

ORDINANCE NO. 5092

AN ORDINANCE to amend and reordain Section 6-403 (General Regulations and Exceptions) of Section 6-400 (Height Districts) of Article VI (Special and Overlay Zone) and Section 7-1200 (Utilities) of Article VII (Supplemental Zone Regulations) of the City of Alexandria Zoning Ordinance, in accordance with the text amendment heretofore approved on October 14, 2017 by city council as Text Amendment No. 2017-0008.

WHEREAS, the City Council finds and determines that:

1. In Text Amendment No. 2017-0008, the Planning Commission, having found that the public necessity, convenience, general welfare and good zoning practice so require, recommended approval to the City Council on October 3, 2017 of a text amendment to the Zoning Ordinance to adopt small cell facility regulations, which recommendation was approved by the City Council at public hearing on October 14, 2017;
2. The City Council in adopting this ordinance expressly adopts, ratifies, affirms and concurs in the finding and action of the Planning Commission above stated;
3. All requirements of law precedent to the adoption of this ordinance have been complied with; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 6-403 of the Zoning Ordinance be, and the same hereby are, amended by deleting the language shown in strikethrough and inserting new language shown in underline, as follows:

6-403 - General regulations and exceptions.

- (A) Relationship of height to setback. In all height districts, the allowable height of a building at any point shall not exceed twice the distance from the face of the building at that point to the centerline of the street facing such building.
- (B) Mechanical appurtenances. Chimney, towers, tanks, machinery, equipment, penthouses or other necessary mechanical appurtenances to a main building may be erected as a part of the main building to their required heights, regardless of any other height provisions or restrictions of this ordinance, provided that the following requirements are met.
 - (1) All necessary rooftop mechanical appurtenances and penthouses shall be concealed by or constructed of exterior architectural materials or features of the same type of quality used on the exterior walls of the main building in question.
 - (2) The following limitations apply to rooftop mechanical penthouses:

- (a) Only one penthouse is permitted unless the number is increased by a special use permit;
 - (b) The penthouse shall not exceed 15 feet unless the height is increased by a special use permit;
 - (c) The penthouse must be limited in size to the minimum space required to house necessary mechanical equipment; and
 - (d) No equipment may be placed above the roof of the penthouse to increase its height if such equipment could be located on the roof of the building itself.
- (3) For buildings located within the Old and Historic Alexandria District or the Parker Gray District, or for buildings outside such districts designated pursuant to section 10-300, the board of architectural review having jurisdiction of the matter may, after public hearing, waive or modify the screening requirement of subsection (B)(1) of this section, if the board finds such requirement to be architecturally inappropriate. The board of architectural review for the Parker Gray District may delegate the waiver authority under this subsection (3), making it an administrative determination pursuant to the requirements of section 10-203 of this ordinance.
- (C) Church steeples. No church building shall exceed the height for each zone, as limited by the Height District Maps, except that a church steeple may be erected to a height of 90 feet, or to a height in excess of 90 feet but not in excess of 150 feet with a special use permit. For purposes of this section 6-403(C), steeple shall mean a decorative or symbolic architectural component including a tower, spire, belfry or similar component extending above the ridge line of the building roof, or the highest point of the roof of the building.
- (D) Reception or transmission structures. ~~All radio and television reception or transmission structures require an administrative permit to be issued by the director based on the following considerations:~~
- ~~(1) Whether the proposed size and height of the structure is compatible with the height and scale of adjacent buildings and is the minimum necessary to conduct the anticipated transmission or reception activity;~~
 - ~~(2) Whether the proposed location of the structure is one that has the least negative impact on surrounding buildings and neighborhoods of the locations available and is the least visible position which still provides adequate transmission and reception; if there is no unobtrusive location for the structure, whether alternative methods of achieving transmission or reception are reasonably feasible; and~~

~~(3) Whether the proposed material and screening of the structure is adequate and appropriate to minimize the visual impact of the structure. All radio and television reception or transmission structures may be erected only in compliance with Section 7-1205 and Section 7-1206.~~

- (E) Noncomplying buildings and structures. Any building or structure lawfully in existence on June 24, 1992 which does not comply with the provisions of this section 6-400, shall be categorized as a noncomplying structure subject to section 12-100; provided, however, that any building or structure in existence on June 24, 1992 and immediately prior to such date categorized as an illegal building or structure because of height, shall continue to be so categorized.

Section 2. That the following section of Section 7-1200 of the Zoning Ordinance be, and the same hereby are, amended by inserting new language shown in underline, as follows:

Article VII – Supplemental Zone Regulations

Sec. 7-1200 - Utilities.

7-1201 - Permitted utilities.

The following utilities are permitted in any zone in the city: the erection, construction, alteration or maintenance by public utilities, public service corporations, municipal departments, public commissions or public authorities of underground gas, steam, water or sewage supply, collection or disposal systems and underground or overhead electric, communication, telephone or cable transmission or distribution systems, including poles, wires, lines, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, traffic signals, hydrants, freestanding pad mounted transformers and electric switches, and other similar equipment and accessories in connection therewith reasonably necessary for the furnishing of adequate services by such utilities, corporations, departments, commissions or authorities, or for the public health, safety or general welfare; provided, that such freestanding pad mounted transformers and electric switches have been approved after public hearing by site plan, special use permit or certificate of appropriateness or as part of the city's capital improvement program, or have been approved either by both the director of transportation and environmental services and the director of planning and zoning, in accordance with guidelines established by the directors and approved by city council, after affording informal notice and opportunity to comment to affected parties or by city council, after public hearing, on an appeal from disapproval by one or both directors. Notwithstanding the foregoing, small cell facilities shall be regulated by Section 7-1206.

7-1202 - Special use utilities.

The following utility uses are permitted by public utilities, public service corporations, municipal departments, public commissions or public authorities only with a special use permit:

- (A) Tanks, towers, standpipes or other facilities for storing water, sewage or other liquids or gases, electric power substations, telephone exchange buildings and structures, and pumping stations;
- (B) Overhead transmission, distribution or communication wires, lines, cables or facilities for the transmission of telecommunication suspended, mounted or carried by poles, towers or other structures which:
 - (1) Exceed 65 feet in height;
 - (2) Have one or more arms, cross arms or similar apparatus which would extend out more than six feet from the side thereof;
 - (3) Have a diameter in excess of three feet if it is a pole-like structure; or
 - (4) Exceed four square feet in area at any cross section, or have a side exceeding two feet in width if it is a tower or other type structure.
- (C) Notwithstanding the foregoing, small cell facilities shall be regulated by Section 7-1206.

7-1203 - Uses not considered utilities.

The following are not included in the above-named lists of uses: buildings, offices, motor vehicles, bus or car barns, garages, shops, railroad yards or siding, freight terminals, warehouses, service or storage yards or facilities or any use separately listed in a zone.

7-1204 - Compliance with other regulations.

Notwithstanding anything to the contrary in this section 7-1200, all development shall comply with chapter 3, title 5, of the city code pertaining to underground utilities.

7-1205 – Radio and television reception or transmission structures.

All non-small cell facility radio and television reception or transmission structures require an administrative permit to be issued by the director based on the following criteria:

- (1) Whether the proposed size and height of the structure is compatible with the height and scale of adjacent buildings and is the minimum necessary to conduct the anticipated transmission or reception activity;
- (2) Whether the proposed location of the structure is one that has the least negative impact on surrounding buildings and neighborhoods of the locations available and is the least visible position which still provides adequate transmission and reception; if there is no unobtrusive location for the structure, whether alternative methods of achieving transmission or reception are reasonably feasible; and
- (3) Whether the proposed material and screening of the structure is adequate and

appropriate to minimize the visual impact of the structure.

7-1206 – Small cell facilities.

(A) For purposes of section 7-1206, the following definitions apply:

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

(2) 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.

(3) Existing structure means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality or the Department of Transportation of the Commonwealth of Virginia 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.

(4) 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.

(5) 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.

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

(7) 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.

(8) 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.

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

(10) Wireless services provider means a provider of wireless services.

(11) Wireless support structure means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing structure or alternative structure designed to support or capable of supporting wireless facilities. "Wireless support structure" does not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

(B) Administrative Approval: Notwithstanding any other provisions of this Zoning Ordinance, no special exception, special use permit, or variance shall be required for any small cell facility installed by a wireless services provider or wireless infrastructure provider on an existing structure, provided that the wireless services provider or wireless infrastructure provider:

(1) has permission from the owner of the structure to co-locate equipment on that structure and

- (2) applies pursuant to this Section.
- (3) Notwithstanding anything to the contrary in this Section, the installation, placement, maintenance, or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes shall be exempt from these permitting requirements and fees.
- (C) *Application Process:* An applicant for a small cell facility permit shall file an application with the director on such forms and subject to such procedures as the director may establish for the purpose which shall include a statement identifying the applicant and providing a valid electronic mail address for the applicant. The application may include up to thirty-five (35) permit requests on the same application. Within 10 days after receipt of an application and a valid electronic mail address for the applicant, the director shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete.
- (D) *Filing Fee:* The fee for processing the application shall be \$100 each for the first five (5) permit requests and \$50 for each additional permit request on an application.
- (E) *Action by the director:* The application must be approved or disapproved by the director within 60 days of receipt of the complete application. Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval including the specific reason for disapproval pursuant to Section 7-1205(F). The 60-day period may be extended by the director in writing for a period not to exceed an additional 30 days. The application shall be deemed approved if the director fails to act within the initial 60 days or the extended 30-day period. Approval for a permit shall not be unreasonably conditioned, withheld, or delayed.
- (F) *Reasons for disapproval limited:* The director may disapprove a proposed location or installation of a small cell facility only for the following reasons:
- (1) Material potential interference with other pre-existing communications facilities or with future communications facilities that have already been designed and planned for a specific location or that have been reserved for future public safety communications facilities;
 - (2) The public safety or other critical public service needs;
 - (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; or

(4) Conflict with the regulations in Article X – Historic Districts and Buildings of this ordinance.

(G) Conditions of Approval: An applicant may voluntarily submit, and the director may accept, any conditions that otherwise address potential visual or aesthetic effects resulting from the placement of small cell facilities.

(H) Abandoned Facilities: Nothing in this subsection shall preclude the director from adopting reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities.

Section 3. That the director of planning and zoning be, and hereby is, directed to record the foregoing text amendment.

Section 4. That Section 6-403 of Article VI (Special and Overlay Zone) and Section 7-1200 (Utilities) of Article VII (Supplemental Zone Regulations) of this ordinance, be, and the same hereby are, reordained as part of the City of Alexandria Zoning Ordinance.

Section 5. That this ordinance shall become effective on the date and at the time of its final passage, and shall apply to all applications for land use, land development or subdivision approval provided for under the City of Alexandria Zoning Ordinance which may be filed after such date, and shall apply to all other facts and circumstances subject to the provisions of the City of Alexandria Zoning Ordinance, except as may be provided in Article XII of the Zoning Ordinance.

ALLISON SILBERBERG
Mayor

Final Passage: November 18, 2017