

1 **Ordinance to Amend and Reenact Chapter 34 of the City Code of the City of Hampton,**
2 **Virginia entitled “Streets and Sidewalks” by Amending Article III to Add “Division 1. –**
3 **Encroachments Generally” After the Title of the Article and Add “Division 2. - Wireless**
4 **Communications Infrastructure” to Comply with Recent Enactments of §§ 56-484.26, Et**
5 **Seq. of the Code of Virginia**

6 **BE IT ORDAINED** by the Council of the City of Hampton, Virginia, that Chapter 34 of the City
7 Code of the City of Hampton entitled “Streets and Sidewalks” is amended and reenacted to read
8 as follows:

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10 **Chapter 34 – STREETS AND SIDEWALKS**

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12 **ARTICLE III. – ENCROACHMENTS INTO PUBLIC STREETS AND OTHER PUBLIC WAYS,**
13 **PLACES OR PROPERTY**

14 ***DIVISION 1. – ENCROACHMENTS GENERALLY***

15 **Sec. 34-86. – Application; processing fee; procedures; council review.**

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17 ***DIVISION 2. – WIRELESS COMMUNICATIONS INFRASTRUCTURE***

18 ***Sec. 34-90. – Definitions.***

19 *In accordance with Sec. 56-484.26 of the Code of Virginia, as amended, the following definitions*
20 *apply to this division.*

21 *Antenna. Communications equipment that transmits or receives electromagnetic radio signals*
22 *used in the provision of any type of wireless communications services.*

23 *Co-locate. To install, mount, maintain, modify, operate, or replace a wireless facility on, under,*
24 *within, or adjacent to a base station, building, existing structure, utility pole, or wireless support*
25 *structure. "Co-location" has a corresponding meaning.*

26 *Department. The Department of Public Works.*

27 *Existing structure. Any structure that is installed or approved for installation at the time a*
28 *wireless services provider or wireless infrastructure provider provides notice to the city of an*
29 *agreement with the owner of the structure to co-locate equipment on that structure. "Existing*
30 *structure" includes any structure that is currently supporting, designed to support, or capable of*
31 *supporting the attachment of wireless facilities, including towers, buildings, utility poles, light*
32 *poles, flag poles, signs, and water towers.*

33 *Micro-wireless facility. A small cell facility that is not larger in dimension than 24 inches in*
34 *length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not*
35 *longer than 11 inches.*

36 *Small cell facility. A wireless facility that meets both of the following qualifications: (i) each*
37 *antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case*
38 *of an antenna that has exposed elements, the antenna and all of its exposed elements could fit*
39 *within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment*
40 *associated with the facility has a cumulative volume of no more than 28 cubic feet, or such*
41 *higher limit as is established by the Federal Communications Commission. The following types*
42 *of associated equipment are not included in the calculation of equipment volume: electric meter,*
43 *concealment, telecommunications demarcation boxes, ground-based enclosures, back-up*
44 *power systems, grounding equipment, power transfer switches, cut-off switches, and vertical*
45 *cable runs for the connection of power and other services.*

46 *Utility pole. A structure owned, operated, or owned and operated by a public utility, local*
47 *government, or the Commonwealth that is designed specifically for and used to carry lines,*
48 *cables, or wires for communications, cable television, or electricity.*

49 *Water tower. A water storage tank, or a standpipe or an elevated tank situated on a support*
50 *structure, originally constructed for use as a reservoir or facility to store or deliver water.*

51 *Wireless facility. Equipment at a fixed location that enables wireless services between user*
52 *equipment and a communications network, including (i) equipment associated with wireless*
53 *services, such as private, broadcast, and public safety services, as well as unlicensed wireless*
54 *services and fixed wireless services, such as microwave backhaul, and (ii) radio transceivers,*
55 *antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and comparable*
56 *equipment, regardless of technological configuration.*

57 *Wireless infrastructure provider. Any person, including a person authorized to provide*
58 *telecommunications service in the state, that builds or installs transmission equipment, wireless*
59 *facilities, or wireless support structures, but that is not a wireless services provider.*

60 *Wireless services. (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i); (ii)*
61 *"personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including*
62 *commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile*
63 *communication devices through wireless facilities; and (iii) any other fixed or mobile wireless*
64 *service, using licensed or unlicensed spectrum, provided using wireless facilities.*

65 *Wireless services provider. A provider of wireless services.*

66 *Wireless support structure. A freestanding structure, such as a monopole, tower, either guyed*
67 *or self-supporting, or suitable existing structure or alternative structure designed to support or*
68 *capable of supporting wireless facilities. "Wireless support structure" does not include any*
69 *telephone or electrical utility pole or any tower used for the distribution or transmission of*
70 *electrical service.*

71 **State law reference:** *Definitions, Code of Virginia § 56-484.26.*

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74 **Sec. 34-91. – Application, permit, and permit fees.**

75 (a) *Application and permit generally.*

76 (1) *Upon application by a wireless services provider or wireless infrastructure provider,*
77 *the department shall issue a permit granting access to all public rights-of-way to*
78 *install and maintain small cell facilities on existing structures, provided that the*
79 *wireless services provider or wireless infrastructure provider (i) has permission from*
80 *the owner of the structure to co-locate equipment on that structure and (ii) provides*
81 *notice of the agreement and co-location to the city.*

82 (2) *The department shall approve or disapprove any such requested permit within 60*
83 *days of receipt of the complete application. Within 10 days after receipt of an*
84 *application and a valid electronic mail address for the applicant, the department shall*
85 *notify the applicant by electronic mail whether the application is incomplete and*
86 *specify any missing information; otherwise, the application shall be deemed*
87 *complete.*

88 (3) *Any disapproval shall be in writing and accompanied by an explanation for the*
89 *disapproval. The department may extend the 60-day period in writing for a period not*
90 *to exceed an additional 30 days.*

91 (4) *The permit request shall be deemed approved if the department fails to act within the*
92 *initial 60 days or an extended 30-day period.*

93 (5) *No such permit shall be required for providers of telecommunications services and*
94 *nonpublic providers of cable television, electric, natural gas, water, and sanitary*
95 *sewer services that, as of July 1, 2017, already have facilities lawfully occupying the*
96 *public rights-of-way under the locality's jurisdiction.*

97 (b) *The department shall not impose any fee for the use of the rights-of-way, except for*
98 *zoning, subdivision, site plan, and comprehensive plan fees of general application, on a wireless*
99 *services provider or wireless infrastructure provider to attach or co-locate small cell facilities on*
100 *an existing structure in the right-of-way. A permit application processing fee of \$250 shall be*
101 *charged.*

102 (c) *No fee shall be imposed and no application or permit shall be required for the*
103 *installation, placement, maintenance, or replacement of micro-wireless facilities that are*
104 *suspended on cables or lines that are strung between existing utility poles in compliance with*
105 *national safety codes. The department shall require a single-use right-of-way permit if such*
106 *activities (i) involve working within the highway travel lane or require closure of a highway travel*
107 *lane; (ii) disturb the pavement, shoulder, roadway, or ditch line; (iii) include placement on limited*
108 *access rights-of-way; or (iv) require any specific precautions to ensure the safety of the traveling*
109 *public or the protection of public infrastructure or the operation thereof, and either were not*
110 *authorized in or will be conducted in a time, place, or manner that is inconsistent with terms of*
111 *the existing permit for that facility or the structure upon which it is attached.*

112 **State law reference:** *Access to locality rights-of-way for installation and maintenance of small*
113 *cell facilities on existing structures, Code of Virginia § 56-484.29.*

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115 **Sec. 34-92. – Term and relocation.**

116 (a) *Except as provided in Article VII, Section 9 of the Constitution of Virginia, public right-of-*
117 *way permits or agreements for the construction of wireless support structures issued on or after*
118 *July 1, 2017, shall be for an initial term of at least 10 years, with at least three options for*
119 *renewal for terms of five years, subject to terms providing for earlier termination for cause or by*
120 *mutual agreement.*

121 (b) *Nothing in this division prohibits the department from requiring permittees to relocate*
122 *wireless support structures when relocation is necessary due to a transportation project, the*
123 *need to remove a hazard from the right-of-way when the Commissioner of Highways determines*
124 *such removal is necessary to ensure the safety of the traveling public, or material change to the*
125 *right-of-way, so long as other users of the right-of-way that are in similar conflict with the use of*
126 *the right-of-way are required to relocate.*

127 (c) *Such relocation shall be completed as soon as reasonably possible within the time set*
128 *forth in any written request by the department, as long as the department provides the permittee*
129 *with a minimum of 180 days' advance written notice to comply with such relocation, unless*
130 *circumstances beyond the control of the department require a shorter period of advance notice.*
131 *The permittee shall bear only the proportional cost of the relocation that is caused by the*
132 *transportation project and shall not bear any cost related to private benefit or where the*
133 *permittee was on private right-of-way.*

134 (d) *If the department bears any of the cost of the relocation, the permittee shall not be*
135 *obligated to commence the relocation until it receives the funds for such relocation. The*
136 *permittee shall have no liability for any delays caused by a failure to receive funds for the cost of*
137 *such relocation, and the department shall have no obligation to collect such funds.*

138 (e) *If relocation is deemed necessary, the department shall work cooperatively with the*
139 *permittee to minimize any negative impact to the wireless signal caused by the relocation. In the*
140 *event of an emergency, the permittee and the department shall work diligently to accomplish*
141 *such emergency relocation.*

142 **State law reference:** *Agreements for use of public right-of-way to construct new wireless*
143 *support structures; relocation of wireless support structures, Code of Virginia § 56-484.30.*

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145 **Secs. ~~34.90~~ 34-93 – 34.110. – Reserved.**