

Thank VML for inviting me

WHAT'S NEW? TITLE 15.2 CITIES, COUNTIES AND TOWNS CHAPTER 20 Planning, Subdivision of Land and Zoning • § 56-484.28. Access to public rights-of-way operated and **ARTICLE 7.2 Zoning for Wireless** maintained by the Department for the installation and maintenance of small cell facilities on existing structures. • § 15.2-2316.3. Definitions. • § 56-484.29. Access to locality rights-of-way for installation • § 15.2-2316.4. Zoning; small cell facilities. and maintenance of small cell facilities on existing structures. • § 15.2-2316.5 Moratorium prohibited. • § 56-484.30. Agreements for use of public right-of-way to construct new wireless support structures; relocation of wireless support structures. • § 56-484-31. Attachment of small cell facilities on government-owned structures.

Refresher, original bill contained many more restrictions. Impact VA Wireless Service Authorities Act already addressed many of the items. Able to get rid of those. Limit on zoning, most of what we ended up with was small cell related.

ARTICLE 7.2 ZONING FOR WIRELESS COMMUNICATIONS INFRASTRUCTURE • § 15.2-2316.3. Definitions. • § 15.2-2316.4. Zoning; small cell facilities. • § 15.2-2316.5 Moratorium prohibited. But, stay tuned....

Minor affect – but the industry [Verizon] has already put forth proposal for next session. VML opposing in total. Not negotiating.

SITING ON PRIVATE PROPERTY - ZONING Siting on private property - City does not zone its rights-of-way, but counties may EXISTING STRUCTURE e.g. towers, buildings, utility poles, light poles, flag poles, signs and water towers. Locality cannot require special use permit ("CUP") or variance Provider must have permission from the structure owner Provider must notify locality City is requiring administrative review from Zoning Dept. - restrictions: Locality must allow up to 35 requests per application Fees cannot exceed: \$100 each for up to 5 on an application \$50 each for each additional up to 35

City owned ROW's, but for counties that VDOT owns street, County may exert zoning authority. Board of Suprs of Fairfax County, VA v. Washington DC SMSA, 522 SE2d 897 (1999). Whether telecom facilities constructed by private owner on its leasehold on land within ROW of VDOT are exempt from zoning authority of the locality where land is located.



Can't find them, can you? This is preferred. But providers aren't wanting to deal with private prop negotiations. Mention Town Center, garage attachments, VBDA owned.

CHAPTER 15.1 WIRELESS COMMUNICATIONS INFRASTRUCTURE

- § 56-484.26. Definitions.
- § 56-484.27. Access to the public rights-of-way by wireless service providers and wireless infrastructure providers; generally.
- § 56-484.28. Access to public rights-of-way operated and maintained by the Department for the installation and maintenance of small cell facilities on existing structures.
- § 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities on existing structures.
- § 56-484.30. Agreements for use of public right-of-way to construct new wireless support structures; relocation of wireless support structures.
- § 56-484-31. Attachment of small cell facilities on government-owned structures.

.28 is in red, because I will not be discussing that today. Does not apply to cities ("Department" is VDOT)

The first 3 are easy. Next slide...

SITING IN PUBLIC RIGHTS-OF-WAY • § 56-484.26. Definitions. This is helpful. • §56-484.27. Be fair, don't discriminate among carriers. We wouldn't have it any other way. • § 56-484.28. Refers to rights-of-way maintained by Dept. of Transportation. No effect on cities. And then there's... • § 56.484.29. Existing structures in rights-of-way. BINGO, we have a winner.

We have ROWs. There's existing structures in them. Should pay attention now.



What is the best outcome for our residents, our visitors, our businesses. Balance connectivity options private providers – coverage v capacity, with taxpayers interest in roads, protection, safety.

ATTACHMENTS TO EXISTING POLES • Most of Virginia Beach's

- Most of Virginia Beach's street light poles are owned by Dominion Energy.
- Other poles may be owned by Verizon, etc.
- Traffic control signals and some new LED light poles are owned by City.





Remember NOOPE? Well, maybe. What's the alternative?

DOES A PROVIDER NEED A FRANCHISE TO BE ON SOMEONE ELSE'S POLE? 1st paragraph of §56-484.30 states "Subject to any applicable requirements of Article VII, Section 9 of the Constitution of Virginia..." (codified in Va. Code 15.2-2100.B.) Section 9. Sale of property and granting of franchises by cities and towns. No rights of a city or town in and to its waterfront, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges, or other public places, or its gas, water, or electric works shall be sold except by an ordinance or resolution passed by a recorded affirmative vote of three-fourths of all members elected to the governing body. No franchise, lease, or right of any kind to use any such public property or any other public property or easement of any description in a manner not permitted to the general public shall be granted for a longer period than forty years, except for air rights together with easements for columns of support, which may be granted for a period not exceeding sixty years. Merganger granting any such franchise or privilege for a term in excess of five year, except for a trunk railway, the city or town shall, after due advertisement, publicly receive bids therefor.

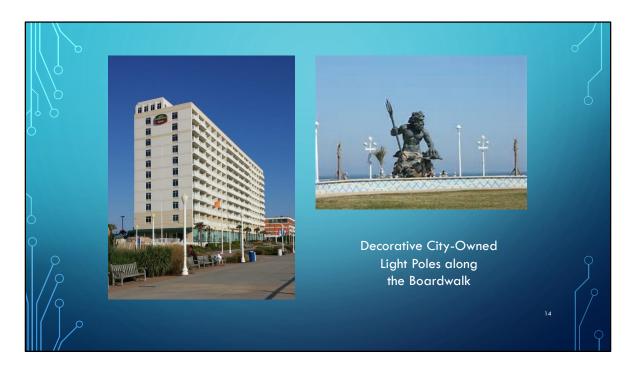
Point of discussion among localities. Difference of opinion among carriers and cities. DVP agreements is what put VB on the side of must have franchise.

FRANCHISE OFFERS EXTRA LAYER OF PROTECTION • Satisfies "permit shall grant access to all rights-of-way in the locality..." §56-484.29.A. • Covers City for bond, insurance, liability, and abandonment of equipment. • Requires advertisement and public hearing, so public has notice and opportunity to be heard.

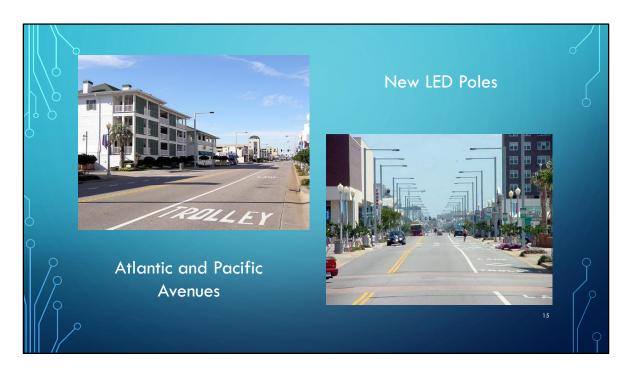
Can't charge for use of ROW by statute anyway, so no franchise fee cost to provider. But must provide insurance w/City as addl insured, and bond, LOC negotiable. Keep in mind abandonment, who will remove and who will pay.



Construct your own poles. City can't be barrier to entry into market. If we don't allow on City poles, can't go on other poles, only choice left is new poles. Can't really say no. For relocation due to City project. Permittee pays incremental cost only.



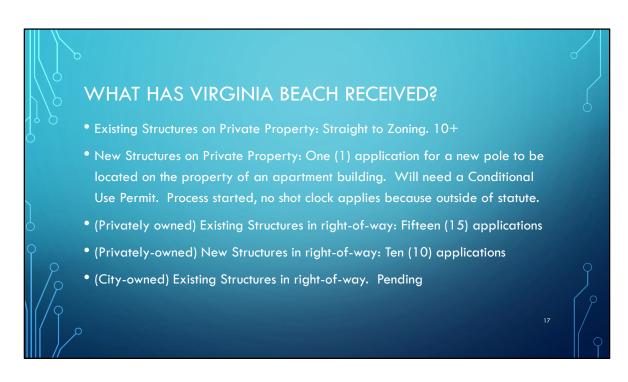
Aesthetic concerns, as well as load-bearing, wind – CAT 2, projectiles onto beach if not properly secured. Safety concerns, security concerns vandalism because they can be down low. RF Emissions. How would drop and swap work.



Similar concerns. What is alternative? Could be 4 more poles in same general area.

UNINTENTIONAL CONSEQUENCES? Virginia Constitution Art. VII, Section 9: *NEW* <u>Va. Code §56-484.29:</u> [Va. Code §15.2-2100.B.] "No franchise, lease, or VII, Section 9 of the Constitution of Virginia, public right of any kind to use any such public property or right-of-way permits or agreements for the any other public property or easement of any description, in a manner not permitted to the general public, shall be granted for a longer or after July 1, 2017, shall be for an initial term of at least 10 years, with at least three options for together with easements for columns of support, renewal for terms of five years, subject to terms which may be granted for a period not exceeding providing for earlier termination for cause or by sixty years. Before granting any such franchise or mutual agreement." privilege for a term in excess of five years, except for a trunk railway, the city or town shall, after due [TOTAL = 25 YEARS] advertisement, publicly receive bids therefor, [in such a manner as is provided by 15.2-2102, and shall then act as may be required by law.]"

Code section mirrors constitution, except for [] section – in code. Understand rationale for .29, "construction of wireless support structures" – assumes building of new structure, wouldn't want to make investment for short term. But franchise ("agreement")? License, right... needs bid for >5 years. Providers requested 5 year terms. We interpreted that as contrary to new section. "Bid" not really applicable, b/c franchise is non-exclusive, unlike a lease of city property, etc.



Not On Our Pretty Poles. Ever. We'll come back to that.

HANDLING THE PROCESS 1. Franchise – negotiate terms, advertisement, bid, public hearing, adopt ordinance, execute, receive Certificate of Insurance, Bond, Letter of Credit, if any. 2. Application – Virginia Beach developed written application specifically for small cells. 3. Submittal – Submit one site per application (\$250 each application) for attachment to existing structure; \$500 each for new structure (statute is silent) INVOLVES: Planning > Zoning > Permits & Inspections > Traffic Engineering > Public Works > Public Utilities > Information Technology WHERE SHOULD PROCESS START?

For new structure, \$500 was decided because more review work needed, aesthetic and structural.



Working out process, legal and shot clock, deemed approved most concerning, but also new legislation proposed next session. That's why we need to stop, at least for now.



Permits and Inspections sends them to CA office for franchise first if they want to be in the ROW. So far, everyone does. If no ROW, then submit application. Still comes here first for legal review. T-Mobile – in merger talks with Sprint. Submitted applications for private locations only so far.

SMALL CELL SITE APPLICATION	APPLICANT SHALL PROVIDE THE FOLLOWING, IF APPLICABLE:
SAALL CELL SIR. APPLICATION The application is for use by window survived provides an involved influence provides for sing of small cell floridates as defined in 1th Code \$15.3.2116.4 (Stating attentions and in CO try refresh orly) and 1th Code \$54.432, or say (Access to public reflects of which replies appears with the CO). Full legal name of Applicates. Date: Are you a CD wireless services provider or a constraint provider? Location/Address/GPDN where small cell will be located.	• Site plan and engineering design and specifications for installation of Small Cell Equipment, including the location of radios, antenna facilities, transmitters, equipment tabelies, cables, couldn't, point of demurcation, backhard solution, electrical distribution panel, electric mere, and electrical couldn't and colling. The content of the colling panel electric mere, and electrical countries and colling to the colling of pole with attached equipment. Where applicable, the design documents should include specifications on stealth design, pole modification, and ADA compliance. • For new pole installation, include a picture of the proposed pole, the small cell and all equipments, and the exact location where the pole would be placed (include nearest GPIN). The design documents for the pole installation must demonstrate compliance with the Americans with Disabilities Act (ADA) if applicable.
Description of wireless support structure (e.g., building, rooftop, pole, etc.):	 Copy of the manufacturer's detailed specifications for Small Cell Equipment, including photographs or illustrations and a complete description of all pertinent physical and electrical characteristics.
Emitte Pareill. For attachment to estiming atvaness on graining analysis, exploses may solute up to \$15 permit requests on our options on. Types are explosed, for subject incomes, please explose the middle all photometric out descriptions of evaluated and excellent exploses on extensions.	 Documentation of applicable design standards or criteria for installations minde the boundaries of a Historic District, or dother restricted zeas, and installations within 250 feet of the boundary of such districts. If stealth modifications are required in order to comply with the design standards or criteria for installations required in order to comply with the design standards or criteria for installations are required as new pole, provide design and specification drawings. If the proposed installation requires a new pole, provide design and specification drawings for the new pole, including untra poles. If the proposed installation will require re-emborement or replacement of an existing pole, provide specification drawings. The number, size, type and proximity to the facilities of all communications conduit) and colleds to be installed. Description of the utility services required to support the facilities to be installed. All permits and letters of ambinization from all affected parties. Valid PCC thems or other appropriate certificates on permits as required. General description of the services to be provided. List of the contractors and subcontractors, and their contact information, nuthorized to work on the project.
☐ Installed on Pole ☐ Installed in Ground (Vault) ☐ Installed above Ground (may need lease, depending on size)	
FCC License No. /Permit No.:	

Doesn't fit the Accela system – yet. Needs more information, we are working on updating Accela. Now, manual, and P&I or Zoning administrator, as appropriate, keys it in to system for tracking.

ATTACH CHICK OR MONEY ORDER IN AMOUNT OF APPROPRIATE APPLICATION FIE. THIS PROCESSING FIE IS NON-REFUNDABLE AND NON-TRANSFERBLE. Zonia Print Text. Extractional Executing attaches NOT in public rights of map, pursued to \$13.2-3316.4.8.2. Top 10.3 for explacing a	This is a public record subject to disclosure under the Virginia Freedom of Information Act. APPLICANT REPRESENTATIVE: PRINTNAME: PRINTNAME: EMAIL:
\$100 each for up to five small cell facilities on a permit application; and \$50 for each additional small cell facility on a permit application. Number of small cell locations applied for: Amount enclosed: ROW Permit Feets. For attrachment as entiring attractives located HTTHIN in public rights-of-way, pursuant to \$56-55-28. [One (1) small cell sink location per application.]	FOR CITYUSE ONLY
\$150 each location For new pole installation and attachment located #ITTHIN public replaced/wmr. [One (1) usual cell sale location per application] \$500 each location The entiry applying for use of the rights-of-may has a valid Franchise Agreement with the City of	APPROVED BY: APPROVAL DATE:
The fearly applying is the tert use apparent-way and value reachine spectrum with the cuty or Virginal Bench, including current of immenses enquirements, b) bond, c) better of credit. VES	Mon 4/4/4/7

Sample, small and difficult to see. I've brought copies if anyone is interested.

JUST WHEN YOU THINK YOU'VE GOT IT ALL FIGURED OUT... 56-484.31. Attachment of small cell facilities on government-owned structures. Pole attachment agreements: • Both parties must negotiate in good faith • Rates, terms and conditions just and reasonable, cost-based, nondiscriminatory, competitively neutral... However, rates for attachments to government-owned buildings may be based on fair market value

NOOPPE, becomes maybe, what is the alternative? What are the benefits? Still a work-in-progress for VB. DCM facilitating review committee from each department to develop standards, aesthetics and engineering requirements. Treat similar to lease of City property.

DROP AND SWAP

- Government entity owning the pole to provide estimate for work needed to enable the pole to support the equipment, including replacement, within 60 days.
- Who does the work? Statute is silent, but seems to indicate locality. Negotiable.
- Who pays? Statute is silent. City will require Provider to pay, by agreement.
- Charges for make-ready work cannot exceed actual costs... shall not include consultants' fees or expenses.
- Annual recurring rate cannot exceed actual, direct, and reasonable costs for use of space on the pole. If there is any controversy, locality has burden of proof.

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15.2-2316.4(B)(2): "reasonable", not to exceed \$100 each for up to 5 on an app, \$50 for each additional up to 35 (existing, private)

56-484.29(B): reasonable fee not to exceed \$250 (existing, ROW)

56-484.31B: rent on City-owned pole "just" "reasonable" and cost based

E: make ready estimate shall not exceed actual cost

F: annual rent shall not exceed actual, direct, reasonable.... For use of space. Govt entity has burden of proof... use of space.

TAKEAWAYS AND CONCERNS

- Providers are most interested in using rights-of-way instead of private property.
- Shot clock not unreasonable, as long as locality has enough personnel to handle.
- Providers indicate they are "willing to pay" for increase in administrative costs put on localities, but fees are capped by statute.
- RF Emissions and FCC Standards need revisiting.
- OTMR (One Touch Make Ready) provisions put burden on locality.

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