

Memorandum

Department of Planning & Development Services



To: Planning and Public Works Committee

From: Jessica Henry, Senior Planner

Date: December 7, 2017

RE: Unified Development Code Articles 01 and 06 Updates

Summary

Staff has been directed by the Planning and Public Works Committee to pursue several updates to various articles of the Unified Development Code (UDC), including Articles 01 and 06. In accordance with this direction, a Public Hearing presenting the draft UDC revisions was held before the Planning Commission on November 27, 2017. At that time, the Planning Commission passed a motion recommending approval of the Article 01 and Article 06 updates by a vote of 9-0. The revisions to Articles 01 and 06 are presented below and draft versions are attached to this report.

Article 01-11.B (3) Architectural Review Board—Composition of the ARB

The first set of necessary amendments is located within Article 01-11.B (3) “Composition of the ARB” of the UDC. This item was presented to the Planning and Public Works Committee at the June 8, 2017 meeting where a motion to direct Staff to amend Article 01-11 of the UDC to remove the Chesterfield Arts membership requirement for ARB membership and to amend the language to read: “The desired composition of the Board is two commercial architects, two residential architects, two landscape architects and one affiliate in a related field” was passed by a vote of 4-0.

Article 6 Telecommunications Facilities Siting

Over the last several years, the Missouri Legislature has approved legislation that dramatically limits the ability of Missouri municipalities to regulate wireless communication facilities. As a result, Article 6 of the UDC is no longer compliant with State Law. In order to become compliant, an entire new set of regulations has been drafted by Staff and the City Attorney.

Attachments

1. Draft amendment to UDC Article 01-11 General Provisions
2. Draft amendment to UDC Article 06 Telecommunications Facilities Siting

Sec. 01-11. ADMINISTRATIVE & DECISION MAKING AUTHORITIES

- A. Refer to Chapters 2 and 23 of the City of Chesterfield City Code for the following entities; City Council, Planning and Public Works Committee, Planning Commission, Board of Adjustment and Public Works Board of Variance.
- B. Architectural Review Board.
1. An Architectural Review Board (hereafter referred to as "ARB") is hereby established.
 2. Purpose. The purpose of the ARB is to protect the character of the City of Chesterfield by requiring that all development and redevelopment projects submitted to the City of Chesterfield during the Site Development Plan and the Site Development Section Plan process be reviewed by the ARB in order to achieve the following goals:
 - a.) Ensuring that high standards of architectural design and materials are used for development in the City of Chesterfield.
 - b.) Preserving and improving the value of property within the City of Chesterfield.
 - c.) Protecting and enhancing the attractiveness of the City to home buyers, tourists, visitors, and shoppers; thereby supporting and promoting business, commerce and industry, and providing economic benefit to the City.
 - d.) Provide recommendations to the Planning Commission. The Planning Commission shall consider any recommendations or comments provided by the ARB. The Planning Commission may consider, accept, modify, or reject such recommendations in whole or part at their sole discretion.
 - e.) Review projects for consistency with the City of Chesterfield Architectural Review Design Standards while making recommendations to the Planning Commission on potential modifications or enhancements to architectural submissions.
 3. Composition of the ARB. The Chesterfield ARB shall consist of seven (7) members, ~~which shall be made up and the desired composition of the Board is of~~ two (2) commercial architects, ~~one two (12)~~ residential architects, ~~one two (12)~~ landscape architects and ~~one (1) member from the Board of Chesterfield Arts Inc. The remaining members shall be two (2) other professionals affiliate in a related field selected for their expertise in these or related fields.~~ Preference in the selection shall be given to members who are residents of the City of Chesterfield or whose business is located in the City of Chesterfield, all of whom shall be appointed by the Mayor

with the consent of the City Council. The Chair of the Planning Commission shall appoint a member to act as Liaison to the ARB, as provided for in the Planning Commission By-Laws. Said Liaison may be rotated between interested members of the Planning Commission at the discretion of the Planning Commission Chair. The Planning Commission Liaison representative shall not vote and may not serve as an ARB officer.

4. ARB terms. The terms of office of the members of the ARB shall be for two (2) years. Mid-term vacancies shall be filled for the remaining unexpired term only by Mayoral appointment. The ARB shall schedule at least 12 meetings per year and any member of the ARB who fails to attend at least 50% of all meetings, regular and special, in any calendar year, will be replaced on the Board.
5. ARB officers. Officers shall consist of a Chair and a Vice-Chair elected by the ARB membership. Officers shall each serve a term of one (1) year and shall be eligible for re-election; but no member shall serve as Chair for more than two (2) consecutive years. The Planning Commission Liaison shall not be eligible for office. The ARB Chair shall preside over meetings. In the absence of the Chair, the Vice-Chair shall perform the duties of the Chair. If both are absent, those present shall elect a temporary Chair.
6. ARB meetings. A quorum shall exist when four (4) of the appointed members are in attendance at a meeting. All decisions or actions of the ARB shall be made by a majority vote of those members present and voting at any meeting where a quorum exists. Meetings shall be held at regularly scheduled times to be established by resolution of the ARB at the beginning of each calendar year or at any time upon the call of the Chair, but not less than 12 times each year. No member of the ARB shall vote on any matter that may materially or apparently affect the property, income, or business of that member. All members shall abide by any other City policies as to conflict of interest. All meetings of the ARB shall be open to the public. The Director of Planning and Development Services ~~Director~~ shall provide staff to keep minutes of its proceedings, showing the vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed and retained by the Department and shall be public record.
7. Powers and duties of the ARB. The ARB shall have the following powers and duties:
 - a.) To make recommendations to the Planning Commission regarding architectural elevations and all other architectural matters, including amendments thereto, which are forwarded or assigned to be reviewed by the ARB;
 - b.) Responsibilities and duties to be assigned or amended by City Council.

ARTICLE 06. WIRELESS COMMUNICATIONS FACILITIES SITING

SEC. 06-01. PURPOSE.....06-2

SEC. 06-02. APPLICABILITY06-2

SEC. 06-03. GENERAL REQUIREMENTS06-3

SEC. 06-04. SPECIFIC REQUIREMENTS AND REVIEW PROCESS FOR COLLOCATIONS AND REPLACEMENT OF EXISTING WIRELESS FACILITIES.....06-7

SEC. 06-05. SPECIFIC REQUIREMENTS AND REVIEW PROCESS FOR INSTALLATION OF NEW WIRELESS SUPPORT STRUCTURES AND SUBSTANTIAL MODIFICATIONS.06-8

SEC. 06-06. EXTENT AND PARAMETERS OF WIRELESS COMMUNICATIONS FACILITY SITING PERMIT (FSP)06-11

SEC. 06-07. APPEAL.....06-11

DRAFT

Sec. 06-01. PURPOSE

The purpose of this Article is to provide a process and a set of standards for the placement, construction, maintenance and modification of wireless radio-based communications facilities in order to:

- A. Implement a municipal policy concerning the provision of wireless radio-based communications services, and the siting of their facilities;
- B. Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless radio-based communications facilities in compliance with applicable federal and state law;
- C. Insure that the City of Chesterfield can continue to fairly and responsibly protect the public health, safety and welfare; and
- D. Enable the City of Chesterfield to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

Sec. 06-02. APPLICABILITY

- A. **Public Property:** The terms of this Article shall apply to all wireless radio-based communications facilities proposed to be located within the City of Chesterfield whether on property owned by the City of Chesterfield or on privately owned property, or on property owned by another governmental entity that acts in a proprietary capacity to lease such property to a carrier. This includes any areas of right-of-way.
- B. **Amateur Radio, Receive-Only Antennas:** This Article shall not govern any tower, or the installation of any antenna that is under thirty-five (35) feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.
- C. **Essential Services and Public Utilities:** Wireless radio-based communications facilities will not be considered infrastructure, essential services, or public utilities as defined or used elsewhere in the City of Chesterfield's ordinances and regulations. Siting of wireless radio-based communications facilities is the use of land subject to the City's zoning ordinances and all other applicable ordinances and regulations, consistent with the provisions of this Article.
- D. **Facility Siting Permits (FSP) for Wireless Radio-Based Communications Facilities** may be issued for Wireless Communications Facilities in all zoning districts, consistent with the provisions of this Article.
- E. **New construction, renovations and expansions, including routine maintenance on existing Wireless Facilities,** shall comply with the requirements of this Article.

- F. No Person shall be permitted to site, place, build, construct or modify, or prepare any site for the placement or use of, Wireless Facilities as of the effective date of this Article without having first obtained a Facilities Siting Permit for Wireless Communications Facilities. Notwithstanding anything to the contrary in this section, no Facility Siting Permit shall be required for those exceptions noted in the definition of Wireless Facilities, such as those used exclusively for fire, police and other dispatch Wireless Communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar Wireless Communications.
- G. All Wireless Facilities legally existing on or before the effective date of this Article shall be allowed to continue as they presently exist, provided however, that any modification to existing Wireless Facilities must comply with this Article.
- H. As used hereunder, Municipal Zoning Approval (MZA) does not constitute zoning approval and refers to approval of the City of Chesterfield Department of Planning and Development Services and is not a zoning review as defined by RSMO 67.5090-67.5104.
- I. New Wireless Communications Facilities, Substantial Modifications of existing facilities, and/or Collocations shall only be permitted within right-of-way areas, regardless of whether said right-of-way areas belong to the City or are currently under the jurisdiction of another entity, pursuant to an agreement approved by the City Council.

Sec. 06-03. GENERAL REQUIREMENTS

- A. The requirements set forth in this Article shall be applicable to all wireless radio-based communication facilities installed, built, or modified after the effective date of this Article to the full extent permitted by law whether on public property, private property, or within any rights-of-way.
- B. Applications and Permits
 - 1. All applicants for a FSP for Wireless Communications Facilities or any modification of any such facility shall comply with the requirements set forth in this Article. The Council is the officially designated agency or body of the community to whom applications for an FSP for Wireless Communications Facilities shall be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking Facilities Siting Permits for Wireless Communications Facilities. The Council may at its discretion delegate or designate other official departments or agents of the City to approve, accept, review, analyze, evaluate and/or make recommendations to the Council with respect to the granting or not granting, recertifying or not recertifying or revoking FSPs for Wireless Communications Facilities.

2. An Application for a FSP for Wireless Communications Facilities shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. Said application shall also be signed by the property owner to which the facility is located or is to be located. Each application shall include a copy of the lease, letter of authorization or other legal documentation from the property owner showing authority of the applicant to pursue the application. At the discretion of the Council, any false or misleading statement in the Application may subject the applicant to denial or revocation of approval of the Application without further consideration or opportunity for correction.
3. Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the City in writing, and listing the application deficiencies, within thirty (30) calendar days of submission of the application. The applicant may take thirty (30) days from receiving the insufficiency letter to correct the specific deficiencies otherwise the documents submitted to the City will be returned.
4. Security. Facilities shall be protected from unauthorized access by appropriate security measures. A description of proposed security measures shall be provided as part of any application to install, build, or modify wireless facilities.
5. Lighting.
 - a.) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the wireless structure intended to support wireless facilities requires lighting under Federal Aviation Administration Regulation Part 77. This requirement shall be for any new tower, or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided in a timely manner.
 - b.) The City encourages installations that do not require lighting under Federal Aviation Administration Regulation Part 77.
 - c.) Security lighting associated with equipment cabinets and shelters shall not exceed one-half (0.5) foot-candles at the property line.
6. Signage.
 - a.) Wireless Facilities may be permitted one (1) sign no larger than one (1) square feet to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities. Said sign shall contain the name(s) of the

owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s).

- b.) The sign shall be located so as to be visible from the access point of the site.
- c.) Lighting associated with said sign must meet all requirements of the City Code and be approved by the City Council or its designee.
- d.) No other signage, including advertising, shall be permitted on any facilities, Antennas, Antenna supporting structures or Antenna Towers, unless otherwise required by law.

7. Design.

- a.) Subject to the requirement of the FAA or any other applicable State or Federal agency, towers shall be painted a neutral color consistent with the natural or built environment of the site.
- b.) Equipment shelters or cabinets shall have exterior finish compatible with the natural or built environment of the site and shall also comply with any design guidelines (exterior material requirements) as may be applicable to the particular zoning district in which the facility is located. All equipment shall be placed underground, contained in a single shelter or cabinet, or wholly concealed within a building.
- c.) All towers shall be surrounded by a minimum six (6) foot high fence and a landscape buffer strip of not less than ten (10) feet in width and planted with materials, which will provide a visual barrier to a minimum height of six (6) feet. The landscape buffer strip shall be exterior to any security fence. In lieu of the required security fence and landscape strip, an alternative means of screening upon demonstration by the applicant that an equivalent degree of visual screening will be achieved, is available or may be requested and approved by the City. This requirement does not apply to facilities located within the right-of-way.
- d.) Antennas attached to an existing building or structure shall be of a color identical to or closely compatible with the surface to which they are mounted. Antennas attached to a disguised support structure or tower shall be contained within the disguised support structure or within or mounted flush on the surface of the tower to which they are mounted or disguised themselves. All antennas attached to a disguised support structure shall be designed to be disguised and maximally concealed on or within the support structure.

- e.) Facilities located within the right-of-way shall be of a single pole design that shall not have antenna arrays that protrude more than twelve (12) horizontal inches from the pole.

8. Yard (Setback) Requirements.

- a.) Wireless facilities shall be located within a minimum structure setback from any property line of a distance equal to 110% height of the wireless facility structure or the existing minimum structure setback requirement in that zoning district, whichever is greater. This requirement shall not apply to accessory equipment for wireless facilities located within the right-of-way.
- b.) If the applicant demonstrates that the support structure is designed with a failure point that necessitates a yard setback less than that of height of the tower, the City shall consider said request. However, at no time shall the minimum yard setback be less than the minimum structure setback of the zoning district on which the structure is placed. This requirement shall not apply to accessory equipment for wireless facilities located within the right-of-way.
- c.) Accessory equipment shall be located so as to comply with the minimum structure setback requirements for the zoning district of the property to which it is located. This requirement shall not apply to accessory equipment for wireless facilities located within the right-of-way.
- d.) No new wireless facility shall be constructed within a distance greater than or equal to 110% of the height of the wireless facility structure in relation to the nearest structure designed for occupancy. This requirement applies to wireless facilities located on private land and within the right-of-way.

9. Overview of submittal process

Type of Application	Permit Required	Decision-making Authority	Notes
Collocation/ replacement	MZA	Staff	
Substantial Modification	MZA	Staff	
New wireless facility	FSP	City Council	FSP reviewed by PPW prior to CC; MZA required upon approval.
New wireless facility or substantial modification located in ROW	FSP Permitting Agreement MZA	City Council City Council Planning Staff	FSP and Permitting Agreement reviewed by PPW prior to CC; MZA required upon approval.
Collocation located in ROW	Permitting Agreement MZA	City Council Planning Staff	Permitting Agreement reviewed by PPW prior to CC; MZA required upon approval.

Sec. 06-04. SPECIFIC REQUIREMENTS AND REVIEW PROCESS FOR COLLOCATIONS AND REPLACEMENT OF EXISTING WIRELESS FACILITIES.

A. Collocation and Replacement of Wireless Facilities Requirements on Non-Historic Structures

1. An application for Municipal Zoning Approval (MZA) shall be required for all collocation and replacement of existing facilities requests provided that:

a.) Additional equipment is located within the existing shelter, or for collocations within the right-of-way, additional equipment shall be:

(1) Installed underground; or

(2) Located on the support structure itself and positioned no closer to ten (10) feet to the ground;

- b.) The collocation or replacement of existing wireless facilities does not result in the expansion of the compound area or increase the overall height of the structure by greater than 10%; and
 - c.) All requirements of this Article are met.
2. A collocation is as defined and described in Article 10-08 of this UDC.
3. Timing. All MZA applications for collocation or replacement of wireless communication facilities shall be reviewed, and a final decision made in writing no later than forty-five (45) calendar days after the City has received a completed MZA application. Each MZA application shall be signed by the property owner and include a copy of the lease agreement or other letter of authorization from the property owner evidencing the applicant's right to pursue the application.
- a.) An application is deemed to be complete unless the City notifies the applicant within fifteen (15) calendar days of submission. Within the notice of incompleteness, the City shall specify deficiencies in the application, which if cured, would make the application complete. The applicant has fifteen (15) calendar days to respond from receiving such notices of incompleteness to cure all required deficiencies. If the applicant cures the deficiencies within fifteen (15) calendar days, the application shall be reviewed and processed within forty-five (45) calendar days from the initial date the application was received.
 - b.) If the applicant requires a time period beyond fifteen (15) calendar days to cure deficiencies, the forty-five (45) calendar deadline shall be extended by the same period of time.
4. Fees. There is no review fee associated with collocations or replacement of existing facilities with submittal of an MZA.

Sec. 06-05. SPECIFIC REQUIREMENTS AND REVIEW PROCESS FOR INSTALLATION OF NEW WIRELESS SUPPORT STRUCTURES AND SUBSTANTIAL MODIFICATIONS.

A. Applications and Review Process for New Wireless Support Structures.

- 1. Requests for construction of a new wireless support structure such as a tower or building which does not constitute a substantial modification shall require a Facilities Siting Permit (FSP) prior to obtaining an MZA by the City. (See Article 10-08 of the UDC for definitions of substantial modification and wireless telecommunications facility)
- 2. Applications for the construction of new Wireless Support Structures which do not constitute a substantial modification shall submit the following items with the FSP application;

- a.) The name, address and phone number of the person preparing the report;
- b.) Each application shall include a copy of a lease, letter of authorization or other agreement from the property owner evidencing applicant's right to pursue the application;
- c.) The postal address and tax map parcel number of the property;
- d.) Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
- e.) The location and distance of the nearest residential structure as measured from the base of the proposed tower;
- f.) An outboundary survey, prepared by a licensed professional Surveyor, licensed to perform surveying within the State of Missouri, with an original seal and signature affixed thereto;
- g.) The location, size and height of all existing and proposed structures on the subject property;
- h.) The type, locations and dimensions of all proposed and existing landscaping and fencing/screening requirements;
- i.) The size and centerline height location of all proposed and existing antenna on the wireless supporting structure including the number, type and model of the antenna(s) proposed with a copy of the specification sheet;
- j.) The make, model, type and manufacturer of the wireless support structure tower and design plan stating the wireless support structure's tower's capacity to accommodate multiple users;
- k.) A site plan signed and sealed by a registered engineer describing the proposed wireless support structure and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting compliant with this Article as applicable.

3. Review Process

- a.) Timing. The City Council shall review the application in light of its conformity with applicable zoning regulations within 120 calendar days of receipt of the application and shall make its final decision to approve or disapprove the application, in writing, within the 120 calendar days' review period.
- b.) An application is deemed to be complete unless the City notifies the applicant within thirty (30) calendar days of submission of the

application, of the specific deficiencies in the application which, if cured, would make the application complete. Upon receipt of a timely written notice that an application is deficient, the applicant may take thirty (30) calendar days from receiving such notice to correct the specific deficiencies. If the applicant cures the deficiencies within thirty (30) calendar days, the applicant shall be reviewed and processed within 120 calendar days from the initial date the application was received.

- c.) If the applicant requires a time period beyond thirty (30) calendar days to cure deficiencies, the 120 calendar deadline shall be extended by the same period of time.
 - d.) Fees. A review fee of \$150 shall be required in addition to the public hearing fee. The public hearing fee is as required for all special procedures and as established in Article 09-02 of the UDC.
4. Design Features shall comply with the requirements set forth in Section 06-03 of this Article unless otherwise stated herein.
5. Height.
- a.) New wireless support structures shall not exceed 100 feet in height unless it may be shown that the requested height is necessary to provide reasonable service and reasonable collocation.
 - b.) New wireless support structures within the right-of-way shall not exceed thirty-five (35) feet in height.
6. Location.
- a.) New facilities within a right-of-way shall not be located within 500 feet of another wireless facility that is located on the same side of the roadway.
- B. Applications and Review Process for Substantial Modifications.
- 1. Requests for substantial modifications of wireless support structures shall require Facilities Siting Permit (FSP) approval by the City of Chesterfield prior to obtaining an MZA by the City.
 - 2. A substantial or material modification is as defined and described in Article 10-08 of this UDC.
 - 3. Applications for Substantial Modifications. The applicant shall submit along with the FSP application, all documents listed in Section 06-05.A of this Article.
 - a.) Timing. Within 120 calendar days of receiving an application for a substantial modification of wireless support structures, the City shall

review the application in light of its conformity with applicable local zoning regulations; make its final decision to approve or disapprove the application; and advise the applicant in writing of the City's final decision.

- b.) An application is deemed to be complete unless the City notifies the applicant within thirty (30) calendar days of submission. Within the notice of incompleteness, the City shall specify deficiencies in the application, which if cured, would make the application complete. The applicant has thirty (30) calendar days to respond from receiving such notices of incompleteness to cure all required deficiencies. If the applicant cures the deficiencies within thirty (30) calendar days, the application shall be reviewed and processed within 120 calendar days from the initial date the application was received.
- c.) If the applicant requires a time period beyond thirty (30) calendar days to cure deficiencies, the 120 calendar deadline shall be extended by the same period of time.
- d.) Fees. A review fee of \$150 shall be required in addition to the public hearing fee. The public hearing fee is as required for all special procedures and as established in Article 09-02 of the UDC.

- 4. Design Features shall comply with the requirements set forth in Section 06-03 of this Article unless otherwise stated herein.

Sec. 06-06. EXTENT AND PARAMETERS OF WIRELESS COMMUNICATIONS FACILITY SITING PERMIT (FSP)

- A. A FSP shall be non-exclusive.
- B. The FSP shall not be assigned, transferred or conveyed without written notification to the City. Such notification will occur within 180 calendar days of such assignment, transfer or conveyance.
- C. An FSP may, following a hearing upon due prior notice to the applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Facility Siting Permit, or for a material violation of this Article after prior written notice to the applicant and the holder of the facility siting permit.

Sec. 06-07. APPEAL

- A. Appeal may be taken from the regulations contained within this Article 6 to the Board of Adjustment, as provided for in this Code which Board shall hear and pass on such appeals.