Projects not allowed on the basis of:**
 - applicant's decision re: its designed service, customer demand, or quality of service
 - applicant's specific need for the project
 - the wireless technology involved
- **If a Standard Process Project is disapproved, the City must:**
 - provide a written statement stating all reasons
 - state in writing any modifications that would permit the City to approve the project
 - not unreasonably discriminate between providers
 - publicly release within 30 days substantial record evidence in writing that supports the action



Standard Process Projects, Part 4:

SAME REQUIREMENTS AS FOR AREPS:

- **If the Standard Process Project requests:**
 - a. the modification of an existing wireless support structure; or**
 - b. co-location of new transmission equipment; or**
 - c. removal or replacement of transmission equipment; and**
- **that request does not substantially change the physical dimensions, then the City may not deny it and shall approve it within 60 days**



Standard Process Projects, Part 5:

- **“SUBSTANTIAL CHANGE”** here means the same as for AREPs:
 - For a new antenna array outside the R-O-W, the FCC says it is not a “substantial change” if there is no more than 20 feet of separation from the top of the nearest existing antenna to the bottom of the proposed new antenna
- **APPLICANTS AUTOMATICALLY GET AT LEAST 20 EXTRA FEET OF HEIGHT**
- Disapprovals---Disapproval of AREPs are allowed:
 - if the proposed height exceeds 50 feet and the City follows a local ordinance that does not unreasonably discriminate between providers
- **2020 Bone to Localities also applies**



Permitted Uses:

- **All Small Cell Facilities in all districts**
- **All AREPs in all districts (50 feet or less in height)**
- **Any wireless facility or structure in the B-1 District 100 feet or less**
- **Any wireless facility or structure in the B-3, B-5, IN-2, I-1, I-2, and I-3 Districts 150 feet or less**
- **Any base station for a lawfully existing wireless facility or structure meeting specified requirements**
- **Any co-location on an existing structure meeting specified requirements**



Conditional Use Permits Required:

- **Standard Process Projects between 50 and 150 feet in height in the R-C, R-1, R-2, R-3, R-4, IN-1, and B-4 Districts**
- **Standard Process Projects that exceed 100 feet in height in the B-1 District, but no greater than 150 feet**
- **Standard Process Projects that exceed 150 feet in height in the B-3, B-5, IN-2, I-1, I-2, and I-3 Districts**
- **Standard process project base stations meeting specified requirements**
- **Any co-location on an existing structure that increases the height of the facility, but any height increase is limited to no more than 15 feet**
- **Any other standard process project**



Setbacks:

- In the R-C, R-1, R-2, R-3, R-4, IN-1, and B-4 Districts: minimum setback is the height of the structure
- In the B-1, B-3, B-5, IN-2, I-1, I-2, and I-3 Districts: if parcel adjacent to any parcel zoned R-C, R-1, R-2, R-3, R-4, IN-1, or B-4, the minimum setback is the height of the structure
- In the B-1, B-3, B-5, IN-2, I-1, I-2, and I-3 Districts: if structure is 50 feet or less in height, the setback is the minimum setback for the applicable district
- In the B-1, B-3, B-5, IN-2, I-1, I-2, and I-3 Districts: if structure is 50 feet or more in height, the minimum setback is $\frac{1}{2}$ the height of the structure



Standards for CUP's – Standard Process Projects Only:

- **Substantial conformance with the Comprehensive Plan**
- **No significant adverse impact on use and enjoyment of nearby properties**
- **No significant negative impact on property values**
- **No material potential interference with pre-existing facilities or for future planned facilities planned or designed for a specific location or any reserved for future public safety facilities**
- **No significant adverse impact on public safety or public service needs**
- **No available and existing wireless support structures nearby**
- **Not in conflict with the City historic district ordinance**
- **Satisfies all other applicable requirements**



Setbacks for Similar Structures:

- Virginia law provides that the City cannot impose a setback or fall zone requirement that is larger than the setback or fall zone requirement “that is imposed on other types of similar structures of a similar size, including utility poles.
- As a result, we propose establishing setbacks for wireless support structures that provide the same setbacks for wireless support structures as are applied to light poles, utility poles, and flag poles of a similar size.



Setbacks for Similar Structures:

- No setback for flag poles, light poles or utility poles (“poles”) that are less than 35’ in height.
- Poles greater than 35’ in height set back at a 1:1 in R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 Districts.
- Poles greater than 35’ in height in B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District and adjacent to R-C, R-1, R-2, R-3, IN-1 or B-4 District set back at 1:1
- Poles in the B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District between 35’ and 50’ must meet underlying district setback
- Poles in the B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District greater than 50’ set back at least $\frac{1}{2}$ the height of the pole.
- Measured from base of pole to the property line



Discussion:

Discussion

Amendments to the Telecommunications Ordinance and Setbacks for Flag Poles, Light Poles, & Utility Poles December 9, 2020

PLEASE PRINT CLEARLY

[illegible]

The Lynchburg Planning Commission will hold a public hearing for citizen comment on December 9, 2020, at 4:00 p.m., in the Council Chamber, first floor, City Hall, 900 Church Street, on the following matters:

Petition of Jefferson House LLC for a conditional use permit at 1818 Langhorne Square to allow the construction of sixty-five senior housing units in a B-3, Community Business District.

City Council is tentatively scheduled to hear this petition on January 12, 2021, at 7:30 p.m., in City Council Chamber, first floor, City Hall, 900 Church Street.

Consideration of amending Section 35.2-61.2 of the City of Lynchburg Zoning Ordinance Additional Height Regulations, by adding section (d) Flag Poles, Light Poles and Utility Poles. The proposed amendment would:

- (1) establish that there shall be no setback requirement for any flag pole, light pole or utility pole that is thirty-five (35) feet or less in height;
- (2) provide that any flag pole, light pole or utility pole greater than thirty-five (35) feet in height and located in the R-C, Conservation District, R-1, Low Density Residential District, R-2, Low-Medium Density Residential District, R-3, Medium Density Residential District, R-4, High Density Residential District, IN-1, Institutional 1 District or B-4, Urban Commercial District shall be required to set back a distance from all property lines at least the height of the pole;
- (3) provide that any flag pole, light pole or utility pole greater than thirty-five (35) feet in height and located in the B-1, Limited Business District, B-3, Community Business District, B-5, General Business District, IN-2, Institutional 2 District, I-1, Restricted Industrial District, I-2, Light Industrial District or I-3, Heavy Industrial District, that is adjacent to any parcel that is zoned R-C, R-1, R-2, R-3, R-4, IN-1, or B-4 shall be required to set back a distance at least the height of the pole from any land zoned R-C, R-1, R-2, R-3, R-4, IN-1, or B-4;
- (4) provide that any flag pole, light pole or utility pole located in the B-1, B-3, B-5, IN-2, I-1, I-2, or I-3 District that is greater than thirty-five (35) feet in height but less than fifty (50) feet in height shall be required to set back a distance from all property lines at least the minimum applicable setback for the district in which it is located;
- (5) provide that any flag pole, light pole or utility pole in the B-1, B-3, B-5, IN-2, I-1, I-2, or I-3, that is greater than fifty (50) feet in height shall be required to set back a distance from all property lines at least one-half (1/2) the height of the pole; and
- (6) provide that setbacks for flag poles, light poles and utility poles shall be measured from the base of the pole to the property lines of the parcel on which the pole is located.

Consideration of proposed amendments to the City of Lynchburg Zoning Ordinance that seek to repeal Zoning Ordinance Chapters 35.2-73.1 through 35.2-73.20 of the City of Lynchburg Zoning Ordinance related to Telecommunication Towers. Simultaneous with the repeal of the foregoing chapters, the

proposed amendments also propose consideration of the adoption of new Zoning Ordinance Chapters 35.2-73.1 through 35.2-73.26 pertaining to Telecommunications Facilities. The proposed amendments shall be referred to herein as the “Telecommunications Facilities Ordinance.”

The purpose and intent of the proposed amendments is to facilitate the provision of telecommunication services, recognize that telecommunication facilities are a necessary part of communication networks, regulate the location of telecommunication facilities, protect property from significant adverse impact, implement the provisions of the City’s Comprehensive Plan while being in compliance with State & Federal Law, minimize, where possible, adverse visual impact of telecommunications facilities, promote co-location of such facilities, promote and encourage the location of telecommunications facilities in commercial and industrial areas, ensure that telecommunications facilities are compatible with other land uses in the vicinity, allow telecommunications facilities as a matter of right, where appropriate, provide greater scrutiny of requests for telecommunications facilities when their size, design, and location may result in greater impacts on surrounding uses, encourage the utilization of smaller telecommunications facilities in order to reduce their impact on the surrounding area, reduce the need for larger and taller telecommunications facilities through the co-location of such facilities on new structures and, where feasible, on existing structures, avoid potential damage to the use and enjoyment of property by ensuring that telecommunication facilities are soundly, safely, and carefully designed, constructed, and maintained and, where no longer structurally sound, removed, and require the removal of telecommunications facilities when they are no longer used to support telecommunications facilities and no longer retain any other legitimate purposes.

The provisions of the proposed Telecommunications Facilities Ordinance shall be applicable to all land within the boundaries of the City of Lynchburg, however, the proposed Ordinance amendments shall not apply to any “small cell facility” within the City’s right-of-way or on any City-owned property which are regulated by separate provisions in the City Code.

The proposed Telecommunications Facilities Ordinance will classify facilities into three categories and provide application submission, processing, timing, and fee requirements for: Small Cell Facilities, Administrative Review-Eligible Projects and Standard Process Projects.

A Small Cell Facility is proposed to be defined in the same way a “small cell facility” is defined in Virginia Code § 15.2-2316.3. A small cell facility is one that satisfies both of the following qualifications: each antenna is located inside an enclosure of no more than six cubic feet of volume or, if the antenna has exposed elements, the antenna and all exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and all other wireless equipment has a cumulative volume of no more than 28 cubic feet, or such higher limit as may be established by the Federal Communications Commission. Small cell facilities are proposed to be permitted by right in all Zoning Districts.

Administrative Review–Eligible Projects are proposed to be defined in the same way “administrative review-eligible projects” are defined in Virginia Code § 15.2-2316.3, which provides, that such projects include 1. The installation or construction of a new structure that is not more than 50 feet above ground level, provided that the structure with attached wireless facilities is (i) not more than 10 feet

above the tallest existing utility pole located within 500 feet of the new structure within the same public right-of-way or within the existing line of utility poles; (ii) not located within the boundaries of a local, state, or federal historic district; (iii) not located inside the jurisdictional boundaries of a locality having expended a total amount equal to or greater than 35 percent of its general fund operating revenue, as shown in the most recent comprehensive annual financial report, on undergrounding projects since 1980; and (iv) designed to support small cell facilities; or 2. The co-location on any existing structure of a wireless facility that is not a small cell facility.

The proposed amendments also provide that the term “administrative review-eligible project” shall also include eligible facilities requests as that term is defined by federal law in 47 Code of Federal Regulations 1.6100.

Administrative Review-Eligible Projects are proposed to be permitted by right in all Zoning Districts.

Standard Process Projects are proposed to be defined in the same way “standard process projects” are defined in Virginia Code § 15.2-2316.3, which states that such projects include any project that is not an administrative review-eligible project.

A Standard Process Project which proposes a wireless facility or structure in the B-1, Limited Business District, that is one hundred feet or less, or a wireless facility or structure in the B-3, Community Business District, B-5, General Business District, IN-2, Institutional 2 District, I-1, Restricted Industrial District, I-2, Light Industrial District or I-3, Heavy Industrial District, that is one hundred fifty (150) feet or less is proposed to be a use permitted by right in those districts.

A Standard Process Project which proposes a wireless facility or structure between fifty (50) feet and one hundred fifty feet in height in the R-C, Conservation District, R-1, Low Density Residential District, R-2, Low-Medium Density Residential District, R-3, Medium Density Residential District, R-4, High Density Residential District, IN-1, Institutional 1 District or B-4, Urban Commercial District, or a wireless facility or structure exceeding one hundred feet but no greater than one hundred fifty (150) feet in the B-1, Limited Business District, or a Standard Process Project that exceeds one hundred fifty (150) feet in the B-3, Community Business District, B-5, General Business District, IN-2, Institutional 2 District, I-1, Restricted Industrial District, I-2, Light Industrial District or I-3, Heavy Industrial District is proposed to require approval of a conditional use permit by the City Council.

In accordance with the adoption of the proposed amendments, the “Approval Type” for “wireless telecommunications transmission” that is stated in each exhibit/chart for each applicable zoning district (for example, please see Exhibit IV-1 for the R-C District) shall be revised in order to state the “Approval Type” (“C” for “Conditional Use Permit” and/or “P” for “Permitted”) for each zoning district consistent with the terms of the proposed amendments.” Thus, if under the proposed amendments a wireless telecommunications facility may be allowed with a Conditional Use Permit (“C”) or may be Permitted (“P”), depending on the circumstances, then the “Approval Type” in the exhibit/chart for each district shall be stated as follows: “P/C”. If such facilities are only allowed by Conditional Use Permit, a “C” will be inserted in the applicable exhibit, and if such facilities are only Permitted, a “P” will be inserted in the applicable exhibit.

Setbacks for wireless facilities and structures are proposed as follows:

Wireless facilities and structures that are less than thirty-five (35) feet in height would require no setback in all Zoning Districts.

Wireless facilities and structures greater than thirty-five (35) feet in height and located in the R-C, Conservation District, R-1, Low Density Residential District, R-2, Low-Medium Density Residential District, R-3, Medium Density Residential District, R-4, High Density Residential District, IN-1, Institutional 1 District, or the B-4, Urban Commercial District, are proposed to be required to set back at least one (1) foot for each one (1) foot in height from all property lines.

Wireless facilities and structures between thirty-five (35) feet and fifty (50) feet in height and located in the B-1, Limited Business District, B-3, Community Business District, B-5, General Business District, IN-2, Institutional 2 District, I-1, Restricted Industrial District, I-2, Light Industrial District or I-3, Heavy Industrial District are proposed to be required to meet the underlying district setback.

Wireless facilities and structures greater than fifty (50) feet in height and located in the B-1, Limited Business District, B-3, Community Business District, B-5, General Business District, IN-2, Institutional 2 District, I-1, Restricted Industrial District, I-2, Light Industrial District or I-3, Heavy Industrial District, are proposed to be required to set back one-half (1/2) the height of the tower from all property lines.

Setbacks are proposed to be measured from the base of the structure to the property line.

The proposed amendments also include requirements and terms applicable to the use of City-owned property for wireless facilities, interference with public safety radio services, structural requirements for telecommunications facilities, the method of determining the height of a wireless support structure, illumination of telecommunications facilities, the exterior finish of telecommunications facilities, the landscaping on parcels containing telecommunications facilities, security of telecommunications facilities, access to parcels containing telecommunications facilities, maintenance of telecommunications facilities, the City's preference for telecommunications facilities with a stealth design, the modification, demolition, and rebuilding of telecommunications facilities, abandonment of telecommunications facilities and removal requirements applicable thereto, the allowance of voluntary conditions, the exemption of micro-wireless facilities from the proposed amendments, and a reservation of rights of the City with respect to telecommunications facilities.

The proposed amendments are tentatively scheduled to go to a City Council work session on January 12, 2021 and to a City Council public hearing on February 9, 2021 at 7:30 p.m., in City Council Chamber, first floor, City Hall, 900 Church Street.

A copy of all draft ordinances, Future Land Use Map amendments, rezoning, conditional use permit petitions or any other matter advertised by this legal notice may be viewed in the Department of Community Development, Planning Division, second floor, City Hall, 900 Church Street between the hours of 8:30 a.m. to 5:00 p.m. or on the internet at www.lynchburgva.gov. At the conclusion of the

public hearing, the Planning Commission/Council will consider adopting each item advertised by this legal notice. For additional information, contact the Planning Division at 455-3900.

6. If at any time evidence is provided that the lot or parcel is being used other than in compliance with these regulations, the property owner may be cited for violation of this zoning ordinance.
7. Copies of the business license and all applicable permits shall be kept in the food truck, trailer or cart at all times.

Section 72 Updates: Ord. No. O-17-013, 2-14-17

35.2-73 Telecommunications Towers

35.2-73.1 Findings

- (a) The City has the authority to regulate the placement, construction, and modification of towers, antennas support structures, and telecommunications facilities.
- (b) The federal communications act of 1934 as amended by the telecommunications act of 1996 ("the act") grants the federal communications commission ("FCC") exclusive jurisdiction over:
 1. The regulation of the environmental effects of radio frequency emissions from telecommunications facilities.
 2. The regulation of radio signal interference among users of the radio frequency spectrum.
- (c) The City's regulation of towers and telecommunications facilities cannot have the effect of prohibiting any person from providing wireless telecommunications services in violation of the act.

35.2-73.2 Purposes.

The general purpose of this article is to regulate the placement, construction, and modification of towers and telecommunications facilities in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in Lynchburg. Specifically, the purposes of this article are:

- (a) To facilitate the provision of wireless telecommunications services to the residents and businesses of the City in an orderly fashion;
- (b) To regulate the location of towers and telecommunications facilities in the City;
- (c) To protect residential areas and land uses from potential adverse impact of towers and telecommunications facilities;

- (d) To minimize adverse visual impact of towers and telecommunications facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
- (e) To promote and encourage shared use/collocation of towers and antenna support structures as a primary option rather than construction of additional single-use towers;
- (f) To avoid potential damage to property caused by towers and telecommunications facilities by ensuring that such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or determined to be structurally unsound;
- (g) To ensure that towers and telecommunications facilities are compatible with surrounding land uses;
- (h) To promote the location of towers in industrial and business, rather than residential areas.

35.2-73.3 Development and approval of towers.

- (a) A tower and associated telecommunications facilities shall be a permitted use of land in business and industrial districts (B-1 through B3, B-5, and I-1 through I-3). A conditional use permit from the City Council shall be required for applicants seeking to locate towers, regardless of height, and related telecommunications facilities, in business districts zoned as B-4 and B-6 and in conservation and residential districts designated R-C through R-5. No structure, regardless of design or material, shall be permitted in any residential district as a telecommunications facility, except small equipment cabinets located on the tower or on the ground immediately adjacent to a telecommunications facility, provided they do not exceed seventy-two cubic feet above ground, and six feet in height. If another company collocates its antenna on the same tower, each company is permitted to have a small equipment cabinet of this size. Any proposal exceeding these parameters shall be subject to review by the City Council as part of a conditional use permit application. Application shall be made to the City Planner in the manner provided in Article II of this Zoning Ordinance. In districts for which a conditional use permit is required, the City Council shall make its decision to grant or deny such permit in writing and in a manner consistent with applicable state and federal law.
- (b) Existing towers are exempt from the maximum height restrictions of the districts where located. New towers shall not exceed a maximum height of fifty (50) feet in any residential district, one hundred (100) feet in a B-1 district, or one hundred fifty (150) feet in any other commercial or industrial district, unless the City Council approves a conditional use permit authorizing a maximum height in excess of these limits
- (c) The City may authorize the use of City property in appropriately zoned districts in accordance with the procedures of the City charter and code. The City shall have no obligation whatsoever to use City property for such purposes.

(d) No new tower shall be built, constructed, or erected in the City unless such tower, including the ground area for associated telecommunications facilities, is capable of supporting another person's operating telecommunications facilities comparable in weight, size, and surface area to the applicant's telecommunications facilities. For purposes of this section, the "applicant's facilities" shall mean those installed within six months of completion of tower construction. These provisions are encouraged for, but need not apply to, towers no greater than 50 feet in height.

(e) An application to develop a tower shall include:

1. The name, address, and telephone number of the applicant. If the applicant is not the owner of the parcel of land upon which the tower is situated, the written consent of the owner, and the name, address, telephone number of the owner, shall be evidenced in the application. The application shall also contain an affirmative statement indicating that both the owner and applicant are aware of and agree to comply with the provisions in section 35.2-73.19 of this Zoning Ordinance regarding abandonment.
2. The legal description, valuation map number, and address of the parcel of land upon which the tower is situated.
3. The names, addresses, and telephone numbers of all tower owners with towers or usable antenna support structures within a one (1) mile radius of the proposed new tower site, including City-owned property.
4. Written documentation that the applicant made diligent, but unsuccessful, efforts for permission to install or collocate the applicant's telecommunications facilities on City-owned towers or usable antenna support structures located within a one (1) mile radius of the proposed tower site.
5. Written documentation that the applicant made diligent, but unsuccessful, efforts to install or collocate the applicant's telecommunications facilities on existing or proposed towers, and their ground area, or usable support structures owned by other persons located within a one (1) mile radius of the proposed tower site.
6. Written, technical evidence from a radio frequency engineer that the proposed tower or telecommunications facilities cannot be installed or collocated on another person's tower or usable antenna support structure located within a one (1) mile radius of the proposed tower site and must be located at the proposed site in order to meet the coverage requirements of the applicant's wireless communications system.
7. Written, technical evidence from a structural engineer that the proposed structure meets the standards set forth in this code, including but not limited to the requirements set forth in sections Article I 35.2-73.3(d) and 35.2-73.6.

8. Written, technical evidence from a radio frequency engineer that the proposed facilities meet the standards set forth in this code, including, but not limited to, the requirements set forth in section 35.2-73.4.
9. Written, technical evidence from an electrical engineer that the proposed site of the tower or telecommunications facilities does not pose a risk of explosion, fire, or other danger due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.
10. A map of the City and the first half-mile of all bordering communities showing the design of the applicant's entire existing or proposed wireless telecommunications network. Such map shall, at minimum, indicate the general location of all proposed or existing tower and antenna sites, their dimensions, specifications, and signal area coverage.
11. Color photo simulations showing the proposed site of the tower with a photo-realistic representation of the proposed tower as it would appear viewed from the closest residential property or properties and from adjacent roadways.
12. An application fee that represents the site plan fee and conditional use fee otherwise required. The City reserves the right to employ an outside consultant to review any application. The applicant shall reimburse the City for the reasonable expenses related to such review as an additional application fee.
13. A site plan, including a description of the lot lines, setbacks, location of adjacent structures, proposed location of the tower, separation distances, proposed tower height, landscaping, screening, access, parking, and security.
14. An acknowledgment that the applicant currently complies and will continue to comply with all FCC standards, including reporting requirements regarding radio frequency emissions.
15. When seeking approval of a telecommunication tower or facility, the applicant shall furnish written documentation that:
 - a. The proposed communication tower is reasonably necessary to serve an adjacent residential area or areas;
 - b. Any variance (or conditional use permit) sought is the minimum necessary to address the need for the variance (or conditional use permit), subsequent to exploring all reasonable siting alternatives;
 - c. The location of the communication tower in relation to the existing structures, trees and other visual buffers shall minimize, to the greatest extent reasonably practicable under the circumstances, any impact on affected residentially zoned property;

- d. The location of the communication tower will not have a significant detrimental impact on adjacent property values; and
- e. Any other factors that the applicant deems to be relevant to the City's consideration of a tower or facility siting.
- f. All information submitted with an application that is trade secret information or is for other reasons proprietary shall be clearly marked as such when submitted with an application. The City shall not disclose publicly, or to any third party, proprietary information unless compelled to do so by federal, state, or local law.

35.2-73.4 Interference with Public Safety Radio Services

In order to ensure that the City's public safety radio services will be free from harmful or destructive interference, all applicants requesting a permit to site a tower or telecommunications facilities must:

- (a) Demonstrate compliance with good engineering practices;
- (b) Provide the City a copy of all intermodulation studies submitted to the FCC;
- (c) Not induce harmful or destructive interference to the City's public safety radio services;
- (d) Comply with FCC regulations regarding susceptibility to radio frequency interference, frequency coordination requirements, general technical standards for power, antenna, bandwidth limitations, frequency stability, transmitter measurements, operating requirements, and any and all other federal statutory and regulatory requirements relating to radio frequency interference (RFI); and
- (e) In the case of co-location of telecommunications facilities either in the same location or on the same tower as the City's, comply with FCC emissions requirements and not radiate any RFI or any electromagnetic interference (EMI) that may interfere with the City's public safety radio services.

35.2-73.5 Setbacks and Fall Zones

(a) Setbacks

1. All towers and any telecommunications facilities in any business and industrial zoning districts shall be set back on all sides a distance equal to the underlying building setback requirement in the applicable zoning district. All towers in residential zoning districts shall be set back on all sides a distance equal to the tower height. In addition, in order to preserve the aesthetics of residential areas and to maintain property values, whenever a tower is located in a residential district, the tower shall be located a distance at least equal to twice the height of the tower from any adjacent property lines. When a tower is located in a commercial district

or industrial district, the tower shall be located a distance at least equal to twice the height of the tower from any residential district.

2. Setback requirements for towers shall be measured from the base of the tower to the property line of the parcel on which it is located.

(b) Fall Zones

1. Every tower shall be designed to fall within the boundaries of the parcel on which the tower is located. The applicant shall submit written certification and supporting documentation from a structural engineer that a tower proposed for a residential area will fall within the specified fall zone. In the case of towers located in commercial or industrial areas that are specified and certified by a structural engineer to be collapsible or incapable of failure, the Zoning Administrator may reduce the fall zone accordingly.
2. In those instances, in which there is a conflict between the required setback and the required fall zone, the greater distance shall apply.

35.2-73.6 Structural Requirements

All towers must be designed and certified by a structural engineer to be structurally sound and, at minimum, in conformance with the statewide uniform building code, and any other standards outlined in this article.

35.2-73.7 Separation or Buffer Requirements

- (a) Towers shall be separated from all residentially zoned lands and all residences (irrespective of zoning classification) by a minimum distance equal to one hundred percent (100%) of the height of the proposed tower.
- (b) Tower separation distances for the purpose of compliance with this article shall be measured from the base of a tower to the closest point of a designated area. The minimum tower separation distance shall be calculated and applied irrespective of City and county jurisdictional boundaries.

35.2-73.8 Method of Determining Tower Height

Measurement of tower height for the purpose of determining compliance with all requirements of this article shall include the tower structure itself, the base pad, and any other telecommunications facilities attached thereto which extend over the top of the tower structure itself. Tower height shall be measured from grade.

35.2-73.9 Illumination

Towers shall not be artificially lighted except as required by the federal aviation administration ("FAA"). Upon commencement of construction of a tower, in cases where there are residential

uses located within a distance equal to the height of the tower from the tower, and when required by federal law, dual mode lighting shall be requested from the FAA.

35.2-73.10 Exterior Finish

Towers not requiring FAA painting or marking shall be painted a neutral color (galvanized finish is considered a neutral color).

35.2-73.11 Landscaping

All landscaping on parcels containing towers, antenna support structures, or telecommunications facilities shall be designed to screen the tower, antenna support structure, and telecommunications facilities to a height of at least six (6) feet from grade. This requirement may be waived at the discretion of the inspections division if the base of the tower and facilities to be screened are not located in and not visible from any business or residential districts or visible from public streets. All landscaping must be continually maintained in a healthy and attractive manner.

35.2-73.12 Security

All towers must be reasonably posted and secured to protect against trespass.

35.2-73.13 Access

All parcels upon which towers are located must provide access during normal business hours to at least one (1) paved vehicular parking space(s) on site.

35.2-73.14 Certifications and Inspections

- (a) All towers shall be certified by an engineer to be structurally sound and in conformance with the requirements of the City building code and all other construction standards set forth by the City code and federal and state law. For new monopole towers, such certification shall be submitted with an application pursuant to section 35.2-73.3(e) and every five (5) years thereafter; for existing monopole towers, such certification shall be submitted within sixty (60) days of the effective date of this article and then every five (5) years thereafter; for new lattice or guyed towers, such certification shall be submitted with an application pursuant to section 35.2-73.3(e) and every two (2) years thereafter; and for existing lattice or guyed towers, such certification shall be submitted within sixty (60) days of the effective date of this article and then every two (2) years thereafter. The tower owner may be required by the City to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the tower is jeopardized.
- (b) The City and its agents shall have authority to enter onto the property upon which a tower is located, between the inspections and certifications required above, to inspect the tower for the purpose of determining whether it complies with the statewide

building code and all other construction standards provided by the City code and federal and state law.

- (c) (The City reserves the right to conduct such reasonable and necessary inspections, upon reasonable notice to the tower owner. All expenses by the City related to such inspections shall be borne by the tower owner if any unresolved defects exist.
- (d) The tower or telecommunication facilities owner shall certify to the City on an annual basis that it is in compliance with all of the requirements of this article, including the requirements set forth in Sec. 35.2-73.15.

35.2-73.15 Maintenance

- (a) Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- (b) Tower owners shall install and maintain towers, telecommunications facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the national electric safety code and all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
- (c) All towers, telecommunications facilities, and antenna support structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any person.
- (d) All telecommunication facilities shall maintain compliance with current radio frequency emission standards of the FCC.
- (e) In the event the use of a tower is discontinued by the tower owner, or in the event a tower owner files notice to the FCC of its interest to cease operating the tower owner shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued.

35.2-73.16 Stealth

All towers and telecommunications facilities in business and residential districts shall be of stealth design.

35.2-73.17 Telecommunications Facilities on Antenna Support Structures

- (a) Any telecommunications facilities which are not attached to a tower may be permitted as an accessory use to any antenna support structure at least thirty (30) feet tall, regardless of the zoning restrictions applicable to the zoning district where the structure is located. Telecommunications facilities are prohibited on all other structures.

- (b) The owner of such structure or telecommunication facilities shall, by written certification, graphic representation, and detailed plans to the technical review committee verify that:
1. The antenna support structure and telecommunications facilities comply with the statewide building code;
 2. Any telecommunications facilities and their appurtenances, located upon the roof of an antenna support structure, are set back a distance at least equal to the height of the telecommunications facilities. However, this setback requirement shall not apply to telecommunications facilities and their appurtenances, located above the roof of an antenna support structure, if such facilities are appropriately screened from view through the use of screening techniques that are compatible with the surrounding built environment and approved by the City. Setback requirements shall not apply to stealth antennas which are mounted to the exterior of antenna support structures below the roof, but which do not protrude more than twenty-four (24) inches from the side of such an antenna support structure; and
 3. All applicable standards of this article are being met.

35.2-73.18 Existing Towers

- (a) An existing tower may be modified or demolished and rebuilt to accommodate collocation of additional telecommunications facilities as follows:
1. Application for a permit shall be made to the division of inspections which shall have the authority to issue a permit without further approval by the City Council.
 2. The total height of the modified tower and telecommunications facilities attached thereto shall not exceed the lesser of the height of the existing tower or the maximum height for towers allowed under this article.
 3. A tower which is being rebuilt to accommodate the collocation of additional telecommunications facilities may be relocated on the same parcel subject to the setback requirements of this article. However, if it is impossible for the tower to be rebuilt in compliance with the setback requirements of this article, such set back requirements shall require approval of a variance from the Board of Zoning Appeals to allow the tower to be rebuilt in its exact previous location.

35.2-73.19 Abandonment

- (a) If the City receives notice pursuant to section 35.2-73.15, or if any tower shall cease to be used for a period of three hundred sixty-five (365) consecutive days, the division of inspection shall notify the owner, with a copy to the applicant, that the site will be subject to a determination by the division of inspection that such site has been abandoned. The owner shall have thirty (30) days from receipt of said notice to show by a preponderance of the evidence that the tower has been in use or under repair during

the period. If the owner fails to show that the tower has been in use or under repair during the period, the division of inspection shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the owner shall, within seventy-five (75) days, dismantle and remove the tower. If an owner fails to remove an abandoned tower within seventy-five (75) days of the final determination of abandonment, the City may dismantle and remove the tower and recover the costs of the same from the owner or by accessing the bond set forth below. For the purposes of this section, removal includes all physical improvements associated with towers, including foundation and tower grounding.

- (b) To secure the obligation set forth above, the owner shall post a bond or provide a letter of credit in an amount to be determined by the City's risk manager based on the anticipated cost of removal of the tower.

35.2-73.20 Reservation of Rights

The City reserves the right to impose any other reasonable conditions it determines are necessary for the proper placement, construction, or modification of towers or facilities, and/or to impose any other reasonable conditions on the issuance of a conditional use permit for placement, construction, or modification of a tower or facilities.

ORDINANCE:

#O-21-009

AN ORDINANCE REPEALING CHAPTER 35.2-73, WHICH COMPRISES §§ 35.2-73.1 THROUGH 35.2-73.20, AND ADOPTING A NEW CHAPTER 35.2-73, WHICH COMPRISES §§ 35.2-73.1 THROUGH 35.2-73.26, PERTAINING TO TELECOMMUNICATIONS FACILITIES.

WHEREAS, City staff has proposed and recommends approval of an Ordinance that will create a new Chapter 35.2-73 of the current City of Lynchburg Zoning Ordinance, which comprises Sections 35.2-73.1 through 35.2-73.26 and pertains to Telecommunications Facilities ("the proposed Ordinance"); and

WHEREAS, on November 11, 2020, the Planning Commission of the City of Lynchburg held a work session on the proposed Ordinance; and

WHEREAS, on December 9, 2020, the Planning Commission held a public hearing on the proposed Ordinance to consider and address the proposed Ordinance and to receive public comment; and

WHEREAS, after its public hearing on the proposed amendments on December 9, 2020, the Planning Commission recommended that the City Council approve the proposed Ordinance; and

WHEREAS, City Council conducted a work session on the proposed Ordinance on January 12, 2021; and

WHEREAS, on February 9, 2021, City Council held a public hearing to consider and address the proposed Ordinance and to receive public comment; and

WHEREAS, City Council finds that the proposed Ordinance should be adopted in order to promote the public necessity, convenience, welfare and good zoning practice.

NOW THEREFORE BE IT ORDAINED, by the City Council of the City of Lynchburg, Virginia that Chapter 35.2-73 of the current City of Lynchburg Zoning Ordinance, which comprises Sections 35.2-73.1 through 35.2-73.20, is hereby repealed.

NOW THEREFORE, BE IT FURTHER ORDAINED, by the City Council of the City of Lynchburg, Virginia, that Chapter 35.2-73 of the Code of the City of Lynchburg, Virginia, is hereby adopted as follows:

§ 35.2-73 TELECOMMUNICATIONS FACILITIES

§ 35.2-73.1 Purpose and Intent.

The purpose and intent of this chapter is to create and implement regulations and requirements for the placement, construction, modification, and removal of wireless support structures, wireless facilities, and base stations in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of a competitive wireless telecommunications marketplace in the City. Specifically, the purposes of this chapter are:

- (a) To facilitate the provision of wireless telecommunications services to the residents and businesses of the City in an orderly fashion;
- (b) To recognize and acknowledge that wireless telecommunications facilities, including their support structures and related equipment, have become a necessary part of today's personal and commercial communications networks;
- (c) To regulate the location of wireless support structures, wireless facilities, and base stations in the City;
- (d) To protect residential, commercial, and industrial areas and land uses from any significant potential adverse impact that may result from the establishment and operation of wireless support structures, wireless facilities and base stations;
- (e) To implement the provisions of the City's Comprehensive Plan with respect to the establishment of wireless support structures, wireless facilities, and base stations in the City;
- (f) To minimize, when possible, the adverse visual impact of wireless support structures, wireless facilities, and base stations through careful design, siting, landscaping, and innovative camouflaging techniques to enhance the ability of such, support structures, facilities, and base stations to be compatible with residential, commercial, and industrial uses;
- (g) To promote and encourage the co-location on and around wireless support structures of multiple wireless facilities and base stations in order to reduce, when possible, the need for additional such structures and facilities;
- (h) To promote and encourage the location of wireless support structures, wireless facilities, and base stations in commercial and industrial areas, rather than residential areas;

- (i) To ensure that wireless support structures, wireless facilities, and base stations are compatible with other land uses in the vicinity;
- (j) To allow wireless support structures, wireless facilities, and base stations as a matter of right, where appropriate, and with minimal administrative requirements when the size, design, and location of such support structures, facilities, and base stations does not result in any significant adverse impacts to other uses or any significant adverse impact to the property values of nearby properties;
- (k) To provide greater scrutiny of requests for wireless support structures, wireless facilities, and base stations when their size, design, and location may result in greater impacts on surrounding land uses and property values in order to assure that adverse impacts of such structures, facilities, and base stations and any adverse impact on the values of nearby properties are mitigated and minimized;
- (l) To encourage the providers of wireless telecommunications services to utilize smaller wireless support structures, wireless facilities, and base stations in order to reduce the overall impact of any single wireless support structure or facility on the surrounding area;
- (m) To reduce the need for larger and taller wireless support structures, wireless facilities, and base stations through the encouragement of co-location on any new structures as well as the installation, where feasible, of such facilities onto existing structures;
- (n) To avoid potential damage to the use and enjoyment of property caused by wireless support structures, wireless facilities, and base stations by ensuring that such structures, facilities, and stations are soundly, safely, and carefully designed; constructed, modified, and maintained, and, when no longer structurally sound, removed; and
- (o) To require the removal of wireless support structures, wireless facilities, and base stations that are no longer used to support wireless facilities and no longer retain any other legitimate purposes.

§ 35.2-73.2 Definitions.

As used in this Ordinance, unless the context requires a different meaning:

"Administrative review-eligible project" means a project that provides for:

1. The installation or construction of a new structure that is not more than 50 feet above ground level, provided that the structure with attached wireless facilities is (i) not more than 10 feet above the tallest existing utility pole located within 500 feet of the new structure within the same public right-of-way or within the existing line of utility poles; (ii) not located within the boundaries of a local, state, or federal historic district; (iii) not located inside the jurisdictional boundaries of a locality having expended a total amount equal to or greater than 35 percent of its general fund operating revenue, as shown in the most recent

comprehensive annual financial report, on undergrounding projects since 1980; and (iv) designed to support small cell facilities; or

2. The co-location on any existing structure of a wireless facility that is not a small cell facility;
3. The term “administrative review-eligible project” shall include eligible facilities requests as that term is defined by federal law in 47 Code of Federal Regulations 1.6100.

“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 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.

“City” means the City of Lynchburg, Virginia.

“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.

“Department” means the Virginia Department of Transportation.

“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 the City or the Department 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.

“New structure” means a wireless support structure that has not been installed or constructed, or approved for installation or construction, at the time a wireless services provider or wireless infrastructure provider applies to the City for any required zoning approval.

“New wireless support structure” has the same meaning as “new structure.”

“Project” means (i) the installation or construction by a wireless services provider or wireless infrastructure provider of a new structure or (ii) the co-location on any existing structure of a

wireless facility that is not a small cell facility. "Project" does not include the installation of a small cell facility by a wireless services provider or wireless infrastructure provider on an existing structure to which the provisions of Code Virginia § 15.2-2316.4 apply.

"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.

"Standard process project" means any project that is not an administrative review-eligible project.

"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)(i); "personal wireless service facilities" as defined in 47 U.S.C. § 332(C)(7)(ii); including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communications 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 is 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.

§ 35.2–73.3 Applicability.

The provisions of this chapter shall apply to all land within the jurisdictional boundaries of the City of Lynchburg, provided, however, that the provisions of this chapter shall not apply to any small cell facility within the City’s right-of-way or on any City-owned property. Small cell facilities within the City’s right-of-way or on any City-owned property are regulated by §§ 35–28, 35–28.1, 35–28.2, 35–28.3, 35–28.4, 35–28.5, 35–28.6, and 35–28.7 of the City Code.

§ 35.2–73.4 Small Cell Facilities.

- A. Review of Applications for Small Cell Facilities. No conditional use permit or its equivalent shall be required in the City for a small cell facility to be installed on an existing structure if a wireless services provider or wireless infrastructure provider has: (1) permission from the owner to co-locate equipment on that structure; and (2) has notified the City that such permission exists. A permit for the installation of a small cell facility shall be required before a small cell facility may be installed on an existing structure.
- B. Application Requirements for Small Cell Facilities. Applications filed by a wireless services provider or wireless infrastructure provider for administrative review of a small cell facility on an existing structure shall include the following:
1. A valid electronic mail address for the applicant.
 2. Written proof that the owner of the existing structure has given the applicant consent to install the small cell facility as proposed.
 3. The name, address, telephone number, and electronic mail address of the applicant. If the applicant is not the owner of the parcel(s) of land on which the wireless support structure, wireless facility, and/or base station is proposed to be located, then the applicant shall provide written consent of the owner, and the name, address, telephone number, and the electronic mail address of the owner.
 4. The valuation map number and address of the parcel of land on which the wireless support structure, wireless facility, and/or base station is proposed to be located.

5. A plan, drawn to scale, depicting the location and elevation of any small cell facility that is the subject of the application, with engineering drawings showing the actual size of the small cell facility and each component thereof, from which the City can reasonably determine whether the proposed facility meets the definition of a small cell facility.
6. Drawings showing where and how the small cell facility is proposed to be attached to the existing structure.
7. Written, technical evidence from a radio frequency engineer that the proposed facilities meet the standards set forth in this Ordinance, including, but not limited to, the requirements set forth in § 35.2–73.13 (Interference With Public Safety Radio Services) and will not materially interfere 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.
8. Evidence relating to any other factors the applicant believes are relevant to the City's consideration of whether the applicant's proposed small cell facility should be approved.
9. Payment of an application processing fee of \$100.00 each for up to five small cell facilities on a permit application, and payment of a fee of \$50 for each additional small cell facility on that permit application.

C. Multiple Requests on a Single Application for Small Cell Facilities. Applications filed by a wireless services provider or wireless infrastructure provider for a small cell facility to be co-located on an existing structure may include multiple such permit requests on a single application.

D. Notification of Incomplete Application for Small Cell Facilities. If an incomplete initial or resubmitted application is filed for a small cell facility to be installed on an existing structure, then the City shall notify the applicant by electronic mail that the application is incomplete and shall specify any missing information and documents in accordance with the following:

1. for an initial application, the City shall notify the applicant by electronic mail within ten (10) calendar days after receipt of a valid electronic mail address and the application that the application is incomplete and shall specify in that notification any missing information and documents; otherwise, the application shall be deemed complete; and
2. for a resubmitted application for a small cell facility to be installed on an existing structure, the City shall notify the applicant by electronic mail within ten (10) calendar days after the application is resubmitted whether the application is incomplete and shall specify in that notification any missing information and documents; otherwise, the application shall be deemed complete.

E. Deadline for Approval or Disapproval of Small Cell Facilities. The City shall approve or disapprove any application filed by a wireless services provider or wireless infrastructure provider proposing a small cell facility to be installed on an existing structure in accordance with the following:

1. any such application shall be approved or disapproved in writing within sixty (60) calendar days after receipt of the complete application;
2. if the applicant files an incomplete initial or resubmitted application and the City notifies the applicant of its incompleteness in accordance with the applicable timeframes set forth in subsection D above (Notification of Incomplete Application for Small Cell Facilities), then the time within which the City must approve or disapprove such an initial application shall be tolled for the period from the date of the submission of the initial incomplete application to the date on which the applicant files a complete application;
3. if the applicant files an incomplete resubmitted application, the time within which the City must approve or disapprove a resubmitted application shall also be tolled for the period from the date of submission of the resubmitted incomplete;
4. application to the date on which the applicant resubmits a complete application;
5. the initial sixty (60) calendar-day period for the City to approve or disapprove an application for a small cell facility proposed to be installed on an existing structure may be extended by the City in writing for a period not to exceed an additional 30 days;
6. any such application for a small cell facility proposed to be installed on an existing structure shall be deemed approved if the City fails to act within the timeframes set forth in this section;
7. any disapproval of an application for a small cell facility on an existing structure shall be in writing and accompanied by an explanation for the disapproval; and approval of a permit for any such small cell facility application shall not be unreasonably conditioned, withheld, or delayed.

F. Grounds for Disapproval of Small Cell Facilities. The City may disapprove an application filed by a wireless services provider or wireless infrastructure provider proposing the installation of a small cell facility on an existing structure for any of 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 safety of the public or other critical public service needs;

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 City 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.

G. Small Cell Facilities on New Structures. Any application for the installation of a small cell facility on a new structure shall require any approval that may be required by this chapter for that new structure as either an administrative review-eligible project or a standard process project.

§ 35.2–73.5 Administrative Review-Eligible Projects.

- A. Review of Administrative Review-Eligible Projects. Administrative review-eligible projects shall not require that a conditional use permit or its equivalent be obtained for the installation or construction of such a project; but administrative review shall be required for the issuance of any zoning approval, or an acknowledgment that zoning approval is not required, for such a project.
- B. Application Requirements for Administrative Review-Eligible Projects. Applications for wireless support structures, wireless facilities, and/or base stations that comprise administrative review-eligible projects shall require the following:

1. The name, address, telephone number, and electronic mail address of the applicant. If the applicant is not the owner of the land on which the wireless support structure, wireless facility, and/or base station is proposed to be located, then the applicant shall provide written consent of the owner, and the name, address, telephone number, and the electronic mail address of the owner. If the land on which the proposed wireless support structure, wireless facility, or base station is proposed to be located is, in whole or in part, within the City's right-of-way, then the applicant shall be required to secure written consent from the City for the proposed wireless support structure, wireless facility, or base station to be located within the City's right-of-way prior to filing such application and shall include such written consent as part of any such application.
2. An affirmative written statement signed by the applicant and the owner that the applicant and the owner are aware of and agree to comply with the provisions of this Zoning Ordinance set forth in § 35.2-73.24 (Abandonment) regarding removal and dismantlement of all wireless support structures, wireless facilities, base stations, and related equipment in the event such a structure, facility, base station, or related equipment is no longer in use.

3. The valuation map number and address of the parcel of land on which the wireless support structure, wireless facility, and/or base station is proposed to be located.
 4. Written, technical evidence from a radio frequency engineer that the proposed facilities meet the standards set forth in this Ordinance, including, but not limited to, the requirements set forth in § 35.2–73.13 (Interference With Public Safety Radio Services), and will not materially interfere 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.
 5. Written, technical evidence from an electrical engineer that the proposed site of the wireless support structure, wireless facility, and/or base station does not pose a risk of explosion, fire, or other danger due to its proximity to volatile, flammable, explosive, or hazardous materials such as propane, gasoline, natural gas, or corrosive or other dangerous chemicals.
 6. A site plan, as required by § 35.2-14.2 (Site Plans) of this Ordinance.
 7. A map showing the location and height of every utility pole within 500 feet of and within the same public right-of-way or within the existing line of utility poles as the proposed wireless support structure or wireless facility.
 8. In the case of an administrative review-eligible project proposing a new structure, a detailed explanation of how the proposed new structure is designed to support small cell facilities.
 9. A copy of any approval granted by a federal agency, including any conditions imposed by that agency, regarding the proposed wireless support structure, wireless facility, and/or base station, provided, however, that this requirement shall not apply to applications for small cell facilities.
 10. Evidence relating to any other factors the applicant believes are relevant to the City's consideration of whether the applicant's proposed small cell facility should be approved.
 11. The applicable application fee for the proposed administrative review-eligible project.
 12. Evidence that the applicant has given written notice to all adjacent landowners regarding the applicant's intent to file the application at least 15 days before the filing of any application to locate a new structure on the subject property.
- C. Fee Limitations for Administrative Review-Eligible Projects. When an application for an administrative review-eligible project is filed, the following provisions shall apply to the fee that must be paid by the applicant:

1. The fee must be reasonable.
2. The fee charged by the City shall not include direct payment or reimbursement of third-party fees charged on a contingency basis or a result-based arrangement.
3. The City shall not charge market-based or value-based fees for the processing of any such application.
4. Upon request, the City shall, within a reasonable amount of time after such request, provide the applicant with the cost basis for any fee charged by the City for an administrative review-eligible project.

D. Assessment of Fees for Administrative Review-Eligible Projects. Each application for a wireless support structure, wireless facility, or base station that constitutes an administrative review-eligible project shall be accompanied by payment of a \$500 fee for the processing of the application

E. Processing Applications for Administrative Review-Eligible Projects. The following provisions set forth the process that shall apply to any application for an administrative review-eligible project:

1. Prior to accepting any application for an administrative review-eligible project, the City shall first determine that the application includes the applicant's electronic mail address. In the event the application does not include the applicant's electronic mail address, the City shall not accept it for filing
2. If the application is incomplete, but includes an electronic mail address for the applicant, then within ten (10) business days after actual receipt of the application, the City shall accept the application and notify the applicant by electronic mail that the application is incomplete and shall specify any additional information, documents and materials required to complete the application.
3. If the application is incomplete and does not include an electronic mail address for the applicant when it was filed, the City shall use reasonable means to contact the applicant and request the applicant's electronic mail address. Within ten (10) days after actual receipt of the applicant's electronic mail address, the City shall notify the applicant by electronic mail that the application is incomplete and shall specify any additional information, documents and materials required to complete the application.
4. If an incomplete initial or resubmitted application is filed for an administrative review-eligible project, then the City shall notify the applicant by electronic mail that the application is incomplete and shall specify any missing information and documents and materials in accordance with the following:
 - (a) for an initial application, the City shall notify the applicant by electronic mail within ten (10) business days after the application is submitted whether the

application is incomplete and shall specify in that notification any missing information, documents and materials; otherwise, the application will be deemed complete; and

(b) for a resubmitted application, the City shall notify the applicant by electronic mail within ten (10) days after the application is resubmitted whether the application is incomplete and shall specify in that notification any missing information, documents and materials; otherwise, the application will be deemed complete.

5. If the City fails to timely provide the applicant with notice that the initial application or a resubmitted application is incomplete in accordance with the foregoing provisions, as applicable, the application shall be deemed complete.

6. Except as provided for in subsection 7 below, the City shall approve or disapprove a complete application in accordance with the following:

(a) For a new structure, within 150 days after receipt of the completed application minus any days that expired from the date of filing of the application to the date any notice of incompleteness was given to the applicant by the City;

(b) For the modification of an existing wireless support structure or base station that involves the co-location of new transmission equipment, the removal of transmission equipment, or the replacement of transmission equipment, but does not substantially change, as that term is defined by federal law, the physical dimensions of such support structure or base station, within 60 days after receipt of the application provided, however, that this period shall be tolled during any time after which the applicant has been informed that the application is not complete and is provided with the grounds for its incompleteness by the City, and when the applicant files all requested information and items necessary to make the application complete;

(c) For the co-location on an existing support structure of any wireless facility that is not a small cell facility and substantially changes, as that term is defined by federal law, the physical dimensions of such support structure or any related base station, within the lesser of 90 days after receipt by the City of the completed application, minus any days that expired from the date of filing of the application to the date any notice of incompleteness was given to the applicant by the City; and

(d) For any wireless facility that is not a small cell facility on a new structure, within the lesser of 150 days after receipt of a completed application, minus any days that expired from the date of filing of the application to the date any notice of incompleteness was given to the applicant by the City .

7. Any period specified in subsection 6(a), 6(b), 6(c), or 6(d) above within which the City must approve or disapprove an application may be extended by written agreement of the applicant and the City.

8. A complete application for an administrative review-eligible project shall be deemed approved if the City fails to approve or disapprove such application within the applicable period specified in subsection 6(a), 6(b), 6(c), or 6(d) above or within any agreed extension thereof pursuant to subsection 7 above.
 9. If the City disapproves an application for an administrative review-eligible project:
 - (a) the City shall provide the applicant with a written statement listing all of the reasons for the disapproval; and
 - (b) if the City is aware of any modifications to the project as described in the application that if made would permit the City to approve the proposed project, the City shall identify them in the written statement provided under subsection 9(a) above. The City's subsequent disapproval of an application for a project that incorporates the modifications identified in such a written statement may be used by the applicant as evidence that the City's subsequent disapproval was arbitrary or capricious in any appeal of the City's subsequent disapproval.
 10. If an application for an administrative review-eligible project is disapproved, the City's disapproval shall:
 - (a) not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services; and
 - (b) be supported by substantial record evidence contained in a written record publicly released within 30 days following the disapproval.
- F. Limitations on Disapprovals of Administrative Review-Eligible Projects. Whenever the City receives, considers, and processes a complete application for an administrative review-eligible project, it shall not disapprove any such application on the basis of:
- (a) the applicant's business decision with respect to its designed service, customer demand, or quality of service to or from a particular site;
 - (b) the applicant's specific need for the project, including the applicant's desire to provide additional wireless coverage or capacity; or
 - (c) the wireless facility technology selected by the applicant for use at the project.
- G. Disapproval Considerations for Administrative Review-Eligible Projects. Nothing in this Ordinance shall be construed to prohibit the City from disapproving an application for an administrative review-eligible project:

1. On the basis of the fact that the proposed height of any wireless support structure, wireless facility, or wireless support structure with attached wireless facilities exceeds 50 feet above ground level, provided that the City follows a local ordinance or regulation that does not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services; or
2. That proposes to locate a new structure, or to co-locate a wireless facility in an area where all cable and public utility facilities are required to be placed underground by a date certain or encouraged to be undergrounded as part of a transportation improvement project or rezoning proceeding as set forth in objectives contained in a comprehensive plan, if:

(a) The undergrounding requirement or comprehensive plan objective existed at least three months prior to the submission of the application;

(b) The City allows the co-location of wireless facilities on existing utility poles, government-owned structures with the government's consent, existing wireless support structures, or a building within that area;

(c) The City allows the replacement of existing utility poles and wireless support structures with poles or support structures of the same size or similar within that area; and

(d) The disapproval of the application does not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services, and other providers of functionally equivalent services.

H. Disapproval Limitation If Administrative Review-Eligible Project Does not Substantially Change Physical Dimensions. The City may not deny, and shall approve, within sixty (60) days, any administrative review-eligible project which requests any modification of an existing base station or wireless support structure that does not substantially change, as that term is defined by federal law, the physical dimensions of such support structure or base station and that involves the co-location of new transmission equipment, the removal of transmission equipment, or the replacement of transmission equipment.

I. Disapproval Allowed If Written Notice Not Provided to Adjacent Property Owners. The City may disapprove an application for an administrative review-eligible project if the applicant has not given written notice to all adjacent property owners at least 15 days before the applicant applies to locate a new structure on the subject property.

§ 35.2–73.6 Standard Process Projects.

A. Review of Standard Process Projects. Standard process projects may require the approval of a conditional use permit and/or a site plan for the installation or construction of such a

project, and City staff review may also be required for the issuance of any zoning permit, or an acknowledgment that zoning approval is not required, for a standard process project.

B. Application Requirements for Standard Process Projects. Applications for wireless support structures, wireless facilities, and/or base stations that constitute standard process projects shall include the following:

1. The name, address, telephone number, and electronic mail address of the applicant. If the applicant is not the owner of the land on which the wireless support structure, wireless facility, and/or base station is proposed to be located, then the applicant shall provide written consent of the owner, and the name, address, telephone number, and the electronic mail address of the owner. If the land on which the proposed wireless support structure, wireless facility, or base station is proposed to be located is, in whole or in part, within the City's right-of-way, then the applicant shall be required to secure written consent from the City for the proposed wireless support structure, wireless facility, or base station to be located within the City's right-of-way prior to filing such application and shall include such written consent as part of any such application.
2. An affirmative written statement signed by the applicant and the owner that the applicant and the owner are aware of and agree to comply with the provisions of this Zoning Ordinance set forth in § 35.2-73.24 (Abandonment) regarding removal and dismantlement of all wireless support structures, wireless facilities, base stations, and related equipment in the event such a structure, facility, base station, or related equipment is no longer in use.
3. The valuation map number and address of the parcel of land on which the wireless support structure, wireless facility, and/or base station is proposed to be located.
4. The names, addresses, and telephone numbers of the owners of and a map showing the location and height of all wireless support structures or potential wireless support structures taller than fifty (50) feet that are within a one (1) mile radius of the proposed new site for a wireless support structure, wireless facility, and/or base station, including City-owned property.
5. Written documentation that the applicant has made diligent, but unsuccessful, efforts to secure the permission to co-locate the applicant's proposed wireless facility on an existing or proposed wireless support structure owned by others, including the City, within a one-mile radius of the proposed wireless support structure, wireless facility, and/or base station.
6. Written, technical evidence from a radio frequency engineer that the proposed wireless support structure, wireless facility, base station, or project cannot be installed or co-located on another existing or proposed wireless support structure within a one (1) mile radius of the proposed site for a wireless support structure, wireless facility, or base station and must be located at the proposed site in order to meet the coverage requirements for applicant's wireless telecommunications system.

7. Written, technical evidence from a structural engineer that the proposed wireless support structure can support the wireless facilities and base stations of other carriers for the purposes of co-location.
8. Written, technical evidence from a radio frequency engineer that the proposed facilities meet the standards set forth in this Ordinance, including, but not limited to, the requirements set forth in § 35.2–73.13 (Interference With Public Safety Radio Services), and will not materially interfere 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.
9. Written, technical evidence from an electrical engineer that the proposed site of the wireless support structure, wireless facility, and/or base station does not pose a risk of explosion, fire, or other danger due to its proximity to volatile, flammable, explosive, or hazardous materials such as propane, gasoline, natural gas, or corrosive or other dangerous chemicals
10. A map of the City and the first half-mile of all bordering communities showing the design of the applicant's entire existing or proposed telecommunications network. Such map shall, at a minimum, indicate the general location of all proposed or existing sites of the applicant's wireless support structures, wireless facilities, base stations, and related equipment, the dimensions of the sites, specifications relating to the facilities, and signal area coverage.
11. Color photo simulations showing the proposed site of the proposed wireless support structure, wireless facility, base station, or project with a photo-realistic representation of the proposed structure and facility as they would appear viewed from at least four (4) substantially different vantage points on the eight (8) closest residential properties or adjacent roadways.
12. Any initial application fee required by § 35.2–73.6(D) (Fees for Standard Process Projects).
13. A site plan, including a depiction of the lot lines, setbacks, existing structures and other improvements on the property, the location of adjacent and nearby structures, the proposed location of the proposed wireless support structure, wireless facility, and base station that are the subject of the application, separation distances, proposed height of any new structure, screening and landscaping, existing and proposed, access, parking, security, zoning district(s) for the subject property and all adjacent properties, and any floodplain on the subject property.
14. A copy of any approval granted by a federal agency, including any conditions imposed by that agency, regarding the proposed wireless support structure, wireless facility, and/or base station.

15. Evidence relating to any other factors the applicant believes are relevant to the City's consideration of whether the applicant's proposed standard process project should be approved.
16. Written documentation regarding whether and how the location of the proposed wireless support structure and/or wireless facility in relation to existing structures, trees, and other visual buffers, minimizes, to the greatest extent reasonably practicable under the circumstances, any significant negative adverse impact.
17. Written documentation regarding whether and how the location of the wireless support structure and/or wireless facility will not have a significant detrimental impact on the property values of adjacent and nearby properties.
18. Written documentation regarding any other factors the applicant believes are relevant to the City's consideration of whether the applicant's proposed standard process project should be approved.
19. Evidence that the applicant has given written notice to all adjacent landowners regarding the applicant's intent to file the application at least 15 days before the filing of any application to locate a new structure on the subject property

C. Fee Limitations for Standard Process Projects. When an application for a standard process project is filed, the following provisions shall apply to the fee that must be paid by the applicant:

1. The fee must be reasonable.
2. The fee charged by the City shall not include direct payment or reimbursement of third-party fees charged on a contingency basis or a result-based arrangement.
3. The fee charged by the City shall not exceed the actual direct costs to process the application, including permits and inspection.
4. The City shall not charge market-based or value-based fees for the processing of any such application.
5. Upon request, the City shall, within a reasonable amount of time after such request, provide the applicant with the cost basis for any fee charged by the City for a standard process project.

D. Fees for Standard Process Projects. Each application for a wireless support structure, wireless facility, or base station that constitutes a standard process project shall be accompanied by payment of the following fees for the processing of the application:

1. For an application for a standard process project that requires the approval of a conditional use permit and a site plan, the initial fee shall be \$900.
 2. For an application for a standard process project that requires the approval of a site plan, but not a conditional use permit, the initial fee shall be \$500.
 3. The City reserves the right to employ an outside consultant to assist in the review of any application for a standard process project. In the event the City employs an outside consultant to review an application for a standard process project, the applicant shall reimburse the City for the reasonable expenses related to such review as an additional application fee, provided, however, that the fee limitations set forth in § 35.2–73.6(C) (Fee Limitations for Standard Process Projects) shall apply to the calculation of any such additional fee.
 4. For any standard process project that requires the approval of a conditional use permit, the applicant shall be responsible for the payment of any costs for any legal notices that may be required for the conditional use permit.
- E. Processing Applications for Standard Process Projects. The following provisions set forth the process that shall apply to any application for a standard process project:
1. Prior to accepting any application for a wireless support structure, a wireless facility, or a base station, that constitutes a standard process project, the City shall first determine that the application includes the applicant's electronic mail address. In the event the application does not include the applicant's electronic mail address, the City shall not accept it for filing
 2. If the application is incomplete, but includes an electronic mail address for the applicant, then within ten (10) business days after actual receipt of the application, the City shall notify the applicant by electronic mail if the application is incomplete and shall specify in that notification any additional information, documents, and materials required to complete the application.
 3. If the application is incomplete and does not include a valid electronic mail address for the applicant when it was filed, the City shall use reasonable means to contact the applicant and request the applicant's valid electronic mail address. Within ten (10) days after actual receipt of a valid electronic mail address for the applicant, the City shall notify the applicant by electronic mail that the application is incomplete and shall specify any additional information, documents, and materials required to complete the application.
 4. If an incomplete initial or resubmitted application is filed for a standard process project, then the City shall notify the applicant by electronic mail that the application is incomplete and shall specify any missing information, documents, and materials in accordance with the following:

- (a) for an initial application, the City shall notify the applicant by electronic mail within ten (10) business days after the application is submitted whether the application is incomplete and shall specify in that notification any missing information, documents, and materials; otherwise, the application will be deemed complete; and
 - (b) for a resubmitted application, the City shall notify the applicant by electronic mail within ten (10) days after the application is resubmitted whether the application is incomplete and shall specify in that notification any missing information, documents and materials; otherwise, the application will be deemed complete.
- 5. If the City fails to timely provide the applicant with notice that the initial application or a resubmitted application is incomplete in accordance with the foregoing provisions, as applicable, the application shall be deemed complete.
- 6. Except as provided for in subsection 7 below, the City shall approve or disapprove a complete application for a standard process project in accordance with the following:
 - 7. Any period specified in subsection 6(a), 6(b), 6(c), or 6(d) above within which the City must approve or disapprove an application may be extended by written agreement of the applicant and the City.
 - 8. A complete application for a standard process project shall be deemed approved if the City fails to approve or disapprove such application within the applicable period specified in subsection 6(a), 6(b), 6(c), or 6(d) above or any agreed extension thereof pursuant to subsection 7 above.
- 9. If the City disapproves an application for a standard process project:
 - (a) the City shall provide the applicant with a written statement listing all of the reasons for the disapproval; and
 - (b) if the City is aware of any modifications to the project as described in the application that if made would permit the City to approve the proposed project, the City shall identify them in the written statement provided under subsection 6(a) above. The City's subsequent disapproval of an application for a project that incorporates the modifications identified in such a written statement may be used by the applicant as evidence that the City's subsequent disapproval was arbitrary or capricious in any appeal of the City's subsequent disapproval.
- 10. If an application for a standard process project is disapproved, the City's disapproval shall:
 - (a) not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services; and

- (b) be supported by substantial record evidence contained in a written record publicly released within 30 days following the disapproval.

F. Limitations on Disapprovals of Standard Process Projects. Whenever the City receives, considers, and processes a complete application for a standard process project, it shall not disapprove any such application on the basis of:

- (a) the applicant's business decision with respect to its designed service, customer demand, or quality of service to or from a particular site;
- (b) the applicant's specific need for the project, including the applicant's desire to provide additional wireless coverage or capacity; or
- (c) the wireless facility technology selected by the applicant for use at the project.

G. Disapproval Considerations for Standard Process Projects. Nothing in this Ordinance shall be construed to prohibit the City from disapproving an application for a standard process project:

1. On the basis of the fact that the proposed height of any wireless support structure, wireless facility, or wireless support structure with attached wireless facilities exceeds 50 feet above ground level, provided that the City follows a local ordinance or regulation that does not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services; or
2. That proposes to locate a new structure, or to co-locate a wireless facility in an area where all cable and public utility facilities are required to be placed underground by a date certain or encouraged to be undergrounded as part of a transportation improvement project or rezoning proceeding as set forth in objectives contained in a comprehensive plan, if:
 - (a) The undergrounding requirement or comprehensive plan objective existed at least three months prior to the submission of the application;
 - (b) The City allows the co-location of wireless facilities on existing utility poles, government-owned structures with the government's consent, existing wireless support structures, or a building within that area;
 - (c) The City allows the replacement of existing utility poles and wireless support structures with poles or support structures of the same size or similar within that area; and
 - (d) The disapproval of the application does not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers,

providers of telecommunications services, and other providers of functionally equivalent services, and other providers of functionally equivalent services.

- H. Disapproval Limitation If Standard Process Project Does not Substantially Change Physical Dimensions. The City may not deny, and shall approve, within sixty (60) days, any standard process project which requests any modification of an existing base station or wireless support structure that does not substantially change, as that term is defined by federal law, the physical dimensions of such support structure or base station and that involves the co-location of new transmission equipment, the removal of transmission equipment, or the replacement of transmission equipment.
- I. Disapproval Allowed If Written Notice Not Provided to Adjacent Property Owners. The City may disapprove an application for a standard process project if the applicant has not given written notice to all adjacent property owners at least 15 days before the applicant applies to locate a new structure on the subject property.

§ 35.2–73.7 Permitted Uses.

A. The following uses shall be permitted by right as follows:

1. Small cell facilities in all zoning districts.
2. Administrative review-eligible projects in all zoning districts.
3. Any wireless support structure and/or wireless facility that does not exceed one hundred (100) feet in height in the B–1 District.
4. Any wireless support structure and/or wireless facility that does not exceed one hundred and fifty (150) feet in height in the B–3, B–5, IN–2, I–1, I–2, or I–3 Districts.
5. Any base station associated with a lawfully existing wireless support structure and/or wireless facility, provided, however, that:
 - (a) the base station shall be located inside the wireless support structure; or
 - (b) the base station shall be located on the ground within 50 feet of the base of the wireless support structure; or
 - (c) the base station is not visible at ground level from off-site; and
 - (d) the size of the base station shall not exceed seventy-two (72) cubic feet in size and/or six (6) feet in height; and

(e) all applicable setbacks shall be complied with.

6. The co-location of a wireless facility on a lawfully existing wireless support structure in any zoning district, provided, however, that:

(a) the height of any such wireless support structure, wireless facility, or wireless support structure with wireless facility attached, shall not increase as a result of the co-location; and

(b) all applicable setbacks must be complied with.

B. Existing wireless support structures and wireless facilities shall be exempt from the maximum height restrictions of the districts in which they are located to the extent such structures and facilities lawfully existed on the date of adoption of this Ordinance.

§ 35.2-73.8 Conditional Use Permit Required.

A. The following uses require the approval of a conditional use permit by the City Council:

1. In the R-C, R-1, R-2, R-3, R-4, IN-1, or B-4 Districts, any standard process project that is between fifty (50) and one hundred and fifty (150) feet in height, provided, however, that no new wireless support structure and/or wireless facility in such districts shall exceed 150 feet in height;
2. In the B-1 District, any standard process project in which a new wireless support structure and/or wireless facility exceeds one hundred (100) feet in height; provided, however, that the maximum height for any wireless facility and/or wireless support structure in the B-1 District shall be 150 feet;
3. In the B-3, B-5, IN-2, I-1, I-2, or I-3 Districts, any standard process project in which a new wireless support structure and/or wireless facility exceeds one hundred fifty (150) feet in height;
4. Any base station that is a standard process project and exceeds seventy-two cubic feet above ground and/or six feet in height;
5. Any base station associated with a lawfully existing wireless support structure and/or wireless facility that is a standard process project, is not located inside the wireless support structure, is visible at ground level from off-site, and/or is not located within 50 feet of the base of the wireless support structure;
6. The co-location of a wireless facility on a lawfully existing wireless support structure in any zoning district that, after the proposed co-location, would result in an increase in height of the wireless support structure and/or wireless facility, provided, however, that

no such structure and/or facility shall be allowed to increase more than fifteen (15) feet in height as a result of the approval of such a conditional use permit; and

7. Any other project that constitutes a standard process project.
- B. Whenever a conditional use permit is required for a proposed wireless structure or wireless facility, any application for such a conditional use permit shall be made to the City Planner in the manner provided in Article 2 of this Zoning Ordinance. In districts for which a conditional use permit is required, the City Council shall make its decision to approve or deny such permit in writing and in a manner consistent with applicable state and federal law.
- C. Any wireless support structure, wireless facility, or base station that is not permitted by right or upon the approval of a conditional use permit under this Ordinance shall be considered to be in violation of this Ordinance.
- D. No new wireless support structure and/or wireless facility for which a conditional use permit is approved shall exceed a maximum height of one hundred fifty (150) feet in the R-C, R-1, R-2, R-3, R-4, IN-1, or B-4 Districts.

35.2-73.9 Setbacks.

- A. There shall be no setback requirement for any wireless support structure and/or wireless facility that is thirty-five (35) feet or less in height.
- B. Any wireless support structure and/or wireless facility greater than thirty-five (35) feet in height in the R-C, R-1, R-2, R-3, R-4, IN-1, or B-4 Districts shall be required to set back a distance from all property lines at least the height of such structure and/or facility.
- C. Any wireless support structure and/or wireless facility greater than thirty-five (35) feet in height in the B-1, B-3, B-5, IN-2, I-1, I-2, or I-3 Districts that is on a parcel adjacent to any parcel that is zoned R-C, R-1, R-2, R-3, R-4, IN-1, or B-4 shall be set back a distance at least the height of such structure and/or facility from the R-C, R-1, R-2, R-3, R-4, IN-1, or B-4 District.
- D. Any wireless support structure and/or wireless facility in the B-1, B-3, B-5, IN-2, I-1, I-2, or I-3 Districts that is greater than thirty-five (35) feet in height but less than fifty (50) feet in height shall be required to set back a distance from all property lines at least the minimum applicable setback for the district in which it is located.
- E. Any wireless support structure and/or wireless facility in the B-1, B-3, B-5, IN-2, I-1, I-2, or I-3 Districts that is a height greater than fifty (50) feet shall be required to set back a distance from all property lines at least one-half the height of such structure and/or facility.

- F. Setback requirements for wireless support structures and/or wireless facilities shall be measured from the base of the structure and/or facility to the property lines of the parcel on which the structure and/or facility is located.

§35.2-73.10 Standards for Conditional Use Permits for Standard Process Projects.

In order to approve a conditional use permit for a standard process project, the City Council must find that the application for such project satisfies all of the following standards:

1. The proposed use is in substantial conformance with the provisions of the City's Comprehensive Plan.
2. The proposed use will not result in any significant adverse impact on the use and enjoyment of nearby properties.
3. The proposed use will not have any significant negative impact on the value of nearby properties.
4. The proposed use will not cause any material potential interference with other pre-existing communications facilities or with future communications facilities that have already been planned or designed for a specific location or that have been reserved for future public safety communications facilities.
5. The proposed use will not result in any significant adverse impact on public safety or other critical public service needs.
6. The proposed use must be compatible with the character of the area in which it is proposed to be located.
7. There are no existing wireless support structures within a reasonable distance from the proposed wireless support structure, wireless facility, and/or base station that are available to be used for co-location at reasonable terms and conditions without imposing technical limitations on the applicant.
8. The proposed use shall not conflict with any City ordinance adopted pursuant to Code of Virginia § 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.
9. The proposed use satisfies all other applicable requirements set forth in this chapter with respect to the location, size, design, and construction of wireless support structures, wireless facilities, and base stations.

§35.2-73.11 Use of City-Owned Property for Wireless Facilities.

The City may authorize the use of City property for wireless facilities in appropriately zoned districts in accordance with the procedures of the City charter and code. The City shall have no obligation whatsoever to allow the use of City property for such purposes and any such approval by the City shall be subject to the discretion of the City Council.

§35.2-73.12 Co-Location Availability.

An application for a standard process project may be disapproved by the City on the basis of the availability of the existence of one or more wireless support structures within a reasonable distance that could be used for co-location at reasonable terms and conditions without imposing technical limitations on the applicant.

§ 35.2-73.13 Interference With Public Safety Radio Services.

In order to ensure that the City's public safety radio services will be free from harmful or destructive interference, all applicants requesting a permit to establish or install a wireless support structure or wireless facility shall:

- A. Demonstrate compliance with good engineering practices;
- B. Not cause material potential interference to the City's existing public safety radio services or to 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; and
- C. Comply with all FCC regulations regarding susceptibility to radio frequency interference, frequency coordination requirements, general technical standards for power, antenna bandwidth limitations, frequency stability, transmitter measurements, operating requirements, and any and all other federal statutory and regulatory requirements relating to radio frequency interference (RFI), provided, however, that this subparagraph (C) shall not apply to applications for small cell facilities.

§ 35.2-73.14 Structural Requirements.

All wireless support structures and wireless facilities must be designed and certified by a structural engineer licensed in the Commonwealth of Virginia to be structurally sound and, at a minimum, in conformance with the Virginia Uniform Statewide Building Code and any other applicable standards set forth in this chapter.

§ 35.2-73.15 Method of Determining Height of A Wireless Support Structure.

Measurement of the height of a wireless support structure for the purpose of determining compliance with all requirements of this chapter shall include the wireless support structure itself and any wireless facilities associated with the wireless support structure, and any other support

features installed thereon which extend over the top of the structure itself. Structure height shall be measured from grade.

§ 35.2-73.16 Illumination.

Wireless support structures whose principal use is the facilitation of wireless telecommunications shall not be artificially lighted except as may be required by the FAA.

§ 35.2-73.17 Exterior Finish.

Wireless support structures and wireless facilities not requiring painting or marking by the FAA shall be painted a neutral color. A galvanized finish is considered a neutral color.

§ 35.2-73.18 Landscaping.

All landscaping on parcels containing wireless support structures, wireless facilities, and/or base stations shall be designed to screen the structure, facilities, base station, and related equipment to a height of at least six (6) feet from grade. This requirement may be waived at the discretion of the planning division if the base of the structure, facilities, base station, and related equipment to be screened is not located in and is not visible from any commercial or residential district or from any public street. All required landscaping shall be continually maintained in a healthy and attractive manner.

§ 35.2-73.19 Security.

All wireless support structures and wireless facilities shall be reasonably posted and secured to prevent against trespass.

§ 35.2-73.20 Access.

All parcels upon which wireless support structures are located must provide access during normal business hours to at least one (1) paved vehicular parking space on site.

§ 35.2-73.21 Maintenance.

- A. The owners and operators of all wireless support structures, wireless facilities, base stations, and related equipment shall at all times employ ordinary and reasonable care in maintaining such structures, facilities, base stations, and equipment and shall install and maintain in use nothing less than commonly accepted methods and devices for the prevention of failures and accidents which are likely to cause damage, injuries, or nuisances to the public,

provided, however, that no zoning approval of the City shall be required for routine maintenance of any existing wireless support structure or wireless facility.

- B. The owners and operators of all wireless support structures, wireless facilities, and base stations shall at all times employ ordinary and reasonable care and shall install and maintain such wireless support structures, wireless facilities, base stations, and equipment in substantial compliance with the requirements of the national electric safety code and all federal, state, and local regulations and in such manner that will not interfere with the use and enjoyment of other property.
- C. All wireless support structures, wireless facilities, base stations, and related equipment shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any person.
- D. All wireless support structures, wireless facilities, base stations, and related equipment shall be maintained in compliance with any applicable radio frequency emission standards of the FCC.
- E. In the event the use of any wireless support structure, wireless facility, base station, and related equipment is discontinued by the owner or operator thereof, or in the event the owner or operator thereof files notice with the FCC or any other federal agency of its interest in ceasing to operate any wireless support structure, wireless facility, base station, and related equipment, said owner or operator shall, within thirty (30) days, provide written notice to the City of its intent to discontinue such use and the date when such use shall be discontinued. If the facility in question, or any part thereof, is located within the City's right-of-way, then the owner or operator shall submit the foregoing written notice to the Department of Public Works. If the facility in question, or any part thereof, is located outside the City's right-of-way, then the owner or operator shall submit the foregoing written notice to the Department of Community Development.

§ 35.2-73.22 Stealth.

The City encourages, but does not require, the installation of small cell facilities and administrative review-eligible projects that employ stealth designs and blend into the environments in which they are proposed to be located. All standard process projects proposing wireless support structures and wireless facilities shall be of stealth design. For purposes of this section, the term "stealth design" refers to a wireless support structure and wireless facility that is designed in such a way as to effectively blend into the environment in which that structure is proposed to be located. Examples of stealth designs include, but are not limited to, a wireless support structure in a wooded area that is designed to look like a tree, a wireless facility that is encased in a flagpole, a wireless support structure on a church property that is designed to look like a bell tower or church steeple, and a wireless support structure in an agricultural area that is designed to look like a farm silo.

§ 35.2-73.23 Existing Wireless Support Structures.

- A. An existing wireless support structure may be modified or demolished and rebuilt to accommodate the co-location of additional wireless facilities and base stations as follows:
1. Application for a permit for any wireless facility or base station, other than a small cell facility, located, in whole or in part, within the City's right-of-way shall be made to the Department of Public Works.
 2. Application for a permit for any wireless facility or base station located, in whole or in part, outside the City's right-of-way shall be made to the Department of Community Development.
 3. The total height of the new or modified wireless support structure and any wireless facilities installed thereon shall not exceed the height of the existing wireless support structure or the maximum height allowed for wireless support structures permitted by right in the applicable zoning district under this ordinance whichever is greater.
- B. The City may not deny and shall approve any request to modify the physical dimensions of an existing wireless tower or base station if that request does not substantially increase the physical dimensions of such tower or base station and involves:
- (1) co-location of new transmission equipment;
 - (2) removal of transmission equipment; or
 - (3) replacement of transmission equipment.

§ 35.2–73.24 Abandonment.

If the City receives notice pursuant to § 35.2-73.21(E), or if any wireless support structure, wireless facility, base station, and/or related equipment shall cease to be used for a period of one hundred eighty (180) consecutive days, then for wireless support structures, wireless facilities, base stations and/or related equipment inside the City's right-of-way, the Department of Public Works shall notify the owner and/or operator of such structure, facility, base station, and related equipment, with a copy to the applicant therefor, that the site will be subject to a determination by the Department of Public Works that such site has been abandoned. In the event such structure, facility, base station, and related equipment is located outside the City's right-of-way, then the foregoing notification and determination shall be made by the Department of Community Development. The owner, operator, and/or applicant shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence, that the support structure, wireless facility, base station, and/or related equipment has been in use or under repair during the period. If the owner, operator, and/or applicant fails to show that the support structure, wireless facility, base station, and/or related equipment has been in use or under repair during the period, the Department of Public Works, or Department of Community Development, whichever applies, shall issue a final determination of abandonment for the site. Upon issuance of the City's final determination, the owner, operator, and/or applicant shall, within seventy-five (75) days, dismantle and remove the support structure, wireless facility,

base station, and related equipment. If the owner, operator, and/or applicant fails to remove the abandoned support structure, wireless facility, base station, and related equipment within seventy-five (75) days after the City's final determination of abandonment, the City and/or its agents may, at its option, enter upon the property and dismantle, remove, and lawfully dispose of the support structure, wireless facility, base station, and related equipment that has been determined by the City to have been abandoned. The City may place a lien on the property of the owner from which the abandoned support structure, wireless facility, base station, or related equipment was removed in the amount of the City's expenses in dismantling, removing, and lawfully disposing of such support structure, wireless facility, base station, and related equipment. The City also may recover from the owner, operator, and/or applicant the costs of dismantling, removing, and lawfully disposing of the support structure, wireless facility, base station, and related equipment from the owner. For purposes of this section, removal includes all physical improvements associated with the support structure, wireless facility, base station, and related equipment, including foundation and tower grounding.

§ 35.2–73.25 Miscellaneous Provisions.

- A. Voluntary Conditions Allowed. Nothing in this Ordinance shall prohibit an applicant from voluntarily submitting, and the City from accepting, any conditions that otherwise address potential visual or aesthetic effects resulting from the placement of any new structure or wireless facility, including small cell facility.
- B. Micro-Wireless Facilities Exemption. Nothing in this Ordinance shall be construed to require any permitting requirements and fees imposed by the City for 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, because the installation, placement, maintenance, or replacement of such facilities are exempt from any City-imposed permitting requirements and fees.
- C. Limitations on Review of Administrative Review-Eligible Projects and Standard Process Projects. Whenever the City receives, considers, and processes an application for an administrative review-eligible project or a standard process project, it shall not:
1. Discriminate or create a preference on the basis of the ownership by the City, of any property, structure, base station, or wireless support structure when promulgating rules or procedures for siting wireless facilities or for evaluating applications;
 2. Impose any unreasonable requirements or obligations regarding the presentation or appearance of a project, including unreasonable requirements relating to (i) the kinds of materials used or (ii) the arranging, screening, or landscaping of wireless facilities or wireless structures;
 3. Impose any requirement that an applicant purchase, subscribe to, use, or employ facilities, networks, or services owned, provided, or operated by the City, in whole or in part, by the City or by any other entity in which the City has a competitive, economic, financial, governance, or other interest;

4. Condition or require the approval of an application solely on the basis of the applicant's agreement to allow any wireless facilities provided or operated, in whole or in part, by the City, or by any other entity, to be placed at or co-located with the applicant's project;
 5. Impose a setback or fall zone requirement for a project that is larger than a setback or fall zone area that is imposed on other types of similar structures of a similar size, including utility poles;
 6. Limit the duration of the approval of an application, except the City may require that construction of the approved project shall commence within two years after final approval and be diligently pursued to completion; and
 7. Require an applicant to perform services unrelated to the project described in the application, including restoration work on any surface not disturbed by the applicant's project.
- D. Nothing in this chapter shall prohibit the City from disapproving an application submitted under a standard process project on the basis of availability of existing wireless support structures within a reasonable distance that could be used for co-location at reasonable terms and conditions without imposing technical limitations on the applicant.
- E. No zoning approval shall be required for (i) routine maintenance or (ii) the replacement of wireless facilities or wireless support structures within a six-foot perimeter with wireless facilities or wireless support structures that are substantially similar or smaller; provided, however, that the City may require a permit to work within the right-of-way for the activities described in clause (i) or (ii), if applicable.
- F. Nothing in this chapter shall prohibit the City from limiting the number of new structures or the number of wireless facilities that can be installed in a specific location.
- G. Nothing in this chapter shall be construed to require an applicant to provide proprietary, confidential, or other business information to justify the need for a project, including propagation maps and telecommunications traffic studies, or information reviewed by a federal agency as part of the approval process for the same structure and wireless facility
- H. All information submitted with an application that is a trade secret or proprietary shall be clearly marked as such when submitted to the City. The City shall not disclose publicly, or to any third party, any such proprietary information unless compelled to do so by federal, state, or local law.

§ 35.2–73.26 Reservation of Rights.

The City reserves the right to impose any other reasonable conditions it determines are necessary for the proper placement, construction, or modification of wireless support structures, wireless facilities, or base stations and/or to impose any other reasonable conditions on the

issuance of a conditional use permit for the placement or construction of, or modification to, a wireless support structure, wireless facility, or base station, provided, however, that the imposition of any such conditions must be in conformance with federal and state law and the provisions of this chapter.

This ordinance shall become effective upon adoption.

Adopted: February 9, 2021

Certified:


Clerk of Council

AN ORDINANCE TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG, 1981 BY AMENDING ZONING ORDINANCE EXHIBIT IV-1: AUTHORIZED USES IN R-C DISTRICT, EXHIBIT IV-3: AUTHORIZED USES IN R-1 DISTRICT, EXHIBIT IV-5: AUTHORIZED USES IN R-2 DISTRICT, EXHIBIT IV-7: AUTHORIZED USES IN R-3 DISTRICT, EXHIBIT IV-9: AUTHORIZED USES IN R-4 DISTRICT, EXHIBIT IV-12: AUTHORIZED USES IN B-1 DISTRICT, EXHIBIT IV-15: AUTHORIZED USES IN B-3 DISTRICT, EXHIBIT IV-17: AUTHORIZED USES IN B-4 DISTRICT, EXHIBIT IV-19: AUTHORIZED USES IN B-5 DISTRICT, EXHIBIT IV-21: AUTHORIZED USES IN IN-1 DISTRICT, EXHIBIT IV-23: AUTHORIZED USES IN IN-2 DISTRICT, EXHIBIT IV-24, AUTHORIZED USES IN I-1 DISTRICT, EXHIBIT IV-26: AUTHORIZED USES IN I-2 DISTRICT AND EXHIBIT IV-28: AUTHORIZED USES IN I-3 DISTRICT.

WHEREAS, City staff has proposed and recommends approval of an Ordinance that will amend certain exhibits in the current City Zoning Ordinance (Exhibit IV-1: Authorized Uses in R-C District, Exhibit IV-3: Authorized Uses in R-1 District, Exhibit IV-5: Authorized Uses in R-2 District, Exhibit IV-7: Authorized Uses in R-3 District, Exhibit IV-9: Authorized Uses in R-4 District, Exhibit IV-12: Authorized Uses in B-1 DISTRICT, Exhibit IV-15: Authorized Uses in B-3 District, Exhibit IV-17: Authorized Uses in B-4 District, Exhibit IV-19: Authorized Uses in B-5 District, Exhibit IV-21: Authorized Uses in IN-1 District, Exhibit IV-23: Authorized Uses in IN-2 District, Exhibit IV-24, Authorized Uses in I-1 District, Exhibit IV-26: Authorized Uses in I-2 District and Exhibit IV-28: Authorized Uses in I-3 District approval type for wireless telecommunications transmission) to reflect the "Approval Type" for wireless telecommunications transmission as "C" for "Conditional Use Permit" and/or "P" for "Permitted" depending on the requirements of Sections 35.2–73.1 through 35.2–73.26 of the City Zoning Ordinance related to Telecommunications Facilities ("the proposed Ordinance"); and

WHEREAS, on November 11, 2020, the Planning Commission of the City of Lynchburg held a work session on the proposed Ordinance; and

WHEREAS, on December 9, 2020, the Planning Commission held a public hearing on the proposed Ordinance to consider and address the proposed Ordinance and to receive public comment; and

WHEREAS, after its public hearing on the proposed Ordinance on December 9, 2020, the Planning Commission recommended that the City Council approve the proposed Ordinance; and

WHEREAS, City Council conducted a work session on the proposed Ordinance on January 12, 2021; and

WHEREAS, on February 9, 2021, City Council held a public hearing to consider and address the proposed Ordinance and to receive public comment on the proposed Ordinance; and

WHEREAS, City Council finds that the proposed Ordinance should be adopted in order to promote the public necessity, convenience, welfare and good zoning practice.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

That Exhibit IV-1: Authorized Uses in R-C District, Exhibit IV-3: Authorized Uses in R-1 District, Exhibit IV-5: Authorized Uses in R-2 District, Exhibit IV-7: Authorized Uses in R-3 District, Exhibit IV-9: Authorized Uses in R-4 District, Exhibit IV-12: Authorized Uses in B-1 DISTRICT, Exhibit IV-15: Authorized Uses in B-3 District, Exhibit IV-17: Authorized Uses in B-4 District, Exhibit IV-19: Authorized Uses in B-5 District, Exhibit IV-21: Authorized Uses in IN-1 District, Exhibit IV-23: Authorized Uses in IN-2 District, Exhibit IV-24, Authorized Uses in I-1 District, Exhibit IV-26: Authorized Uses in I-2 District and Exhibit IV-28: Authorized Uses in I-3 District approval type for wireless telecommunications transmission is amended as follows:

EXHIBIT IV-1: AUTHORIZED USES IN R-C DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers ordinance	C / <u>P</u>

EXHIBIT IV-3: AUTHORIZED USES IN R-1 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers ordinance	C / <u>P</u>

EXHIBIT IV-5: AUTHORIZED USES IN R-2 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers ordinance	C / <u>P</u>

EXHIBIT IV-7: AUTHORIZED USES IN R-3 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers ordinance	<u>C / P</u>

EXHIBIT IV-9: AUTHORIZED USES IN R-4 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers ordinance	<u>C / P</u>

EXHIBIT IV-12: AUTHORIZED USES IN B-1 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers ordinance	<u>C / P</u>

EXHIBIT IV-15: AUTHORIZED USES IN B-3 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers ordinance	<u>C / P</u>

EXHIBIT IV-17: AUTHORIZED USES IN B-4 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers ordinance	<u>C / P</u>

EXHIBIT IV-19: AUTHORIZED USES IN B-5 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers ordinance	<u>C / P</u>

EXHIBIT IV-21: AUTHORIZED USES IN IN-1 DISTRICT

Land Use	LBCS#	Description	Approval Type
<u>Wireless telecommunications transmission</u>	<u>4233</u>	<u>Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication ordinance</u>	<u>C / P</u>

EXHIBIT IV-23: AUTHORIZED USES IN IN-2 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication towers ordinance	<u>C / P</u>

EXHIBIT IV-24, AUTHORIZED USES IN I-1 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication-towers ordinance	<u>C / P</u>

EXHIBIT IV-26: AUTHORIZED USES IN I-2 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for telecommunication-towers ordinance	<u>C / P</u>

EXHIBIT IV-28: AUTHORIZED USES IN I-3 DISTRICT

Land Use	LBCS#	Description	Approval Type
Wireless telecommunications transmission	4233	Operate, maintain or provide access to facilities for the transmission of voice, data, text, sound or video, see Section 35.2-73 for	<u>C / P</u>

		telecommunication towers ordinance	
--	--	---------------------------------------	--

That this ordinance shall become effective upon its adoption.

Adopted: February 9, 2021

Certified:

Alicia L. Finn
Clerk of Council

ORDINANCE:

#O-21-008

AN ORDINANCE TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG, 1981 BY AMENDING ZONING ORDINANCE SECTION 35.2-61.2, ADDITIONAL HEIGHT REQUIREMENTS BY ADDING NEW SECTION 35.2-61.2 (D), FLAG POLES, LIGHT POLES AND UTILITY POLES.

WHEREAS, City staff has proposed and recommends approval of an Ordinance amending Zoning Ordinance Section 35.2-61.2, Additional Height Requirements, to add new Section 35.2-61.2(d), Flag Poles, Light Poles, and Utility Poles ("the proposed Ordinance"); and

WHEREAS, on November 11, 2020, the Planning Commission of the City of Lynchburg held a work session on the proposed Ordinance; and

WHEREAS, on December 9, 2020, the Planning Commission held a public hearing to consider and address the proposed Ordinance and to receive public comment on the proposed Ordinance; and

WHEREAS, after its public hearing on the proposed amendments on December 9, 2020, the Planning Commission recommended that the City Council approve the proposed Ordinance; and

WHEREAS, City Council conducted a work session on the proposed Ordinance on January 12, 2021; and

WHEREAS, on February 9, 2021, City Council held a public hearing to consider and address the proposed Ordinance and to receive public comment on the proposed Ordinance; and

WHEREAS, City Council finds that the proposed Ordinance should be adopted in order to promote the public necessity, convenience, welfare and good zoning practice.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

That Section 35.2-61.2, Additional Height Requirements of the Code of the City of Lynchburg, 1981 is hereby amended and reenacted by adding Section 35.2-61.2 (d), Flag Poles, Light Poles and Utility Poles as follows:

(d) Flag poles, Light Poles and Utility Poles

1. There shall be no setback requirement for any Flag Pole, Light Pole or Utility Pole that is thirty-five (35) feet or less in height.
2. Any Flag Pole, Light Pole, or Utility Pole greater than thirty-five (35) feet in height in the R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 District shall be required to set back a distance from all property lines at least the height of the pole.
3. Any Flag Pole, Light Pole, or Utility Pole greater than thirty-five (35) feet in height in the B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District that is on a parcel adjacent to any parcel that is

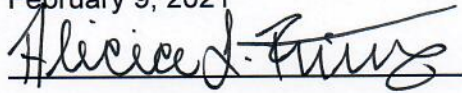
zoned R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 shall be set back a distance at least the height of the pole from the R-C, R-1, R-2, R-3, R-4, IN-1 or B-4 District.

4. Any Flag Pole, Light Pole, or Utility Pole in the B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District that is greater than thirty-five (35) feet in height but less than fifty (50) feet in height shall be required to set back a distance from all property lines at least the minimum applicable setback for the district in which it is located.
5. Any Flag Pole, Light Pole, or Utility Pole in the B-1, B-3, B-5, IN-2, I-1, I-2 or I-3 District that is a height greater than fifty (50) feet shall be required to set back a distance from all property lines at least one-half the height of the pole.
6. Setback requirements for Flag Poles, Light Poles, and Utility Poles shall be measured from the base of the pole to the property lines of the parcel on which the pole is located.

That this ordinance shall become effective upon its adoption.

Adopted: February 9, 2021

Certified:



Clerk of Council

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **February 9, 2021**

AGENDA ITEM #: **6**

CONSENT:
ACTION: **X**

REGULAR: **X**
INFORMATION:

WORK SESSION:

CLOSED SESSION:
(Confidential)

ITEM TITLE: Vacate Advantage Court

KEY ELEMENTS:

☒ Economic Development ☐ Excellent Government ☒ Natural and Built Environment ☐ Safe Community ☒ Vibrant Community

RECOMMENDATION: Approval of the right-of-way vacation of Advantage Court.

SUMMARY: Ed Willman, on behalf of O Mayflower, LLC, is petitioning to vacate the Advantage Court right-of-way located off of Chiles Circle. The right-of-way vacation would facilitate the future development of the adjacent property for industrial use. The total area of the proposed vacation is approximately nine hundred seventy-nine thousandths (0.979) of an acre.

The area to be vacated includes an unpaved gravel drive. The vacation would not impact vehicle or pedestrian access along Advantage Court or Chiles Circle.

PRIOR ACTION(S): January 12, 2021: The Physical Development Committee (PDC) recommended approval of the right-of-way vacation.

November 3, 2020: The Technical Review Committee (TRC) reviewed the petition.

FISCAL IMPACT: Based on the zoning of the adjacent lots and property frontage, the value of the property is anticipated to be approximately \$9,790.

CONTACT(S): Victoria Glasgow, Neighborhood Planning Coordinator – 455-3900
Tom Martin, City Planner – 455-3900

ATTACHMENT(S):

- Ordinance
- Application
- Plat
- Title Work

REVIEWED BY: klw

014A

UNCODIFIED ORDINANCE:

AN ORDINANCE VACATING RIGHT-OF-WAY KNOWN AS ADVANTAGE COURT.

WHEREAS, Ed Willman, on behalf of O Mayflower, LLC, is petitioning to vacate right-of-way known as Advantage Court; and

WHEREAS, City Council finds that no public inconvenience will result from vacating the right of way; and

WHEREAS, City Council determined that the City has no need for the portion of public right-of-way in question and the City's continued ownership of such public right-of-way is not necessary or required to serve the best interest of the City;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lynchburg, on its own motion, and in accordance with the provisions of Section 15.2-2006 of the Code of Virginia, 1950, as amended, and Sections 35-71 through 35-77 of the City Code, 1981, as amended, the following described right of way be, and the same hereby is, discontinued and vacated, namely:

BEGINNING AT THE POINT OF BEGINNING, A 1/2" REBAR SET AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF CHILES CIRCLE AND THE WESTERLY RIGHT-OF-WAY LINE OF ADVANTAGE COURT; THENCE S 53°43'43" E A DISTANCE OF 150.14' TO A STAKE FOUND; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 50.03', WITH AN ARC LENGTH OF 81.02', WITH A CHORD LENGTH OF 72.45', WITH A CHORD BEARING OF S 79°53'36" W, WITH A DELTA ANGLE OF 92°46'53", TO A POINT; THENCE WITH A COMPOUND CURVE TURNING TO THE LEFT WITH A RADIUS OF 696.82', WITH AN ARC LENGTH OF 137.72', WITH A CHORD LENGTH OF 137.50', WITH A CHORD BEARING OF S 27°51'13" W, WITH A DELTA ANGLE OF 11°19'27", TO A POINT; THENCE WITH A COMPOUND CURVE TURNING TO THE LEFT WITH A RADIUS OF 700.00', WITH AN ARC LENGTH OF 116.61', WITH A CHORD LENGTH OF 116.47', WITH A CHORD BEARING OF S 17°27'29" W, WITH A DELTA ANGLE OF 09°32'40", TO A POINT; THENCE S 12°41'10" W A DISTANCE OF 217.71' TO A POINT; THENCE S 12°41'10" W A DISTANCE OF 34.23' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 70.00', WITH AN ARC LENGTH OF 322.39', WITH A CHORD LENGTH OF 104.14', WITH A CHORD BEARING OF N 35°22'24" W, WITH A DELTA ANGLE OF 263°52'52", TO A POINT; THENCE S 82°34'46" E A DISTANCE OF 2.09' TO A POINT; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 27.50', WITH AN ARC LENGTH OF 41.08', WITH A CHORD LENGTH OF 37.36', WITH A CHORD BEARING OF N 55°28'53" E, WITH A DELTA ANGLE OF 85°34'52", TO A POINT; THENCE N 12°41'10" E A DISTANCE OF 154.73' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 750.00', WITH AN ARC LENGTH OF 279.32', WITH A CHORD LENGTH OF 277.71', WITH A CHORD BEARING OF N 23°21'19" E, WITH A DELTA ANGLE OF 21°20'18", TO A POINT; THENCE WITH A REVERSE CURVE TURNING TO THE LEFT WITH A RADIUS OF 50.00', WITH AN ARC LENGTH OF 76.57', WITH A CHORD LENGTH OF 69.30', WITH A CHORD BEARING OF N 09°50'45" W, WITH A DELTA ANGLE OF 87°44'25", TO A 1/2" REBAR SET; WHICH IS THE POINT OF BEGINNING, SAID PARCEL TO CONTAIN 0.979 ACRES, MORE OR LESS.

Provided, however, that any easement to locate, relocate, repair, replace, maintain and perpetually operate all utilities currently located therein or needed by the City in the future is hereby reserved unto the City of Lynchburg and the construction of a permanent structure over any utility line without the prior written approval of the City is prohibited.

BE IT FURTHER ORDAINED that the Clerk of Council is hereby authorized and directed to deliver a duly certified copy of this ordinance to the Clerk of the Circuit Court for the City of Lynchburg so that said certified copy of this ordinance may be recorded as deeds are recorded and indexed in the name of the City of Lynchburg, and the City Manager is hereby authorized to sign any documents that may be needed to complete the vacation of the right-of-way.

Adopted:

Certified:

Clerk of Council



The City of Lynchburg, Virginia

RIGHT-OF-WAY VACATION PACKET

Department of Community Development
City Hall, 900 Church Street
Lynchburg, Virginia 24504
PHONE • (434) 455-3900
FAX • (434) 845-7630

1. PETITIONER: The applicant is the: •Owner ☒ •Contract Purchaser: ☐ •Contract Leaseholder: ☐

Name: O Mayflower, LLC

Street: 100 Halsey City: Lynch State: VA Zip: 24501

Telephone#: 434-660-7662

E-Mail:

E-Signed: [Signature] (Petitioner) Date:

2. OWNER: (if different from petitioner; otherwise leave this section blank)

Name:

Street: City: State: Zip:

Telephone#: Email:

E-Signed: _____ (Owner) Date:

3. REPRESENTATIVE:

Name: Fred Edward Willman

Firm Name: Accupoint Surveying & Design

Street: 6200 Fort A City: Lynch State: VA Zip: 24502

Telephone#: 434-610-4334

Email: ewillman@accupointsurveying.com

Application Submittal Requirements - Right-of-Way Vacation	
	One (1) original signed right-of-way vacation application, complete with metes and bounds description and any adjoining owner signatures.
	Three (3) copies of a title search or opinion from an attorney or title examiner determining ownership of the right-of-way after it is vacated. A copy of a sample opinion letter is included with the right-of-way vacation application.
	Six (6) copies of a sketch (or plat) showing the right-of-way to be vacated.
	Photos of notification signs (if applicable)
	A check payable to the City of Lynchburg in the amount set forth in the fee schedule adopted by City Council (\$75)
	Electronic copy of all submittals. (Electronic copies may be submitted through eTrakit by contacting Victoria Glasgow @ 434-455-3937, by email at victoria.glasgow@lynchburgva.gov or on a flashdrive. Please name the files in the following format: (YY-MM-DD _File name)

This following describes the materials needed and steps involved in a right-of-way (ROW) vacation. This process takes roughly 90-120 days from submittal until the decision to vacate is made.

1. Submit the required materials to the Department of Community Development, located at 900 Church Street (second floor):
 - a. One (1) original signed ROW vacation application, complete with metes and bounds description (usually provided by a surveyor) and any adjoining owner signatures.
 - i. Be aware that any disagreement by affected adjoining land owners may result in City Council denying the ROW vacation.
 - b. Six (6) copies of a sketch (or plat) showing the ROW to be vacated.
 - c. Three (3) copies of a title search or opinion from an attorney or title examiner determining ownership of the right-of-way after it is vacated. A copy of a sample opinion letter is included with the right-of-way vacation application
 - i. In order for the ROW to be vacated by the City, the ownership of the ROW after it is vacated must first be determined. As a petitioner (or their representative) interested in having the City vacate ROW in order to serve the petitioner's interest, you will be required to provide this information.
 - ii. Past laws dictating how ROW was dedicated and annexation history of the ROW need to be taken into consideration during the research process. Here are some, but not all, things to consider when performing the title research:
 1. Was the property in question publicly dedicated?

- a. Some ROW's are simply left by the developer/owner as private, joint and common use, to adjacent properties.
 - b. Private alleys, etc., are generally private issues that do not involve the City
 2. If the ROW is public, in which locality (city or county) was the ROW dedicated?
 - a. When was the ROW dedicated?
 - b. Which law was in effect at the time of dedication? Certain acquisition years mean the City/locality only acquired the right to use the ROW. Fee simple ownership would be retained by the property owner dedicating the ROW to the locality.
 - c. Was the ROW dedicated by deed, plat, or prescription?
 - d. Did the locality accept the ROW?
 - e. Was the ROW dedicated to VDOT?
 - i. ROW dedicated to counties was most likely state maintained and state owned.
 - ii. Annexation by the City does not automatically determine the annexed ROW's clear title to the City. Often the ROW ownership is retained by the State even though the City is maintaining the ROW.
 3. A copy of an article discussing the factors that are to be considered when determining who gets title to a vacated right-of-way is included with the Right-of-Way Vacation Application.
- d. If the application is for an active ROW (ex. a street or alley that is used by the public), submit photos of notification signs posted in the area to be vacated. Sign formatting requirements can be found in City Code §35.2-10.14.3.b. This is to be arranged and paid for by the petitioner.
 - i. Active ROW petitions also require notice be mailed to property owners within 200' of the proposed vacation. This cost will be billed to the petitioner.
 - di. A check payable to the City of Lynchburg in the amount set forth in the fee schedule adopted by City Council (\$75)
 - dii. Electronic copy of all submittals. (Electronic copies may be submitted through eTrakit by contacting Victoria Glasgow @ 434-455-3937, by email at victoria.glasgow@lynchburgva.gov or on a flashdrive. Please name the files in the following format: (YY-MM-DD_File name)
2. Upon determining that the application materials are complete and sufficient, the petition will be reviewed by the City's Technical Review Committee.
 - a. City departments will have the opportunity to comment and voice any concerns over vacating the ROW.
 - b. The Planning Division generally does not support vacating ROW that is reserved for future street connectivity.
 - c. Usually, attendance at this meeting is not required, unless the ROW is active or part of a larger development project.
3. The petition will be scheduled for review by the Physical Development Committee (PDC), usually held on the second Tuesday morning of the month.
 - a. This is a three member board, composed of three members of City Council. The mayor also sits on this board.
 - b. The Planning Division will present its recommendation.
 - c. PDC will deliberate and forward the petition on to full council as they see fit.
 - d. Attendance is required at this meeting (by the petitioner or the representative)
4. The petition will be advertised in the newspaper, as required by state code. This cost will be billed to the petitioner.
5. The petition will be scheduled for a public hearing with City Council.
 - a. Members of the public may speak in favor of or against the petition.
 - b. Council will vote to approve to approve or deny the vacation.

APPLICATION FOR THE VACATION OF A
Advantage Court

Street/Alley/Right-of-way

LOCATED BETWEEN

Chiles Circle and the Termination of Advantage Court

The undersigned applicant, O Mayflower, LLC
pursuant to the provisions of Section 51.1-364 of the Code of Virginia, 1950,
as amended, and Sections 35-71 to 35-77, both inclusive, of the Lynchburg
City Code, 1981, as amended, respectfully makes application to the
Lynchburg City Council for the vacation of that certain Advantage Court
described as follows:

All of Advantage court from Chiles Circle to the termination

The applicant further requests the Lynchburg City Council to hold a public
hearing on this application at its meeting to be held in the Council
Chamber, City Hall, 900 Church Street, Lynchburg,
Virginia, on December 14, 2020, at 7:30 p.m., or as
soon thereafter as the matter may be heard, and at the conclusion of which
hearing to consider whether or not to vacate the above described
Advantage Court.

The City does not guarantee that the adjoining property owners get title to any portions of a public street or alley that is vacated. When vacating public right of way the City is only giving up its interest in the public right of way. State law determines who gets title to the vacated right of way. Anyone who wishes to acquire an interest in the vacated right of way should consult with an attorney or title examiner.

Given under my hand this 30 day of October,
2020.

Robert M. Potters
Applicant

100 Halsey Road

Lynchburg, VA 24501
Address

434-660-7662

Telephone Number

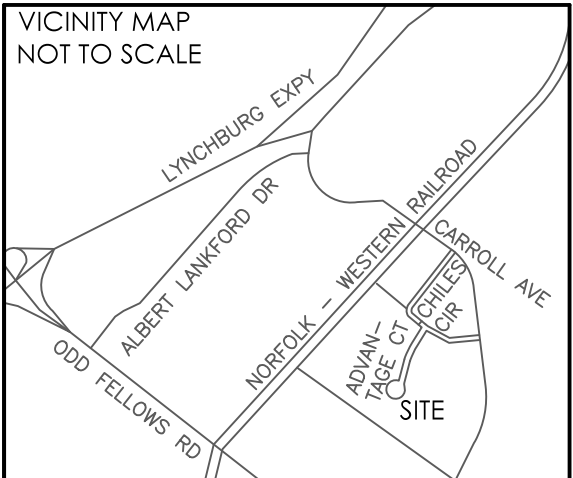
WE, THE ADJOINING PROPERTY OWNER(S), ARE IN AGREEMENT
TO THE VACATION OF THE ABOVE DESCRIBED PROPERTY.

Address

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	50.03'	81.02'	72.45'	S79°53'36"W	92°46'53"
C2	696.82'	137.72'	137.50'	S27°51'13"W	11°19'27"
C3	700.00'	116.61'	116.47'	S17°27'29"W	9°32'40"
C4	70.00'	322.39'	104.14'	N35°22'24"W	263°52'52"
C5	27.50'	41.08'	37.36'	N55°28'53"E	85°34'52"
C6	750.00'	279.32'	277.71'	N23°21'19"E	21°20'18"
C7	50.00'	76.57'	69.30'	N09°50'45"W	87°44'25"

LINE	BEARING	DISTANCE
L1	S53°43'43"E	150.14'
L2	S12°41'10"W	217.71'
L3	S12°41'10"W	34.23'
L4	S82°34'46"E	2.09'
L5	N12°41'10"E	154.73'

VICINITY MAP
NOT TO SCALE



PROPERTY LINE
ADJACENT PROPERTY LINE
EDGE OF PAVEMENT
EDGE OF GRAVEL
STORMWATER MAINTENANCE
AGREEMENT TO BE VACATED
CALCULATED POINT
CORNER MONUMENT

O'MAYFLOWER LLC
PARCEL ID 05105027
1002 ADVANTAGE CT
(CEP ENTERPRISES, NEW LOT 3)
INSTR NO 180003102

O'MAYFLOWER LLC
3001 CARROLL AVE
PARCEL ID 05105005
(CEP ENTERPRISES,
RESIDUE LOT)
INSTR 180003102

O'MAYFLOWER LLC
PARCEL ID 05104011
1003 ADVANTAGE CT
(CEP ENTERPRISES, NEW LOT 1)
INSTR NO 180003102

O MAYFLOWER LLC
PARCEL ID 05104012
1008 ADVANTAGE CT
(CEP ENTERPRISES, NEW LOT 2)
INSTR NO 180003102

ADVANTAGE COURT
50' R/W (NOT OPEN)
TO BE VACATED

STORMWATER MAINTENANCE
AGREEMENT TO BE VACATED
INSTRUMENT NO 070000823

ADVANTAGE COURT
TO BE VACATED
0.979 ACRES

NOTES:

- THIS PLAT WAS PREPARED AT THE REQUEST OF O'MAYFLOWER LLC.
- THIS SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE. THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT THEREFORE NECESSARILY INDICATE ALL ENCUMBRANCES OR IMPROVEMENTS ON THIS PROPERTY. ALL ADJOINING OWNERS ARE NOW OR FORMER OWNERS.
- BY GRAPHIC SCALING THIS PROPERTY AS PLATTED FALLS WITHIN THE FLOOD ZONE "X" AS DETERMINED BY F.E.M.A. AND SHOWN ON THEIR MAP 5100930043D AND 5100930044D, EACH EFFECTIVE JUNE 3, 2008.
- THIS PLAT WAS PREPARED FROM AN ACTUAL AND CURRENT FIELD SURVEY MADE UNDER MY SUPERVISION AND COMPLIES WITH THE MINIMUM STANDARDS AND PROCEDURES ESTABLISHED BY THE VIRGINIA STATE BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS TO THE BEST OF MY KNOWLEDGE AND BELIEF.

THE PLATTING OR DEDICATION OF THE FOLLOWING DESCRIBED LAND IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, PROPRIETORS AND TRUSTEES, IF ANY, THE STATEMENT SHALL BE SIGNED BY SUCH PERSONS AND DULY ACKNOWLEDGED BEFORE AN OFFICER AUTHORIZED TO TAKE ACKNOWLEDGEMENT OF DEEDS.

O'MAYFLOWER, LLC (AGENT)

STATE OF _____ CITY/COUNTY OF _____
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____

BY _____

NOTARY PUBLIC

REGISTRATION NO. _____

MY COMMISSION EXPIRES _____

CITY PLANNER: _____

CITY ENGINEER: _____



DATE: AUGUST 13, 2020

REV: NOVEMBER 30, 2020

STREET VACATION SURVEY
OF ADVANTAGE COURT
CITY OF LYNCHBURG, VIRGINIA


ACCUPOINT
SURVEYING & DESIGN
SURVEYORS ♦ ENGINEERS ♦ SOIL EVALUATORS
6200 FORT AVENUE, LYNCHBURG, VA 24502
PH: 434-610-4334 WWW.ACCUPOINTSURVEYING.COM

SCALE: 1" = 60'

ASD JOB# 2020-124

SHEET 1 OF 1



10/14/2020

Ms. Victoria Glasgow
City Planning and Community Development
900 Church Street
Lynchburg, VA 24504

Dear Ms. Glasgow and to whomever it may concern,

Accupoint Surveying & Design undertook investigation of the title to an undeveloped and unimproved portion of Advantage Court, as it is the desire of our client, O'Mayflower, LLC to vacate the public interest in this land.

A survey and dedication was filed and accepted in the clerk's office of the circuit court of the City of Lynchburg entitled "Division of Property of CES Enterprises, Inc., by Hurt and Proffitt dated February 14, 2008" at Instrument number 080001820 and in Plat Cabinet 9, slide 159 and 160 [Exhibit A]. This survey establishes and clearly dedicates that portion of land within the right-of-way of Advantage Court as a street for public use.

Please consider the following legislation. The General Assembly amended the 1888 Subdivision Act in 1928 to transfer in fee simple to the Commonwealth of Virginia that portion of land within the city limits set apart by subdivision plat for streets for public use.

The current law under Virginia Code §15.2-2265 establishes that "the recordation of such [subdivision] plat shall operate to transfer, in fee simple, to the respective counties and municipalities in which the land lies such portion of the premises platted as is on such plat set apart for streets, alleys or other public use."

In my opinion that the action of these case laws vest fee simple title to the land lying in the right-of-way of Advantage Court into the City of Lynchburg. Upon vacation of this right-of-way, Virginia Code § 15.2-2274 establishes reversion rights with respect to subdivision streets after sale of a lot to vest title to the abutting landowners to the centerline of the street, upholding the rule of common law.

As O'Mayflower LLC owns all adjacent property to the right-of-way of Advantage Court, it is my opinion that title to that land lying within the right-of-way of Advantage Court would vest solely in O'Mayflower LLC upon vacation. Thank you for your consideration of this matter.

Elizabeth M Davis
Virginia Certified Title Examiner
Accupoint Surveying & Design, LLC



SURVEYORS ♦ ENGINEERS ♦ SOIL EVALUATORS
434.610.4334 | 6200 FORT AVENUE | LYNCHBURG, VA 24502
www.accupointsurveying.com



DBE# 723629

AN ORDINANCE VACATING RIGHT-OF-WAY KNOWN AS ADVANTAGE COURT.

WHEREAS, Ed Willman, on behalf of O Mayflower, LLC, is petitioning to vacate right-of-way known as Advantage Court; and

WHEREAS, City Council finds that no public inconvenience will result from vacating the right of way; and

WHEREAS, City Council determined that the City has no need for the portion of public right-of-way in question and the City's continued ownership of such public right-of-way is not necessary or required to serve the best interest of the City;

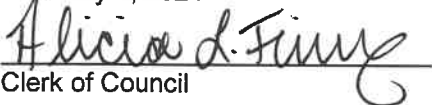
NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lynchburg, on its own motion, and in accordance with the provisions of Section 15.2-2006 of the Code of Virginia, 1950, as amended, and Sections 35-71 through 35-77 of the City Code, 1981, as amended, the following described right of way be, and the same hereby is, discontinued and vacated, namely:

BEGINNING AT THE POINT OF BEGINNING, A 1/2" REBAR SET AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF CHILES CIRCLE AND THE WESTERLY RIGHT-OF-WAY LINE OF ADVANTAGE COURT; THENCE S 53°43'43" E A DISTANCE OF 150.14' TO A STAKE FOUND; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 50.03', WITH AN ARC LENGTH OF 81.02', WITH A CHORD LENGTH OF 72.45', WITH A CHORD BEARING OF S 79°53'36" W, WITH A DELTA ANGLE OF 92°46'53", TO A POINT; THENCE WITH A COMPOUND CURVE TURNING TO THE LEFT WITH A RADIUS OF 696.82', WITH AN ARC LENGTH OF 137.72', WITH A CHORD LENGTH OF 137.50', WITH A CHORD BEARING OF S 27°51'13" W, WITH A DELTA ANGLE OF 11°19'27", TO A POINT; THENCE WITH A COMPOUND CURVE TURNING TO THE LEFT WITH A RADIUS OF 700.00', WITH AN ARC LENGTH OF 116.61', WITH A CHORD LENGTH OF 116.47', WITH A CHORD BEARING OF S 17°27'29" W, WITH A DELTA ANGLE OF 09°32'40", TO A POINT; THENCE S 12°41'10" W A DISTANCE OF 217.71' TO A POINT; THENCE S 12°41'10" W A DISTANCE OF 34.23' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 70.00', WITH AN ARC LENGTH OF 322.39', WITH A CHORD LENGTH OF 104.14', WITH A CHORD BEARING OF N 35°22'24" W, WITH A DELTA ANGLE OF 263°52'52", TO A POINT; THENCE S 82°34'46" E A DISTANCE OF 2.09' TO A POINT; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 27.50', WITH AN ARC LENGTH OF 41.08', WITH A CHORD LENGTH OF 37.36', WITH A CHORD BEARING OF N 55°28'53" E, WITH A DELTA ANGLE OF 85°34'52", TO A POINT; THENCE N 12°41'10" E A DISTANCE OF 154.73' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 750.00', WITH AN ARC LENGTH OF 279.32', WITH A CHORD LENGTH OF 277.71', WITH A CHORD BEARING OF N 23°21'19" E, WITH A DELTA ANGLE OF 21°20'18", TO A POINT; THENCE WITH A REVERSE CURVE TURNING TO THE LEFT WITH A RADIUS OF 50.00', WITH AN ARC LENGTH OF 76.57', WITH A CHORD LENGTH OF 69.30', WITH A CHORD BEARING OF N 09°50'45" W, WITH A DELTA ANGLE OF 87°44'25", TO A 1/2" REBAR SET; WHICH IS THE POINT OF BEGINNING, SAID PARCEL TO CONTAIN 0.979 ACRES, MORE OR LESS.

Provided, however, that any easement to locate, relocate, repair, replace, maintain and perpetually operate all utilities currently located therein or needed by the City in the future is hereby reserved unto the City of Lynchburg and the construction of a permanent structure over any utility line without the prior written approval of the City is prohibited.

BE IT FURTHER ORDAINED that the Clerk of Council is hereby authorized and directed to deliver a duly certified copy of this ordinance to the Clerk of the Circuit Court for the City of Lynchburg so that said certified copy of this ordinance may be recorded as deeds are recorded and indexed in the name of the City of Lynchburg, and the City Manager is hereby authorized to sign any documents that may be needed to complete the vacation of the right-of-way.

Adopted: February 9, 2021

Certified: 
Clerk of Council

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **February 9, 2021**

AGENDA ITEM #: **7**

CONSENT:
ACTION: **X**

REGULAR: **X**
INFORMATION:

WORK SESSION:

CLOSED SESSION:
(Confidential)

ITEM TITLE: Vacate a portion of Chiles Circle

KEY ELEMENTS:

☒ Economic Development ☐ Excellent Government ☒ Natural and Built Environment ☐ Safe Community ☒ Vibrant Community

RECOMMENDATION: Approval of the right-of-way vacation of a portion of Chiles Circle

SUMMARY: Ed Willman, on behalf of O Mayflower, LLC, is petitioning to vacate a portion of Chiles Circle right-of-way, located off of Carroll Avenue and Chiles Circle. The right-of-way vacation would facilitate the future development of the adjacent property for industrial use. The total area of the proposed vacation is approximately four hundred eighty-five thousandths (0.485) of an acre.

The area to be vacated includes an unpaved gravel drive. The vacation would not impact vehicle or pedestrian access along Chiles Circle or Carroll Avenue.

PRIOR ACTION(S): January 12, 2021: The Physical Development Committee (PDC) recommended approval of the right-of-way vacation.

November 3, 2020: The Technical Review Committee (TRC) reviewed the petition.

FISCAL IMPACT: Based on the zoning of the adjacent lots and property frontage, the value of the property is anticipated to be approximately \$4,856.

CONTACT(S): Victoria Glasgow, Neighborhood Planning Coordinator – 455-3900
Tom Martin, City Planner – 455-3900

ATTACHMENT(S):

- Ordinance
- Application
- Plat
- Title Work

REVIEWED BY: raw

015A

UNCODIFIED ORDINANCE:

AN ORDINANCE VACATING A PORTION OF RIGHT-OF-WAY KNOWN AS CHILES CIRCLE.

WHEREAS, Ed Willman, on behalf of O Mayflower, LLC, is petitioning to vacate a portion of right-of-way known as Chiles Circle; and

WHEREAS, City Council finds that no public inconvenience will result from vacating the right of way; and

WHEREAS, City Council determined that the City has no need for the portion of public right-of-way in question and the City's continued ownership of such public right-of-way is not necessary or required to serve the best interest of the City;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lynchburg, on its own motion, and in accordance with the provisions of Section 15.2-2006 of the Code of Virginia, 1950, as amended, and Sections 35-71 through 35-77 of the City Code, 1981, as amended, the following described right of way be, and the same hereby is, discontinued and vacated, namely:

LEGAL DESCRIPTION PARCEL "A"

COMMENCE AT A DRILL HOLE FOUND IN PAVEMENT AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF CARROLL AVENUE AND THE SOUTHERLY RIGHT-OF-WAY LINE OF CHILES CIRCLE, THENCE N 06°44'26" W AND PASSING A DRILL HOLE SET IN THE PAVEMENT AT 46.00' A TOTAL DISTANCE OF 61.00' TO A POINT; THENCE S 83°54'01" W A DISTANCE OF 221.29' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 20.00', WITH AN ARC LENGTH OF 14.85', WITH A CHORD LENGTH OF 14.51', WITH A CHORD BEARING OF N 74°49'59" W, WITH A DELTA ANGLE OF 42°32'00" TO A POINT; THENCE N 53°33'59" W A DISTANCE OF 7.19' TO A POINT; POB "1"; THE POINT OF BEGINNING OF PARCEL "A"; THENCE S 36°26'01" W A DISTANCE OF 15.00' TO A POINT; THENCE N 53°33'59" W A DISTANCE OF 250.55' TO A POINT; THENCE N 36°26'01" E A DISTANCE OF 15.00' TO A POINT; THENCE S 53°33'59" E A DISTANCE OF 250.55' TO A POINT; WHICH IS THE POINT OF BEGINNING, SAID PARCEL "A" TO CONTAIN 0.0863 ACRES, MORE OR LESS.

LEGAL DESCRIPTION PARCEL "B"

COMMENCE AT A DRILL HOLE FOUND IN PAVEMENT AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF CARROLL AVENUE AND THE SOUTHERLY RIGHT-OF-WAY LINE OF CHILES CIRCLE, THENCE N 06°44'26" W AND PASSING A DRILL HOLE SET IN THE PAVEMENT AT 46.00' A TOTAL DISTANCE OF 61.00' TO A POINT; THENCE S 83°54'01" W A DISTANCE OF 221.29' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 20.00', WITH AN ARC LENGTH OF 14.85', WITH A CHORD LENGTH OF 14.51', WITH A CHORD BEARING OF N 74°49'59" W, WITH A DELTA ANGLE OF 42°32'00" TO A POINT; THENCE N 53°33'59" W A DISTANCE OF 7.19' TO A POINT; POB "1"; THE POINT OF BEGINNING OF PARCEL "B"; THENCE N 53°33'59" W A DISTANCE OF 89.71' TO A POINT; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 255.00', WITH AN ARC LENGTH OF 80.72', WITH A CHORD LENGTH OF 80.39', WITH A CHORD BEARING OF S 61°25'12" E, WITH A DELTA ANGLE OF 18°08'15", TO A POINT; THENCE S 06°05'59" E A DISTANCE OF 14.91' TO A POINT; WHICH IS THE POINT OF BEGINNING, SAID PARCEL "B" TO CONTAIN 0.0074 ACRES, MORE OR LESS.

LEGAL DESCRIPTION PARCEL "C"

COMMENCE AT A DRILL HOLE FOUND IN PAVEMENT AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF CARROLL AVENUE AND THE SOUTHERLY RIGHT-OF-WAY LINE OF CHILES CIRCLE, THENCE N 06°44'26" W AND PASSING A DRILL HOLE SET IN THE PAVEMENT AT 46.00' A TOTAL DISTANCE OF 61.00' TO A POINT; THENCE S 83°54'01" W A DISTANCE OF 221.29' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 20.00', WITH AN ARC LENGTH OF 14.85', WITH A CHORD LENGTH OF 14.51', WITH A CHORD BEARING OF N 74°49'59" W, WITH A DELTA ANGLE OF 42°32'00" TO A POINT; THENCE N 53°33'59" W A DISTANCE OF 7.19' TO A POINT; POB "1"; THE POINT OF BEGINNING OF PARCEL "C"; THENCE N 06°05'59" W A DISTANCE OF 14.91' TO

A POINT; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 255.00', WITH AN ARC LENGTH OF 110.58', WITH A CHORD LENGTH OF 109.72', WITH A CHORD BEARING OF S 82°54'44" E, WITH A DELTA ANGLE OF 24°50'49", TO A POINT; THENCE S 83°54'01" W A DISTANCE OF 88.00' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 20.00', WITH AN ARC LENGTH OF 14.85', WITH A CHORD LENGTH OF 14.51', WITH A CHORD BEARING OF N 74°49'59" W, WITH A DELTA ANGLE OF 42°32'00", TO A POINT THENCE N 53°33'59" W A DISTANCE OF 7.19' TO A POINT; WHICH IS THE POINT OF BEGINNING, SAID PARCEL "C" TO CONTAIN 0.019 ACRES, MORE OR LESS.

PARCEL "D" LEGAL DESCRIPTION

BEGIN AT THE POINT OF BEGINNING, POB "2"; A DRILL HOLE SET AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY OF CARROLL AVENUE AND THE CENTERLINE OF CHILES CIRCLE; THENCE S 83°54'01" W A DISTANCE OF 221.46' TO A 1/2" REBAR SET; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 35.00', WITH AN ARC LENGTH OF 25.98', WITH A CHORD LENGTH OF 25.39', WITH A CHORD BEARING OF N 74°49'59" W, WITH A DELTA ANGLE OF 42°32'00", TO A 1/2" REBAR SET; THENCE N 53°33'59" W A DISTANCE OF 7.19' TO A POINT; THENCE N 36°26'01" E A DISTANCE OF 15.00' TO A POINT; THENCE S 53°33'59" E A DISTANCE OF 7.19' TO A POINT; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 20.00', WITH AN ARC LENGTH OF 14.85', WITH A CHORD LENGTH OF 14.51', WITH A CHORD BEARING OF S 74°49'59" E, WITH A DELTA ANGLE OF 42°32'00", TO A POINT; THENCE N 83°54'01" E A DISTANCE OF 221.29' TO A POINT; THENCE S 06°44'26" E A DISTANCE OF 15.00' TO A DRILL HOLE SET; WHICH IS THE POINT OF BEGINNING, SAID PARCEL "D" TO CONTAIN 0.086 ACRES, MORE OR LESS.

PARCEL "E" LEGAL DESCRIPTION

BEGIN AT THE POINT OF BEGINNING, POB "2"; A DRILL HOLE SET AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY OF CARROLL AVENUE AND THE CENTERLINE OF CHILES CIRCLE; THENCE S 06°44'26" E A DISTANCE OF 15.00' TO A POINT; THENCE S 83°54'01" W A DISTANCE OF 221.63' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 50.00', WITH AN ARC LENGTH OF 37.12', WITH A CHORD LENGTH OF 36.27', WITH A CHORD BEARING OF N 74°49'59" W, WITH A DELTA ANGLE OF 42°32'00", TO A POINT; THENCE N 53°33'59" W A DISTANCE OF 257.75' TO A POINT; THENCE N 36°26'01" E A DISTANCE OF 15.00' TO A POINT; THENCE S 53°33'59" E A DISTANCE OF 257.75' TO A 1/2" REBAR SET; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 35.00', WITH AN ARC LENGTH OF 25.98', WITH A CHORD LENGTH OF 25.39', WITH A CHORD BEARING OF S 74°49'59" E, WITH A DELTA ANGLE OF 42°32'00", TO A 1/2" REBAR SET; THENCE N 83°54'01" E A DISTANCE OF 221.46' TO A DRILL HOLE SET; WHICH IS THE POINT OF BEGINNING, SAID PARCEL "E" TO CONTAIN 0.176 ACRES, MORE OR LESS.

PARCEL "F" LEGAL DESCRIPTION

BEGIN AT THE POINT OF BEGINNING, POB "3"; A DRILL HOLE FOUND IN PAVEMENT AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF CARROLL AVENUE AND THE SOUTHERLY RIGHT-OF-WAY LINE OF CHILES CIRCLE, THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 25.00', WITH AN ARC LENGTH OF 39.27', WITH A CHORD LENGTH OF 35.36', WITH A CHORD BEARING OF N 51°44'23" W, WITH A DELTA ANGLE OF 89°59'47" TO A POINT; THENCE S 83°15'34" W A DISTANCE OF 182.84' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 100.00', WITH AN ARC LENGTH OF 75.09', WITH A CHORD LENGTH OF 73.34', WITH A CHORD BEARING OF N 75°13'42" W, WITH A DELTA ANGLE OF 43°01'29" TO A POINT; THENCE N 53°41'45" W A DISTANCE OF 89.09' TO A POINT; THENCE N 53°43'43" W A DISTANCE OF 150.14' TO A 1/2" REBAR SET; THENCE N 36°26'01" E A DISTANCE OF 11.30' TO A 1/2" REBAR SET; THENCE S 53°33'59" E A DISTANCE OF 257.75' TO A POINT; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 50.00', WITH AN ARC LENGTH OF 37.12', WITH A CHORD LENGTH OF 36.27', WITH A CHORD BEARING OF S 74°49'59" E, WITH A DELTA ANGLE OF 42°32'00" TO A POINT; THENCE N 83°54'01" E A DISTANCE OF 221.63' TO A POINT; THENCE S 06°44'26" E A DISTANCE OF 31.00' TO A

DRILL HOLE FOUND; WHICH IS THE POINT OF BEGINNING, HAVING AN AREA OF 0.111 ACRES, MORE OR LESS.

Provided, however, that any easement to locate, relocate, repair, replace, maintain and perpetually operate all utilities currently located therein or needed by the City in the future is hereby reserved unto the City of Lynchburg and the construction of a permanent structure over any utility line without the prior written approval of the City is prohibited.

BE IT FURTHER ORDAINED that the Clerk of Council is hereby authorized and directed to deliver a duly certified copy of this ordinance to the Clerk of the Circuit Court for the City of Lynchburg so that said certified copy of this ordinance may be recorded as deeds are recorded and indexed in the name of the City of Lynchburg, and the City Manager is hereby authorized to sign any documents that may be needed to complete the vacation of the right-of-way.

Adopted:

Certified: _____
Clerk of Council



The City of Lynchburg, Virginia

RIGHT-OF-WAY VACATION PACKET

Department of Community Development
City Hall, 900 Church Street
Lynchburg, Virginia 24504
PHONE • (434) 455-3900
FAX • (434) 845-7630

1. PETITIONER: The applicant is the: •Owner ☒ •Contract Purchaser: ☐ •Contract Leaseholder: ☐

Name: O Mayflower, LLC

Street: 100 Halsey City: Lynch State: VA Zip: 24501

Telephone#: 434-660-7662

E-Mail:

E-Signed: [Signature] (Petitioner)

Date: 10/14/20

2. OWNER: (if different from petitioner; otherwise leave this section blank)

Name:

Street: City: State: Zip:

Telephone#: Email:

E-Signed: _____ (Owner)

Date:

3. REPRESENTATIVE:

Name: Fred Edward Willman

Firm Name: Accupoint Surveying & Design

Street: 6200 Fort A City: Lynch State: VA Zip: 24502

Telephone#: 434-610-4334

Email: ewillman@accupointsurveying.com

Application Submittal Requirements - Right-of-Way Vacation	
	One (1) original signed right-of-way vacation application, complete with metes and bounds description and any adjoining owner signatures.
	Three (3) copies of a title search or opinion from an attorney or title examiner determining ownership of the right-of-way after it is vacated. A copy of a sample opinion letter is included with the right-of-way vacation application.
	Six (6) copies of a sketch (or plat) showing the right-of-way to be vacated.
	Photos of notification signs (if applicable)
	A check payable to the City of Lynchburg in the amount set forth in the fee schedule adopted by City Council (\$75)
	Electronic copy of all submittals. (Electronic copies may be submitted through eTrakit by contacting Victoria Glasgow @ 434-455-3937, by email at victoria.glasgow@lynchburgva.gov or on a flashdrive. Please name the files in the following format: (YY-MM-DD _File name)

This following describes the materials needed and steps involved in a right-of-way (ROW) vacation. This process takes roughly 90-120 days from submittal until the decision to vacate is made.

1. Submit the required materials to the Department of Community Development, located at 900 Church Street (second floor):
 - a. One (1) original signed ROW vacation application, complete with metes and bounds description (usually provided by a surveyor) and any adjoining owner signatures.
 - i. Be aware that any disagreement by affected adjoining land owners may result in City Council denying the ROW vacation.
 - b. Six (6) copies of a sketch (or plat) showing the ROW to be vacated.
 - c. Three (3) copies of a title search or opinion from an attorney or title examiner determining ownership of the right-of-way after it is vacated. A copy of a sample opinion letter is included with the right-of-way vacation application
 - i. In order for the ROW to be vacated by the City, the ownership of the ROW after it is vacated must first be determined. As a petitioner (or their representative) interested in having the City vacate ROW in order to serve the petitioner's interest, you will be required to provide this information.
 - ii. Past laws dictating how ROW was dedicated and annexation history of the ROW need to be taken into consideration during the research process. Here are some, but not all, things to consider when performing the title research:
 1. Was the property in question publicly dedicated?

- a. Some ROW's are simply left by the developer/owner as private, joint and common use, to adjacent properties.
 - b. Private alleys, etc., are generally private issues that do not involve the City
2. If the ROW is public, in which locality (city or county) was the ROW dedicated?
 - a. When was the ROW dedicated?
 - b. Which law was in effect at the time of dedication? Certain acquisition years mean the City/locality only acquired the right to use the ROW. Fee simple ownership would be retained by the property owner dedicating the ROW to the locality.
 - c. Was the ROW dedicated by deed, plat, or prescription?
 - d. Did the locality accept the ROW?
 - e. Was the ROW dedicated to VDOT?
 - i. ROW dedicated to counties was most likely state maintained and state owned.
 - ii. Annexation by the City does not automatically determine the annexed ROW's clear title to the City. Often the ROW ownership is retained by the State even though the City is maintaining the ROW.
3. A copy of an article discussing the factors that are to be considered when determining who gets title to a vacated right-of-way is included with the Right-of-Way Vacation Application.
- d. If the application is for an active ROW (ex. a street or alley that is used by the public), submit photos of notification signs posted in the area to be vacated. Sign formatting requirements can be found in City Code §35.2-10.14.3.b. This is to be arranged and paid for by the petitioner.
 - i. Active ROW petitions also require notice be mailed to property owners within 200' of the proposed vacation. This cost will be billed to the petitioner.
 - di. A check payable to the City of Lynchburg in the amount set forth in the fee schedule adopted by City Council (\$75)
 - dii. Electronic copy of all submittals. (Electronic copies may be submitted through eTrakit by contacting Victoria Glasgow @ 434-455-3937, by email at victoria.glasgow@lynchburgva.gov or on a flashdrive. Please name the files in the following format: (YY-MM-DD _File name)
2. Upon determining that the application materials are complete and sufficient, the petition will be reviewed by the City's Technical Review Committee.
 - a. City departments will have the opportunity to comment and voice any concerns over vacating the ROW.
 - b. The Planning Division generally does not support vacating ROW that is reserved for future street connectivity.
 - c. Usually, attendance at this meeting is not required, unless the ROW is active or part of a larger development project.
3. The petition will be scheduled for review by the Physical Development Committee (PDC), usually held on the second Tuesday morning of the month.
 - a. This is a three member board, composed of three members of City Council. The mayor also sits on this board.
 - b. The Planning Division will present its recommendation.
 - c. PDC will deliberate and forward the petition on to full council as they see fit.
 - d. Attendance is required at this meeting (by the petitioner or the representative)
4. The petition will be advertised in the newspaper, as required by state code. This cost will be billed to the petitioner.
5. The petition will be scheduled for a public hearing with City Council.
 - a. Members of the public may speak in favor of or against the petition.
 - b. Council will vote to approve or deny the vacation.

APPLICATION FOR THE VACATION OF A

a portion of Chiles Circle

Street/Alley/Right-of-way

LOCATED BETWEEN

Carroll Avenue and Advantage Court

The undersigned applicant, O Mayflower, LLC
pursuant to the provisions of Section 51.1-364 of the Code of Virginia, 1950,
as amended, and Sections 35-71 to 35-77, both inclusive, of the Lynchburg
City Code, 1981, as amended, respectfully makes application to the
Lynchburg City Council for the vacation of that certain Chiles Circle
described as follows:

That portion of Chiles Circle between Carroll Avenue and Advantage
Court

The applicant further requests the Lynchburg City Council to hold a
public hearing on this application at its meeting to be held in the
Council Chamber, City Hall, 900 Church Street, Lynchburg,
Virginia, on December 14, 2020, at 7:30 p.m., or as
soon thereafter as the matter may be heard, and at the conclusion of which
hearing to consider whether or not to vacate the above described
Chiles Circle.

The City does not guarantee that the adjoining property owners get title to any portions of a public street or alley that is vacated. When vacating public right of way the City is only giving up its interest in the public right of way. State law determines who gets title to the vacated right of way. Anyone who wishes to acquire an interest in the vacated right of way should consult with an attorney or title examiner.

Given under my hand this 30 day of October,
2020.



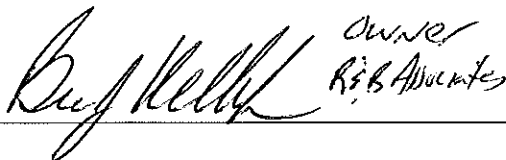
Applicant

100 Halsey Road

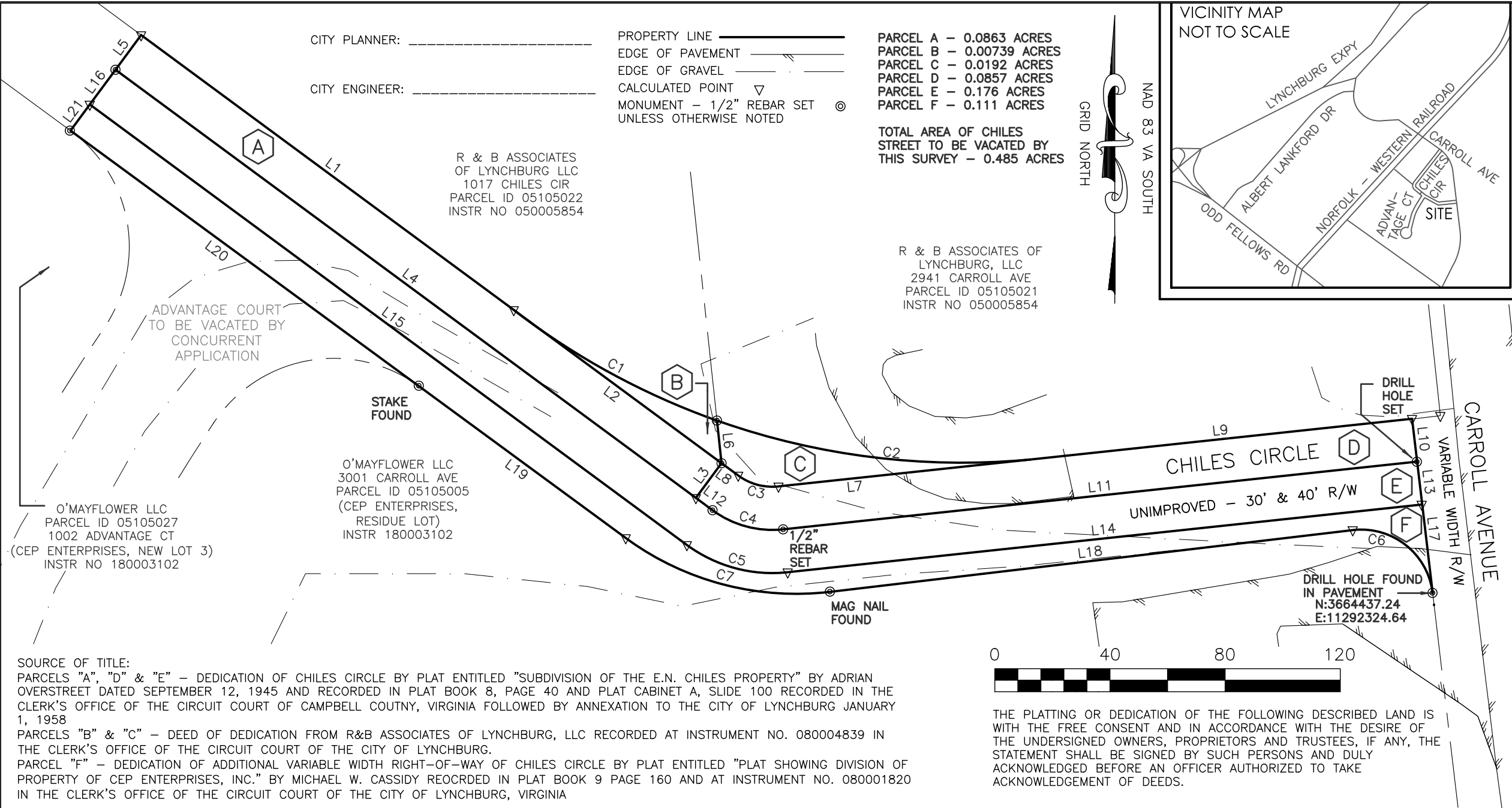
Lynchburg, VA 24501
Address

434-660-7662
Telephone Number

WE, THE ADJOINING PROPERTY OWNER(S), ARE IN AGREEMENT
TO THE VACATION OF THE ABOVE DESCRIBED PROPERTY.



3018 Carroll Avenue
Address



STREET VACATION SURVEY
A PORTION OF CHILES CIRCLE
CITY OF LYNCHBURG, VIRGINIA



SCALE:	1" = 50'
ASD JOB#	2020-254
FILE #:	2020-254.DWG
DATE:	AUGUST 13, 2020
REV:	NOVEMBER 30, 2020
SHEET 1 OF 1	



10/1/2020

Ms. Victoria Glasgow
City Planning and Community Development
900 Church Street
Lynchburg, VA 24504

Dear Ms. Glasgow and to whomever it may concern,

Accupoint Surveying & Design undertook investigation of the title to an undeveloped and unimproved portion of Chiles Circle lying between Carroll Avenue and Advantage Court. It is the desire of O' Mayflower, LLC and R&B Associates of Lynchburg, LLC to vacate the public interest in this portion of land, henceforward described as the "subject property."

The current public right-of-way of Chiles Circle, or the subject property, came into existence by three separate dedications for public use as a street. I undertook research and consideration of the circumstances surrounding each right-of-way dedication, as well as current case law and law at the time of dedication on an individual basis.

Please review the chronological summary of progressive dedication for public use as a street of the subject property. The original subdivision plat entitled "Subdivision of E.N. Chiles Property by Adrian Overstreet, S. C. S.," [Exhibit A] clearly establishes a 30' road currently known as Chiles Circle for the public's right to access the lots within the E.N. Chiles Property subdivision as well as the state road on the face of the survey, currently known as Carroll Avenue.

At the time of dedication in 1945, this portion of the subject property lay within the bounds of Campbell County. As such, the first Subdivision Act of 1888 provides that the recording of a plat operates to create an easement for public use, thus the fee interest in the lands lies with the subdivider, his heirs or assigns. However, upon vacation of this right-of-way, Virginia Code §15.2-2274 establish reversionary rights with respect to subdivision streets after sale of a lot, vesting title to the abutting landowners to the centerline of the street, upholding the long standing rule of common law.

Virginia Code § 15.2-2272 establishes that in circumstances where lots have been sold in the subdivision, and the vacation of the portion of a subdivision street right-of-way does not impede or alter the access for any other lot owners, than the governing body may vacate the plat in writing, provided they obtain the signatures of the lot owners immediately adjoining or contiguous to the vacated area, regardless of whether the plat was recorded under the current statutory scheme.

It is clear from a thorough examination of the public land records the remaining lots within the original E.N. Chiles Subdivision retain direct physical access to publicly maintained roads, and this vacation would not infringe upon any other party's rights of access.



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www.accupointsurveying.com



DBE# 723629



It is my opinion that should the City of Lynchburg exercise the right to vacate the public's interest in that portion of the subject property lying within the original 30' dedication of Chiles Circle, fee simple title shall vest in the abutting landowners to the centerline of the street, under common law practice.

The subject property and adjacent parcels were annexed to the City of Lynchburg in 1958, and the following right-of-way acquisitions which occurred after the annexation fall under separate legislation. The survey entitled "Plat showing Division of Property of CEP Enterprises, Inc.," by Hurt and Proffitt [Exhibit B] dedicates additional right-of-way directly to the City of Lynchburg to widen the southerly border of Chiles Circle.

The deed and accompanying survey entitled "Plat Showing City of Lynchburg Right-of-Way Acquisition for Part of Property of R & B Associates of Lynchburg, LLC, City of Lynchburg, Virginia," [Exhibit C] dedicates additional right-of-way to widen Chiles Circle's northerly border.

There is little question that each of these conveyances vest title directly to the City of Lynchburg, one by express platted dedication and the other by deed and survey. In each case, it is my opinion the vacation of the aforementioned rights-of-way vest fee-simple title to lands within to the abutting landowners.

As R&B Associates of Lynchburg, LLC owns all the adjacent parcels to the north of the subject property, and O Mayflower LLC owns all the adjacent property to the south of the subject parcel, I believe upon vacation of the public interest the title to the land withing the right-of-way of Chiles Circle shall pass in fee to each abutting owner, to the centerline of the original street conveyance.

Thank you for your attention to this matter. Please let me know if there are any questions.

Elizabeth Davis
Virginia Certified Title Examiner
Accupoint Surveying & Design, LLC

AN ORDINANCE VACATING A PORTION OF RIGHT-OF-WAY KNOWN AS CHILES CIRCLE.

WHEREAS, Ed Willman, on behalf of O Mayflower, LLC, is petitioning to vacate a portion of right-of-way known as Chiles Circle; and

WHEREAS, City Council finds that no public inconvenience will result from vacating the right of way; and

WHEREAS, City Council determined that the City has no need for the portion of public right-of-way in question and the City's continued ownership of such public right-of-way is not necessary or required to serve the best interest of the City;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lynchburg, on its own motion, and in accordance with the provisions of Section 15.2-2006 of the Code of Virginia, 1950, as amended, and Sections 35-71 through 35-77 of the City Code, 1981, as amended, the following described right of way be, and the same hereby is, discontinued and vacated, namely:

LEGAL DESCRIPTION PARCEL "A"

COMMENCE AT A DRILL HOLE FOUND IN PAVEMENT AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF CARROLL AVENUE AND THE SOUTHERLY RIGHT-OF-WAY LINE OF CHILES CIRCLE, THENCE N 06°44'26" W AND PASSING A DRILL HOLE SET IN THE PAVEMENT AT 46.00' A TOTAL DISTANCE OF 61.00' TO A POINT; THENCE S 83°54'01" W A DISTANCE OF 221.29' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 20.00', WITH AN ARC LENGTH OF 14.85', WITH A CHORD LENGTH OF 14.51', WITH A CHORD BEARING OF N 74°49'59" W, WITH A DELTA ANGLE OF 42°32'00" TO A POINT; THENCE N 53°33'59" W A DISTANCE OF 7.19' TO A POINT; POB "1"; THE POINT OF BEGINNING OF PARCEL "A"; THENCE S 36°26'01" W A DISTANCE OF 15.00' TO A POINT; THENCE N 53°33'59" W A DISTANCE OF 250.55' TO A POINT; THENCE N 36°26'01" E A DISTANCE OF 15.00' TO A POINT; THENCE S 53°33'59" E A DISTANCE OF 250.55' TO A POINT; WHICH IS THE POINT OF BEGINNING, SAID PARCEL "A" TO CONTAIN 0.0863 ACRES, MORE OR LESS.

LEGAL DESCRIPTION PARCEL "B"

COMMENCE AT A DRILL HOLE FOUND IN PAVEMENT AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF CARROLL AVENUE AND THE SOUTHERLY RIGHT-OF-WAY LINE OF CHILES CIRCLE, THENCE N 06°44'26" W AND PASSING A DRILL HOLE SET IN THE PAVEMENT AT 46.00' A TOTAL DISTANCE OF 61.00' TO A POINT; THENCE S 83°54'01" W A DISTANCE OF 221.29' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 20.00', WITH AN ARC LENGTH OF 14.85', WITH A CHORD LENGTH OF 14.51', WITH A CHORD BEARING OF N 74°49'59" W, WITH A DELTA ANGLE OF 42°32'00" TO A POINT; THENCE N 53°33'59" W A DISTANCE OF 7.19' TO A POINT; POB "1"; THE POINT OF BEGINNING OF PARCEL "B"; THENCE N 53°33'59" W A DISTANCE OF 89.71' TO A POINT; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 255.00', WITH AN ARC LENGTH OF 80.72', WITH A CHORD LENGTH OF 80.39', WITH A CHORD BEARING OF S 61°25'12" E, WITH A DELTA ANGLE OF 18°08'15", TO A POINT; THENCE S 06°05'59" E A DISTANCE OF 14.91' TO A POINT; WHICH IS THE POINT OF BEGINNING, SAID PARCEL "B" TO CONTAIN 0.0074 ACRES, MORE OR LESS.

LEGAL DESCRIPTION PARCEL "C"

COMMENCE AT A DRILL HOLE FOUND IN PAVEMENT AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF CARROLL AVENUE AND THE SOUTHERLY RIGHT-OF-WAY LINE OF CHILES CIRCLE, THENCE N 06°44'26" W AND PASSING A DRILL HOLE SET IN THE PAVEMENT AT 46.00' A TOTAL DISTANCE OF 61.00' TO A POINT; THENCE S 83°54'01" W A DISTANCE OF 221.29' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 20.00', WITH AN ARC LENGTH OF 14.85', WITH A CHORD LENGTH OF 14.51', WITH A CHORD BEARING OF N 74°49'59" W, WITH A DELTA ANGLE OF 42°32'00" TO A POINT; THENCE N 53°33'59" W A DISTANCE OF 7.19' TO A POINT; POB "1"; THE POINT OF BEGINNING OF PARCEL "C"; THENCE N 06°05'59" W A DISTANCE OF 14.91' TO

A POINT; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 255.00', WITH AN ARC LENGTH OF 110.58', WITH A CHORD LENGTH OF 109.72', WITH A CHORD BEARING OF S 82°54'44" E, WITH A DELTA ANGLE OF 24°50'49", TO A POINT; THENCE S 83°54'01" W A DISTANCE OF 88.00' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 20.00', WITH AN ARC LENGTH OF 14.85', WITH A CHORD LENGTH OF 14.51', WITH A CHORD BEARING OF N 74°49'59" W, WITH A DELTA ANGLE OF 42°32'00", TO A POINT THENCE N 53°33'59" W A DISTANCE OF 7.19' TO A POINT; WHICH IS THE POINT OF BEGINNING, SAID PARCEL "C" TO CONTAIN 0.019 ACRES, MORE OR LESS.

PARCEL "D" LEGAL DESCRIPTION

BEGIN AT THE POINT OF BEGINNING, POB "2"; A DRILL HOLE SET AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY OF CARROLL AVENUE AND THE CENTERLINE OF CHILES CIRCLE; THENCE S 83°54'01" W A DISTANCE OF 221.46' TO A 1/2" REBAR SET; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 35.00', WITH AN ARC LENGTH OF 25.98', WITH A CHORD LENGTH OF 25.39', WITH A CHORD BEARING OF N 74°49'59" W, WITH A DELTA ANGLE OF 42°32'00", TO A 1/2" REBAR SET; THENCE N 53°33'59" W A DISTANCE OF 7.19' TO A POINT; THENCE N 36°26'01" E A DISTANCE OF 15.00' TO A POINT; THENCE S 53°33'59" E A DISTANCE OF 7.19' TO A POINT; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 20.00', WITH AN ARC LENGTH OF 14.85', WITH A CHORD LENGTH OF 14.51', WITH A CHORD BEARING OF S 74°49'59" E, WITH A DELTA ANGLE OF 42°32'00", TO A POINT; THENCE N 83°54'01" E A DISTANCE OF 221.29' TO A POINT; THENCE S 06°44'26" E A DISTANCE OF 15.00' TO A DRILL HOLE SET; WHICH IS THE POINT OF BEGINNING, SAID PARCEL "D" TO CONTAIN 0.086 ACRES, MORE OR LESS.

PARCEL "E" LEGAL DESCRIPTION

BEGIN AT THE POINT OF BEGINNING, POB "2"; A DRILL HOLE SET AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY OF CARROLL AVENUE AND THE CENTERLINE OF CHILES CIRCLE; THENCE S 06°44'26" E A DISTANCE OF 15.00' TO A POINT; THENCE S 83°54'01" W A DISTANCE OF 221.63' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 50.00', WITH AN ARC LENGTH OF 37.12', WITH A CHORD LENGTH OF 36.27', WITH A CHORD BEARING OF N 74°49'59" W, WITH A DELTA ANGLE OF 42°32'00", TO A POINT; THENCE N 53°33'59" W A DISTANCE OF 257.75' TO A POINT; THENCE N 36°26'01" E A DISTANCE OF 15.00' TO A POINT; THENCE S 53°33'59" E A DISTANCE OF 257.75' TO A 1/2" REBAR SET; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 35.00', WITH AN ARC LENGTH OF 25.98', WITH A CHORD LENGTH OF 25.39', WITH A CHORD BEARING OF S 74°49'59" E, WITH A DELTA ANGLE OF 42°32'00", TO A 1/2" REBAR SET; THENCE N 83°54'01" E A DISTANCE OF 221.46' TO A DRILL HOLE SET; WHICH IS THE POINT OF BEGINNING, SAID PARCEL "E" TO CONTAIN 0.176 ACRES, MORE OR LESS.

PARCEL "F" LEGAL DESCRIPTION

BEGIN AT THE POINT OF BEGINNING, POB "3"; A DRILL HOLE FOUND IN PAVEMENT AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF CARROLL AVENUE AND THE SOUTHERLY RIGHT-OF-WAY LINE OF CHILES CIRCLE, THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 25.00', WITH AN ARC LENGTH OF 39.27', WITH A CHORD LENGTH OF 35.36', WITH A CHORD BEARING OF N 51°44'23" W, WITH A DELTA ANGLE OF 89°59'47" TO A POINT; THENCE S 83°15'34" W A DISTANCE OF 182.84' TO A POINT; THENCE WITH A CURVE TURNING TO THE RIGHT WITH A RADIUS OF 100.00', WITH AN ARC LENGTH OF 75.09', WITH A CHORD LENGTH OF 73.34', WITH A CHORD BEARING OF N 75°13'42" W, WITH A DELTA ANGLE OF 43°01'29" TO A POINT; THENCE N 53°41'45" W A DISTANCE OF 89.09' TO A POINT; THENCE N 53°43'43" W A DISTANCE OF 150.14' TO A 1/2" REBAR SET; THENCE N 36°26'01" E A DISTANCE OF 11.30' TO A 1/2" REBAR SET; THENCE S 53°33'59" E A DISTANCE OF 257.75' TO A POINT; THENCE WITH A CURVE TURNING TO THE LEFT WITH A RADIUS OF 50.00', WITH AN ARC LENGTH OF 37.12', WITH A CHORD LENGTH OF 36.27', WITH A CHORD BEARING OF S 74°49'59" E, WITH A DELTA ANGLE OF 42°32'00" TO A POINT; THENCE N 83°54'01" E A DISTANCE OF 221.63' TO A POINT; THENCE S 06°44'26" E A DISTANCE OF 31.00' TO A

DRILL HOLE FOUND; WHICH IS THE POINT OF BEGINNING, HAVING AN AREA OF 0.111 ACRES, MORE OR LESS.

Provided, however, that any easement to locate, relocate, repair, replace, maintain and perpetually operate all utilities currently located therein or needed by the City in the future is hereby reserved unto the City of Lynchburg and the construction of a permanent structure over any utility line without the prior written approval of the City is prohibited.

BE IT FURTHER ORDAINED that the Clerk of Council is hereby authorized and directed to deliver a duly certified copy of this ordinance to the Clerk of the Circuit Court for the City of Lynchburg so that said certified copy of this ordinance may be recorded as deeds are recorded and indexed in the name of the City of Lynchburg, and the City Manager is hereby authorized to sign any documents that may be needed to complete the vacation of the right-of-way.

Adopted: February 9, 2021

Certified:


Clerk of Council

Mr. Ben Castle

<https://reformedscholastictexts.wordpress.com>

<https://calvinistruminant.wordpress.com>

"In light of the executive orders of Governor Northam, the duty of the Magistrate to defend the Church from tyrannical overreach in Richmond devolves upon you, Counselors of the City of Lynchburg."

I am contacting you regarding the City Council Meeting calendar and the time slots for public comment. I am part of the Lynchburg Pastors Association and we would like to obtain a spot on the calendar to speak to the City Council.

016A

Finney, Alicia

From: Andrew Glover <andrew@glover.us>
Sent: Tuesday, February 2, 2021 11:01 AM
To: Finney, Alicia
Subject: Lynchburg City Council Public Comment Regarding LCS School Board

Follow Up Flag: Follow up
Flag Status: Completed

CAUTION: External Sender

Hi Alicia,

I would like to be put on the agenda to speak at the next City Council Meeting regarding concerns with precedents being set on the Lynchburg City School Board. Particularly regarding their fiduciary mismanagement.

I will be speaking as a representative of the Conservative Parents of Lynchburg. A group of 220+ families in Lynchburg City.

Andrew Glover

Conservative Parents of Lynchburg

andrew@glover.us

(802) 451-9162

017A

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **February 9, 2021**

AGENDA ITEM #: **10**

CONSENT:
ACTION: **X**

REGULAR: **X**
INFORMATION:

WORK SESSION:

CLOSED SESSION:
(Confidential)

ITEM TITLE: Library of Virginia Grant to preserve Land Books 1845 – 1861; Land Books 1875 – 1886; Marriage Bonds A – K, 1841 – 1847; Marriage Bonds M – Z, 1835 – 1840 at the Lynchburg Circuit Court Clerk's Office.

KEY ELEMENTS:

___Economic Development __**X**___Excellent Government ___Natural and Built Environment ___Safe Community ___Vibrant Community

RECOMMENDATION: Adopt a resolution to amend the FY 2021 City/Federal/State Aid Fund budget and appropriate \$24,794 with resources from a grant from the Library of Virginia to preserve Land Books 1845 – 1861; Land Books 1875 – 1886; Marriage Bonds A – K, 1841 – 1847; Marriage Bonds M – Z, 1835 – 1840 at the Lynchburg Circuit Court Clerk's Office.

SUMMARY: The Library of Virginia allows Circuit Court Clerks' Offices to submit applications for grant funding. Staff submitted a grant application to The Library of Virginia to preserve records held at the Circuit Court Clerk's Office. The approved grant funding of \$24,794 will allow Land Books 1845 – 1861; Land Books 1875 – 1886; Marriage Bonds A – K, 1841 – 1847; Marriage Bonds M – Z, 1835 – 1840 to be reformatted and preserved.

The grant covers 100% for total of preservation work; no local match is required of this grant.

PRIOR ACTION(S): Grant submittal (September 2020); Grant award (December 2020)

FISCAL IMPACT: None – no local match is required.

CONTACT(S): K. Todd Swisher, Circuit Court Clerk, 455-2611

ATTACHMENT(S): Resolution
Library of Virginia Grant Approval Letter, December 8, 2020

REVIEWED BY: raw

012A

RESOLUTION:

BE IT RESOLVED that the FY 2021 City/Federal/State Aid Fund budget is amended and \$24,794 is appropriated with resources from a grant from the Library of Virginia to preserve Land Books 1845 – 1861; Land Books 1875 – 1886; Marriage Bonds A – K, 1841 – 1847; Marriage Bonds M – Z, 1835 – 1840 at the Lynchburg Circuit Court Clerk's Office.

Introduced:

Adopted:

Certified:

Clerk of Council



LIBRARY OF VIRGINIA

Sandra Gioia Treadway
Librarian of Virginia

Dec. 8, 2020

Grant Agreement Number: 2021FY-21

The Honorable Kenneth T. "Todd" Swisher
Clerk of the Circuit Court
City of Lynchburg
P.O. Box 4
Lynchburg, VA 24505

Dear Mr. Swisher,

The Circuit Court Records Preservation Grants Review Board met on Tuesday, Dec. 8th, 2020 to consider ninety-six applications submitted from ninety-five localities. It is our pleasure to inform you that your Item Conservation grant application to the Virginia Circuit Court Records Preservation Program has been **approved in the full amount of \$24,793.50**. The following item(s) have been approved by the Review Board: **Land Books 1845-1861; Land Books 1875-1886; Marriage Bonds A-K, 1841-1847; Marriage Bonds M-Z, 1835-1840**. This grant is subject to the stated amount, availability of funds, and any provisos listed in this letter or on the enclosed CCRP Grants Program Application Certification form. Please review these provisos carefully to determine the scope and/or limitations of the project.

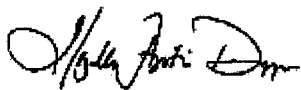
You will find the Award Certification form enclosed. This agreement, along with the original grant application, details the term of your project, the portion of your project supported with grant funds, and the specific work that is to be accomplished. It will also indicate your fiscal and program reporting requirements. Please read the agreement carefully and return it **within fifteen days of receipt** to Michelle Washington at the Library of Virginia in the prepaid envelope included in this mailing. Contact your item conservation vendor representative to make arrangements for them to collect the approved items. If you have any questions regarding this award or agreement, please contact Greg Crawford at (804) 692-3505.

Please accept our congratulations on the approval of your 2021FY application. We appreciate your interest in preserving Virginia's documentary heritage and extend our best wishes for a successful project. We will look forward to working with you next year in preparing for the next grant cycle, which is scheduled for Fall 2021.

Sincerely,



Michael Strom
State Archivist and Director of Government Records Services



Llezelle A. Dugger
President, Virginia Court Clerks' Association

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **February 9, 2021**

AGENDA ITEM #: **11**

CONSENT:
ACTION: **X**

REGULAR: **X**
INFORMATION:

WORK SESSION:

CLOSED SESSION:
(Confidential)

ITEM TITLE: DCJS Grant No. 21-A5032CC21 for Local Probation and Pretrial Services Expansion to unserved localities

KEY ELEMENTS:

___Economic Development **X** Excellent Government ___Natural and Built Environment **X** Safe Community ___Vibrant Community

RECOMMENDATION: Adopt a resolution to amend the FY 2021 City/Federal/State Aid Fund budget and appropriate \$121,389, with resources of \$121,389 provided by the Department of Criminal Justice Services (DCJS) for the expansion of local probation and pretrial services provided by Lynchburg Community Corrections and Pretrial Services Agency to include Amherst County.

SUMMARY: The Virginia Department of Criminal Justice Services (DCJS) solicited grant applications in March 2020 and awarded funds allotted by the General Assembly in December 2020 to expand local probation and pretrial services to unserved localities. This grant is in the amount of \$121,389 for an initial six-month period to assist the agency in providing local probation and pretrial services for defendants awaiting trial and individuals sentenced to local probation in Amherst County Courts. This will ensure that all courts within the 24th Judicial District have access to these bail and sentencing options.

The period for this grant is 1/1/21 through 6/30/21.

PRIOR ACTION(S): Grant submittal (March 2020); Grant awarded (December 2020)

FISCAL IMPACT: Funding is fully reimbursable through this grant and no matching funds are required.

CONTACT(S): Cynthia Plummer, Community Corrections and Pretrial Services Agency 455-3751

ATTACHMENT(S): Resolution

REVIEWED BY: raw

013A

RESOLUTION:

BE IT RESOLVED that the FY 2021 City/Federal/State Aid Fund budget is amended and \$121,389 is appropriated with resources of \$121,389 from the Department of Criminal Justice Services (DCJS) to assist the Lynchburg Community Corrections and Pretrial Services Agency in expanding the provision of local probation and pretrial services to Amherst County.

Introduced:

Adopted:

Certified:

Clerk of Council