



VIRGINIA BEACH'S IMPLEMENTATION
OF THE NEW WIRELESS
COMMUNICATIONS
INFRASTRUCTURE LAW (SB1 282)

VML ANNUAL CONFERENCE
OCTOBER 2, 2017
WILLIAMSBURG, VIRGINIA

Thank VML for inviting me

WHAT'S NEW?

TITLE 15.2 CITIES, COUNTIES AND TOWNS

CHAPTER 20 Planning, Subdivision of Land and Zoning

****NEW SECTION****

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.

TITLE 56. PUBLIC SERVICE COMPANIES

****NEW SECTION****

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.

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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....

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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

NEW STRUCTURE

Not affected by new legislation. New structures require CUP, process through Planning Commission, City Council, Public Notice, etc.



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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.

STEALTH ON BUILDINGS



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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

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- § 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.

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

WHAT CAN LOCAL GOVERNMENTS DO?



**EMBRACE THE
SMALL CELL**

(No, this is not an IV pole)

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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 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.



SITING IN PUBLIC RIGHTS-OF-WAY

- Initial Position: Virginia Beach will not allow any provider to attach to City-owned structures.
- Micro-wireless facilities suspended on cables strung between existing utility poles are exempt.
- Remember Article VII, Section 9 of the Virginia Constitution? How does that affect City's rights?

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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. **Before granting any such franchise or privilege for a term in excess of five years**, except for a trunk railway, the city or town shall, after due advertisement, publicly receive bids therefor.

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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.

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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.

NEW POLES, RELOCATIONS

56-484.30. Agreements for use of public right-of-way to construct new wireless support structures; relocation of wireless support structures.

Must new poles be allowed?

Relocation timeline – Providers did not ask for the 180 days' notice to relocate per new statute.

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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.



Decorative City-Owned
Light Poles along
the Boardwalk

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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.



Atlantic and Pacific
Avenues

New LED Poles



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

UNINTENTIONAL CONSEQUENCES?

Virginia Constitution Art. VII, Section 9:

[Va. Code §15.2-2100.B.] "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. Before granting any such franchise or privilege for a term in excess of five years, except for a trunk railway, the city or town shall, after due 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.]"

NEW Va. Code §56-484.29:

"Subject to any applicable requirements of Article VII, Section 9 of the Constitution of Virginia, public right-of-way permits or agreements for the construction of wireless support structures issued on or after July 1, 2017, shall be for an initial term of at least 10 years, with at least three options for renewal for terms of five years, subject to terms providing for earlier termination for cause or by mutual agreement."

[TOTAL = 25 YEARS]

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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.

WHAT HAS VIRGINIA BEACH RECEIVED?

- Existing Structures on Private Property: Straight to Zoning. 10+
- New Structures on Private Property: One (1) application for a new pole to be located on the property of an apartment building. Will need a Conditional Use Permit. Process started, no shot clock applies because outside of statute.
- (Privately owned) Existing Structures in right-of-way: Fifteen (15) applications
- (Privately-owned) New Structures in right-of-way: Ten (10) applications
- (City-owned) Existing Structures in right-of-way. Pending

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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?

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

Suit me up.

I'M GOING IN.

Temporarily, of course...



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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.

NEW FRANCHISE AGREEMENTS AWARDED

- Mobilitie – Infrastructure provider only for **Sprint**. Others in future?
- New Cingular Wireless, PCS – division of **AT&T** Wireless.
- Cellco Partnership – division of **Verizon** Wireless.
- **T-Mobile** – No requests for placement in right-of way.



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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

This application is for use by wireless service providers and wireless infrastructure providers for siting of small cell facilities as defined in Va. Code §15.2-2316.4 (Existing structures are in City right-of-way) and Va. Code §56-484.27, et seq. (Access to public right-of-way; subject to valid franchise agreement with the City)

Full legal name of Applicant: _____ Date: _____

Are you wireless services provider or a wireless infrastructure provider?

Location/Address/GPIN where small cell will be located: _____

Description of wireless support structure (e.g., building, rooftop, pole, etc.): _____

- **Zoning Permit:** For attachment to existing structures on existing supports, applicants may submit up to 15 permit requests on one application. If you are applying for multiple locations, please attach list including all locations with description of each small cell, support structure, and owner.
- **EGCP Permit:** For attachment to existing structures or new structures in City right-of-way, applicant must submit an individual application for each site.

Full legal name of Owner of structure: _____
[If applying for attachment to more than one structure, provide additional list with each structure type, location and owner]

You must include a copy of the permission from the owner of each structure to co-locate equipment on the structure (§15.2-2516.4.A.)

Type of Installation (Choose One):

Small Cell Equipment with Wireless Backhaul Solution

Small Cell Equipment with Landline Backhaul Solution

Attachment Height (ft.): _____ Weight of Equipment: _____

Number of Antennas: _____ Total area of antennas: _____

Location of Equipment Cabinet, if any:

Installed on Pole

Installed in Ground (Vault)

Installed above Ground (may need lease, depending on size)

FCC License No./Permit No.: _____

Rev. 5/16/17

APPLICANT SHALL PROVIDE THE FOLLOWING, IF APPLICABLE:

- Site plan and engineering design and specifications for installation of Small Cell Equipment, including the location of radios, antenna facilities, transmitters, equipment shelters, cables, conduit, point of demarcation, backhaul solution, electrical distribution panel, electric meter, and electrical conduit and cabling. The design documents should include photo(s) of the existing pole, and photo simulation of pole with attached equipment. Where applicable, the design documents should include specifications on stealth design, pole modification, and ADA compliance.
- For new pole installations, include a picture of the proposed pole, the small cell and all equipment, 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.
- 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.
- Documentation of applicable design standards or criteria for installations inside the boundaries of a Historic District, or other restricted area, and installations within 250 feet of the boundary of such districts.
- If health modifications are required in order to comply with the design standards or criteria for installations inside the boundaries of a Historic District, provide applicable design and specification drawings.
- If the proposed installation requires a new pole, provide design and specification drawings for the new pole, including smart poles.
- If the proposed installation will require re-enforcement or replacement of an existing pole, provide applicable design and specification drawings.
- The number, size, type and proximity to the facilities of all communication conduit(s) and cables to be installed.
- Description of the utility services required to support the facilities to be installed.
- All permits and letters of authorization from all affected parties.
- Valid FCC license or other appropriate certificates or permits as required.
- General description of the services to be provided.
- List of the contractors and subcontractors, and their contact information, authorized to work on the project.

Rev. 5/16/17

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.

<p><u>ATTACH CHECK OR MONEY ORDER IN AMOUNT OF APPROPRIATE APPLICATION FEE.</u> <u>THIS PROCESSING FEE IS NON-REFUNDABLE AND NON-TRANSFERABLE.</u></p> <p>Zoning Permit Fees: <i>For attachment to existing structures NOT in public rights-of-way, pursuant to §15.2-2216.4 B 2, [see to 15 per application]</i></p> <p>\$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.</p> <p>Number of small cell locations applied for: _____</p> <p>Amount enclosed: _____</p> <p>ROW Permit Fees: <i>For attachment to existing structures located WITHIN public rights-of-way, pursuant to §16.2-22. P: [One (1) small cell site location per application]</i></p> <p>\$250 each location</p> <p><i>For new pole installation and attachment located WITHIN public rights-of-way: [One (1) small cell site location per application]</i></p> <p>\$500 each location</p> <p>The entity applying for use of the rights-of-way has a valid Franchise Agreement with the City of Virginia Beach, including current: a) insurance requirements; b) bond; c) letter of credit.</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>If NO, please contact the City Attorney's Office at (757) 383-4331 to apply for a franchise or update your existing franchise with the City of Virginia Beach.</p> <p style="text-align: right;">Rev. 8/28/17</p>	<p>This is a public record subject to disclosure under the Virginia Freedom of Information Act.</p> <p>APPLICANT REPRESENTATIVE: _____</p> <p>PRINT NAME: _____</p> <p>PHONE: _____ EMAIL: _____</p> <p style="text-align: center;">_____ FOR CITY USE ONLY</p> <p>RECEIPT DATE: _____ APPLICATION NO: _____</p> <p>DATE COMPLETE: _____ DUE (60): _____</p> <p>EXTENSION: Y/N (30) _____</p> <p>APPROVED BY: _____</p> <p>APPROVAL DATE: _____</p> <p style="text-align: right;">Rev. 6/28/17</p>
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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**

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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.

Questions?
Comments?
Discussion?

