



Legislation Text

File #: 20-0294, Version: 1

Ordinance To Amend And Re-Enact Chapter 34 Of The City Code Of The City Of Hampton, Virginia Entitled "Streets and Sidewalks," By Amending Article III Pertaining To Wireless Infrastructure

PURPOSE/BACKGROUND:

In recent years, the Federal Communications Commission (FCC) and the Virginia General Assembly adopted new legal criteria governing the installation of wireless infrastructure, which strictly limit City authority to regulate wireless infrastructure, both within City-owned public rights-of-way and upon private property.

While macro towers (over 50' in height) may continue to require a use permit under the zoning ordinance, small cell systems, typically involving small antennas and equipment cabinets installed on utility poles and other structures, must be processed via an administrative permit process under limited review standards.

Approval of this amendment would establish a new "Wireless Infrastructure Permit," which would be required to be obtained by providers prior to installation of wireless infrastructure within public rights-of-way. The amendment sets forth the applicable legal standards, which vary based upon the scope and type of equipment to be installed. The Wireless Infrastructure Permit would replace the individual encroachment process for installation of qualifying devices on poles and structures owned by third parties. The zoning ordinance will continue to govern installation of wireless infrastructure on private property and is not affected by this amendment.

The City can legally review Wireless Infrastructure Permit applications based upon limited criteria, including factors such as public safety concerns and interference with existing communications equipment. The City can also apply reasonable aesthetic standards. Accordingly, The City of Hampton Wireless Infrastructure and Small Cell Design Standards were developed to guide the siting of new equipment within public rights-of-way. An interdepartmental team including the City Attorney's Office and Information Technology, Community Development, and Public Works departments will review Wireless Infrastructure Permit applications.

Recommendation:

Approve the Ordinance

BE IT ORDAINED by the Council of the City of Hampton, Virginia that Article III of Chapter 34 of the City Code of the City of Hampton, Virginia, be amended and re-enacted as follows:

CHAPTER 34 - STREETS AND SIDEWALKS

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ARTICLE III - ENCROACHMENTS INTO PUBLIC STREETS AND OTHER PUBLIC WAYS,

PLACES, OR PROPERTY

DIVISION 1. - ENCROACHMENTS GENERALLY

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

(a) Applications for encroachments into public streets and other public ways, places or property shall be made to the director of the department of public works, except as otherwise provided in Division 2 of this article. A nonrefundable fee of one hundred fifty dollars (\$150.00) shall be paid to the city for processing an application for an encroachment into any public street or other public way, place or property. The director of public works or his designee shall not accept any application unless such fee is paid at the time the application is filed. The director of the department of public works or his designee is hereby authorized and directed to prepare and adopt a procedure for the processing of such applications and the reporting to city council of any detrimental effect which a requested encroachment may have on the public health, safety, welfare or interest. Any application for an encroachment presented for city council consideration shall be accompanied by (i) an encroachment agreement executed by the applicant and incorporating all terms and conditions imposed by city staff, (ii) a certificate of liability insurance in such amounts and such coverages as required by the city's risk management administrator and naming the City of Hampton as an additional insured in the endorsement box, and (iii) if required by the director of public works or his designee, a performance bond in the amount set by the department of public works to cover the costs of removal of the encroachment in the event of a violation of the encroachment agreement or failure to remove the encroachment upon notification.

DIVISION 2. - WIRELESS COMMUNICATIONS INFRASTRUCTURE

Sec. 34-90. - Definitions

In accordance with Code of Virginia §§ 56-484.26 et seq. and 15.2-2316.3, et. seq, as amended, the following definitions apply to this Division, except where context clearly indicates a different meaning:

Administrative review-eligible project. A project that provides for:

1. The installation or construction of a new structure that is not more than 50 feet above ground level, provided that the structure with attached wireless facilities is (i) not more than 10 feet above the tallest existing utility pole located within 500 feet of the new structure within the same public right-of-way or within the existing line of utility poles; (ii) not located within the boundaries of a local, state, or federal historic district; (iii) not located inside the jurisdictional boundaries of a locality having expended a total amount equal to or greater than 35 percent of its general fund operating revenue, as shown in the most recent comprehensive annual financial report, on undergrounding projects since 1980; and (iv) designed to support small cell facilities; or

2. The co-location on any existing structure of a wireless facility that is not a small cell facility.

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

Applicant. A wireless services provider, wireless infrastructure provider, or other third parties at the direction of the provider submitting the WIP application and all required materials and information.

Base station. A station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables, or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.

City facilities. City-owned existing structures located within the public way. City facilities may include, by means of example, city-owned light poles and city-owned traffic signal poles and structures.

Co-locate. 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.

Department. The Department of Public Works or any other department designated by the City Manager.

Existing structure. Any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to the city 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.

Micro-wireless facility. A small cell facility that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, not longer than eleven (11) inches.

New structure. A wireless support structure that has not been installed or constructed, or approved for installation or construction, at the time a wireless services provider or wireless infrastructure provider applies to a locality for any required zoning approval.

Person. A person, including an individual, partnership, corporation, association, governmental agency, trust, or other institution or entity.

Project. Either (i) the installation or construction by a wireless services provider or wireless infrastructure provider of a new structure or (ii) the co-location on any existing structure of a wireless facility that is not a small cell facility. "Project" does not include the installation of a small cell facility by a wireless services provider or wireless infrastructure provider on an existing structure to which the provisions of § 15.2-2316.4 apply.

Public rights-of-way - all rights-of-way owned or controlled by the City of Hampton, including Public Street, Public Way, public easements, and other public places.

Public street. The surface of and the space above and below any public street, road, highway, avenue, sidewalk, way, bridge, viaduct, alley, lane or other public right-of-way, including non-paved surfaces, now or hereafter held by the city for the purpose of public travel, communications, alarm, street lighting, power distribution, water or sewer easements or similar public use.

Public way. All public streets held or controlled by the city, but only to the extent of the city's right, title, interest or authority to grant a license to occupy and use such public streets for telecommunications facilities.

Small cell facility. A wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six (6) 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 (6) cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than twenty-eight (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, ground-based enclosures, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

Standard process project. Any project other than an administrative review-eligible project.

Third Party Existing Structure. An Existing Structure not owned by the City of Hampton.

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

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

WIP. Wireless Infrastructure Permit.

Wireless facility. Equipment at a fixed location that enables wireless services 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.

Wireless Infrastructure Permit (WIP). Permit required by this Division to install wireless infrastructure and wireless facilities within the City.

Wireless infrastructure provider. Any person, including a person authorized to provide

telecommunications service in the state, that builds or installs transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

Wireless services. (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C) (i); (ii) "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 (iii) any other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using wireless facilities.

Wireless services provider. A provider of wireless services.

Wireless support structure. 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.

State Code Reference: §§ 56-484.26 et seq., and 15.2-2316.3, et seq.

Sec. 34-91. - Enforcement of Division

- (a) The Department shall have the authority to enforce all provisions of this division.
- (b) Any person violating any provision of this division shall be guilty of a Class 1 misdemeanor. Each day a violation continues shall constitute a separate offense. In addition to any penalties imposed for each violation, a court of competent jurisdiction shall order the person responsible for the violation to correct the violation, and each day's default in such correction shall constitute a violation of and a separate offense under this division.
- (c) In addition to any criminal penalties imposed, a court may enjoin the continuing violation of this division by proceedings for an injunction brought in any court of competent jurisdiction.
- (d) Any permit issued under this division shall be revocable by the Department for non-compliance with any term of the permit or any applicable wireless facilities franchise agreement, or for non-compliance with any applicable requirement of this division.

State Law Reference - Code of Virginia §§ 15.2-1429, 15.2-1432, 56-484.26 et seq., and 15.2-2316.3, et seq.

Sec. 34-92. - Applicability

This division applies to the following types of wireless facility and wireless infrastructure development within public rights-of-way, each of which contains different permitting requirements, as further set forth in this division.

(a) **Small Cell Wireless Facility Co-Locations within Public Rights of Way**

- (1) Applications to co-locate small cell wireless facilities within public rights-of-way on third-party existing structures shall comply with the requirements in Section 34-93.
- (2) Applications to co-locate small cell wireless facilities within public rights-of-way on city-owned existing structures shall comply with the requirements in Section 34-95.

(b) **Non-Small Cell Wireless Facility Co-Locations within Public Rights of Way**

- (1) Applications to co-locate non-small cell wireless facilities within public rights-of-way on third-party existing structures shall comply with the requirements Section 34-96.
- (2) Applications to co-locate Non-Small Cell Wireless Facilities within Public Rights-of-Way on City-Owned Existing Structures shall comply with the requirements in Section 34-97.

(c) **New Structure Installations within Public Rights of Way**

- (1) Applications to install new structures within public rights-of-way, which meet the criteria for an administrative review-eligible project, shall comply with the requirements in Section 34-98.
- (2) Applications to install new structures within the public rights-of-way which meet the criteria for a standard process project, shall comply with the requirements in Section 34-99.

(d) The provisions of this division apply only to applications for permits within the public right-of-way. Permits for development outside the public right-of-way shall be administered by the zoning administrator in accordance with the requirements of state law and the zoning ordinance. To the extent required by state law, the zoning administrator hereby designates the Department as the administrator of Wireless Infrastructure Permits within the public right-of-way.

State Code Reference: §§ 56-484.26 et seq., and 15.2-2316.3, et seq.

Sec. 34-93. - Small Cell Wireless Facility Co-Locations within Public Rights-of-Way on Third Party Existing Structures

Applications to co-locate small cell wireless facilities within public rights-of-way on third-party existing structures shall comply with the following requirements:

- (a) No wireless infrastructure provider shall co-locate a small cell facility in or on any existing structure located within any public rights of way without first obtaining a Wireless Infrastructure Permit (WIP) from the Department in accordance with this division.
 - (1) Notwithstanding the foregoing, a WIP shall not be required for (i) routine maintenance or (ii) the replacement of wireless facilities or wireless support structures within a six-foot perimeter with wireless facilities or wireless support structures that are substantially similar or the same size or smaller.

- (b) Application for Permit. The Department shall establish a standard application form for Wireless Infrastructure Permits under this section.
 - (1) Applicants may submit not more than 35 individual permit requests with each application.
 - (2) Applicants shall deliver applications to the Department, together with an application fee. No application shall be reviewed unless and until the application fee has been paid.
 - (3) The application fee shall be \$100.00 apiece for each of the first five individual permit requests included with a single application, plus \$50.00 apiece for each additional individual permit request above five included with a single application.

- (c) Materials to be submitted with WIP applications to co-locate small cell wireless facilities within public rights-of-way on third-party existing structures:
 - (1) When filing an application, an applicant shall submit the applicant's name and a valid electronic mail address at which the applicant may be contacted;
 - (2) When filing an application, for each individual permit requested in the application, the applicant shall provide, unless waived or modified by the Department:
 - (i) The address and latitude/longitude of the existing structure on which the small cell facility will be co-located and the nearest Land Record Serial Number (LRSN) from the City's Geographic Information System;
 - (ii) The name of the owner of the existing structure and an agreement or other evidence showing the owner has granted permission to the applicant to co-locate on the existing structure, which evidence may include the owner's signature on the application or other documents;
 - (iii) Copies of any approvals for the site granted by a federal agency, including conditions imposed by that agency;
 - (iv) Engineer-certified intermodulation study and other documentation to the extent permitted by law demonstrating that the small cell facility and operation thereof will not interfere with City pre-existing communications facilities;
 - (v) Plans clearly depicting the dimensions and specifications of the small cell facility, including the antennae, base station, and all assorted wireless equipment;

- (vi) Detailed elevation drawings showing the co-location of the small cell facility, including the base station and all other associated equipment on the existing structure; and
 - (vii) To the extent permitted by law, such additional materials as are listed on the application form established by the Department and are reasonably required by the Department to determine the approvability of a permit in accordance with this Section 34-93.
- (d) Any application not including the required application fee and all of the information listed in this section may be deemed incomplete by the Department.
- (e) The application review process to co-locate small cell wireless facilities within public rights-of-way on third-party existing structures shall comply with the following requirements:
- (1) Provided the applicant has and paid the appropriate application fee, within ten (10) days after receipt of an application and a valid electronic mail address for the applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval.
 - (2) During review of a complete application, the Department may request the applicant to provide additional information which is reasonably required to the extent permitted by law to determine the approvability of a permit in accordance with this section.
 - (3) Within sixty (60) days of submittal of a complete application, the Department shall, for each individual permit request included in an application: (i) approve the individual permit request; or (ii) deny the individual permit request in writing, including a written explanation of the reason[s] for denial. The Department may extend the sixty (60) day period in writing for a period not to exceed an additional thirty (30) days. The application shall be deemed approved if the Department fails to act within the greater of the initial sixty (60) days or an extended thirty (30) day period.
- (f) Standards of Review for Applications and Bases for Denial.
- (1) Upon confirmation that an application is complete, the Department shall review the permit requests. No individual permit request included in a complete application shall be denied except for one or more of the following reasons:
 - (i) Lack of conformance with this division, applicable federal and state law, or the City of Hampton Wireless Infrastructure and Small Cell Facility Design Standards;
 - (ii) 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;

- (iii) The public safety or other critical public service needs;
- (iv) 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
- (v) Conflict with an applicable local ordinance adopted pursuant to § 15.2-2306, or pursuant to local charter on a historic property that is not eligible for the review process established under 54 U.S.C. § 306108.

State Code Reference: §§ 56-484.26 et seq., and 15.2-2316.3, et seq.

Sec. 34-94. - Micro-Wireless Facilities

- (a) 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 within the public way is exempt from the application and permitting requirements of this division.
- (b) Any person who installs micro-wireless facilities as provided in subsection (a) and any subsequent owner, lessee or operator thereof shall ensure that the facilities are maintained in compliance with all national safety codes and so as not to constitute a nuisance or threat to the public safety.
- (c) Notwithstanding the foregoing, the City may require a right-of-way permit if installation of micro-wireless facilities (i) involves working within the highway travel lane or requires closure of a highway travel lane; (ii) disturbs the pavement, shoulder, roadway, or ditch line; (iii) includes placement on limited access rights-of-way; or (iv) requires any specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof, and either were not authorized in or will be conducted in a time, place, or manner that is inconsistent with terms of the existing permit for that facility or the structure upon which it is attached.

State Code Reference: §§ 56-484.26 et seq., and 15.2-2316.3, et seq.

Sec. 34-95. - Small Cell Wireless Facilities within Public Rights-of-Way on City-Owned Existing Structures

Applications to co-locate small cell wireless facilities within public rights-of-way on city-owned existing structures shall comply with the following requirements:

- (a) No Wireless infrastructure provider shall co-locate a small cell facility in or on any City-owned existing structure located within any public rights of way without first obtaining a Wireless

Infrastructure Permit (WIP) from the Department and a franchise, encroachment or other license agreement in accordance with this division.

- (1) Notwithstanding the foregoing, a WIP shall not be required for (i) routine maintenance or (ii) the replacement of wireless facilities or wireless support structures within a six-foot perimeter with wireless facilities or wireless support structures that are substantially similar or the same size or smaller.

(b) Application for Permit. The Department shall establish a standard application form for Wireless Infrastructure Permits under this section.

- (1) Applicants may submit not more than 35 individual permit requests with each application.
- (2) Applicants shall deliver applications to the Department, together with an application fee. No application shall be reviewed unless and until the application fee has been paid.
- (3) The application fee shall be \$100.00 apiece for each of the first five individual permit requests included with a single application, plus \$50.00 apiece for each additional individual permit request above five included with a single application.

(c) Materials to be submitted with WIP applications to co-locate small cell wireless facilities within public rights-of-way on city-owned existing structures:

- (1) When filing an application, an applicant shall submit the applicant's name and a valid electronic mail address at which the applicant may be contacted;
- (2) When filing an application, for each individual permit requested in the application, the applicant shall provide, unless waived or modified by the Department:
 - (i) The address and latitude/longitude of the existing structure on which the small cell facility will be co-located and the nearest Land Record Serial Number (LRSN) from the City's Geographic Information System;
 - (ii) Copies of any approvals for the site granted by a federal agency, including conditions imposed by that agency;
 - (iii) Engineer-certified intermodulation study and other documentation to the extent permitted by law demonstrating that the small cell facility and operation thereof will not interfere with City pre-existing communications facilities;
 - (iv) Plans clearly depicting the dimensions and specifications of the small cell facility, including the antennae, base station, and all assorted wireless equipment;
 - (v) Detailed elevation drawings showing the co-location of the small cell facility, including the base station and all other associated equipment on the existing structure;
 - (vi) Upon request from the Department, a copy of the franchise, encroachment, or other similar license agreement, from the City Council allowing the co-location of small cell facilities upon City-owned existing structures, in accordance with subsection (e) of this section; and
 - (vii) To the extent permitted by law, such additional materials as are listed on the

application form established by the Department and are reasonably required by the city engineer to determine the approvability of a permit in accordance with this Section 34-95.

- (d) Any application not including the required application fee and all of the information listed in this section may be deemed incomplete by the Department.
- (e) Requirements for a franchise, license, or encroachment agreement:
- (1) A franchise, license, or encroachment agreement to permit a wireless services provider or a wireless infrastructure provider to attach small cell facilities to City-owned structures shall be negotiated in good faith to arrive at mutually agreeable contract terms and conditions, which may include but shall not be limited to, compliance with the City of Hampton Wireless Infrastructure and Small Cell Facility Design Standards; responsibility for all costs pertaining to the installation, placement, maintenance, replacement or removal of the wireless facility on or from the city-owned existing structure; responsibility for repairing all damage to the city-owned existing structure resulting from the installation, placement, maintenance, replacement or removal of the wireless facility on or from the existing structure, or for paying the cost incurred by the city to repair the city facility; notification requirements prior to commencement of work; bond requirements; and the right of the city to remove any city facility at any time for the protection of the public health, safety or welfare, with or without notice to the owner of the co-located wireless facilities.
 - (2) The rates, terms, and conditions for such agreement shall be just and reasonable, cost-based, nondiscriminatory, and competitively neutral, and shall comply with all applicable state and federal laws. However, rates for attachments to City-owned buildings may be based on fair market value. The annual recurring rate to co-locate a small cell facility on a City-owned utility pole shall not exceed the actual, direct, and reasonable costs related to the wireless services provider's or wireless infrastructure provider's use of space on the utility pole. In any controversy concerning the appropriateness of the rate, the City shall have the burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs incurred for use of space on the utility pole for such period.
 - (3) For utility poles owned by the City that support aerial cables used for video, communications, or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the City for any make-ready work necessary to enable the utility pole to support the requested co-location shall include pole replacement if necessary.
 - (4) For utility poles owned by the City that do not support aerial cables used for video, communications, or electric service, the City shall provide a good faith estimate for any make-ready work necessary to enable the utility pole to support the requested co-location, including pole replacement, if necessary, within sixty (60) days after receipt of

a complete application. Make-ready work, including any pole replacement, shall be completed within sixty (60) days of written acceptance of the good faith estimate by the wireless services provider or a wireless infrastructure provider.

- (5) The City shall not require more make-ready work than required to meet applicable codes or industry standards. Charges for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other wireless services providers, providers of telecommunications services, and nonpublic providers of cable television and electric services for similar work and shall not include consultants' fees or expenses.
- (f) The application review process for co-locations of small cell wireless facilities within public rights-of-way on City-owned existing structures shall comply with the following requirements:
- (1) Provided the applicant has and paid the appropriate application fee, within ten (10) days after receipt of an application and a valid electronic mail address for the applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval.
 - (2) During review of a complete application, the Department may request applicant to provide additional information which is reasonably required to the extent permitted by law to determine the approvability of a permit in accordance with this Section 34-95.
 - (3) Within sixty (60) days of submittal of a complete application, the Department shall, for each individual permit request included in an application: (i) approve the individual permit request; or (ii) deny the individual permit request in writing, including a written explanation of the reason[s] for denial. The Department may extend the sixty (60) day period in writing for a period not to exceed an additional thirty (30) days. The application shall be deemed approved if the Department fails to act within the greater of the initial sixty (60) days or an extended thirty (30) day period.
- (g) Standards of Review for Applications and Bases for Denial.
- (1) Upon confirmation that an application is complete, the Department shall review the permit requests. No individual permit request included in a complete application shall be denied except for one or more of the following reasons:
 - (i) Lack of conformance with this division; applicable franchise, encroachment, or other license agreement; applicable federal and state law; or the City of Hampton Wireless Infrastructure and Small Cell Facility Design Standards;
 - (ii) 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;
 - (iii) The public safety or other critical public service needs;

- (iv) 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
- (v) Conflict with an applicable local ordinance adopted pursuant to § 15.2-2306, or pursuant to local charter on a historic property that is not eligible for the review process established under 54 U.S.C. § 306108.

State Code Reference: §§ 56-484.26 et seq., and 15.2-2316.3, et seq.

Sec. 34-96. - Non-Small Cell Wireless Facility Co-Locations within Public Rights-of-Way on Third Party Existing Structures

Applications to co-locate non-small cell wireless facilities within public rights-of-way on third-party existing structures shall comply with the following requirements:

- (a) No Wireless infrastructure provider shall co-locate a small cell facility in or on any existing structure located within any public rights of way without first obtaining a Wireless Infrastructure Permit (WIP) from the Department in accordance with this division.
 - (1) Notwithstanding the foregoing, a WIP shall not be required for (i) routine maintenance or (ii) the replacement of wireless facilities or wireless support structures within a six-foot perimeter with wireless facilities or wireless support structures that are substantially similar or the same size or smaller.
- (b) Application for Permit. The Department shall establish a standard application form for Wireless Infrastructure Permits under this section.
 - (1) Applicants may submit not more than one (1) individual permit request with each application.
 - (2) Applicants shall deliver applications to the Department, together with an application fee. No application shall be reviewed unless and until the application fee has been paid.
 - (3) The application fee shall be \$500.00.
- (c) Materials to be submitted with WIP applications to co-locate non-small cell wireless facilities within public rights-of-way on third-party existing structures:
 - (1) When filing an application, an applicant shall submit the applicant's name and a valid electronic mail address at which the applicant may be contacted;
 - (2) When filing an application, for each individual permit requested in the application, the applicant shall provide, unless waived or modified by the Department:
 - (i) The address and latitude/longitude of the existing structure on which the small cell facility will be co-located and the nearest Land Record Serial Number (LRSN) from the City's Geographic Information System;

- (ii) The name of the owner of the existing structure and an agreement or other evidence showing the owner has granted permission to the applicant to co-locate on the existing structure, which evidence may include the owner's signature on the application or other documents;
 - (iii) Copies of any approvals for the site granted by a federal agency, including conditions imposed by that agency;
 - (iv) Engineer-certified intermodulation study and other documentation to the extent permitted by law demonstrating that the non-small cell facility and operation thereof will not interfere with City pre-existing communications facilities;
 - (v) Plans clearly depicting the dimensions and specifications of the non-small cell facility, including the antennae, base station, and all assorted wireless equipment;
 - (vi) Detailed elevation drawings showing the co-location of the non-small cell facility, including the base station and all other associated equipment on the existing structure; and
 - (vii) To the extent permitted by law, such additional materials as are listed on the application form established by the Department and are reasonably required by the Department to determine the approvability of a permit in accordance with this Section 34-96.
- (d) Any application not including the required application fee and all of the information listed in this section may be deemed incomplete by the Department.
- (e) The application review process to co-locate non-small cell wireless facilities within public rights-of-way on third-party existing structures shall comply with the following requirements:
- (1) Provided the applicant has and paid the appropriate application fee, within ten (10) days after receipt of an application and a valid electronic mail address for the applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval.
 - (2) During review of a complete application, the Department may request the applicant to provide additional information which is reasonably required to the extent permitted by law to determine the approvability of a permit in accordance with this Section 34-96.
 - (3) Within ninety (90) days of submittal of a complete application, the Department shall (i) approve the individual permit request; or (ii) deny the individual permit request in writing, including a written explanation of the reason[s] for denial. The 90-day period may be extended by mutual agreement in writing between the applicant and the Department. The application shall be deemed approved if the Department fails to act within the greater of the initial 90 days or within any mutually agreed extension thereof.

- (f) Standards of Review for Applications and Bases for Denial.
- (1) Upon confirmation that an application is complete, the Department shall review the permit requests. No individual permit request included in a complete application shall be denied except for one or more of the following reasons:
 - (i) Lack of conformance with this division, applicable federal and state law, or the City of Hampton Wireless Infrastructure and Small Cell Facility Design Standards;
 - (ii) The proposed wireless facilities have a negative aesthetic impact on the surrounding area, considering the size and design of the facilities and the historic, residential, or commercial character of the surrounding area;
 - (iii) The proposed wireless facilities pose a risk to the public safety, including but not limited to public travel within the public way;
 - (iv) The proposed wireless facilities are inconsistent with the city's existing or planned public safety communications system; or
 - (v) Alternative, less impactful locations which reasonably meet the needs of the applicant are available for placement of the wireless facilities as allowed by law.

State Code Reference: §§ 56-484.26 et seq., and 15.2-2316.3, et seq.

Sec. 34-97. - Non-Small Cell Wireless Facility Co-Locations within Public Rights-of-Way on City-Owned Existing Structures

Applications to co-locate non-small cell wireless facilities within public rights-of-way on city-owned existing structures shall comply with the following requirements:

- (a) No Wireless infrastructure provider shall co-locate a non-small cell facility in or on any City-owned existing structure located within any public rights of way without first obtaining a Wireless Infrastructure Permit (WIP) from the Department and a franchise, encroachment or other license agreement in accordance with this division.
 - (1) Notwithstanding the foregoing, a WIP shall not be required for (i) routine maintenance or (ii) the replacement of wireless facilities or wireless support structures within a six-foot perimeter with wireless facilities or wireless support structures that are substantially similar or the same size or smaller.
- (b) Application for Permit. The Department shall establish a standard application form for Wireless Infrastructure Permits under this section.
 - (1) Applicants may submit not more than one (1) individual permit request with each application.
 - (2) Applicants shall deliver applications to the Department, together with an application fee. No application shall be reviewed unless and until the application fee has been paid.
 - (3) The application fee shall be \$500.00.

- (c) Materials to be submitted with WIP applications to co-locate non-small cell wireless facilities within public rights-of-way on city-owned existing structures:
- (1) When filing an application, an applicant shall submit the applicant's name and a valid electronic mail address at which the applicant may be contacted;
 - (2) When filing an application, for each individual permit requested in the application, the applicant shall provide, unless waived or modified by the Department:
 - (i) The address and latitude/longitude of the existing structure on which the small cell facility will be co-located and the nearest Land Record Serial Number (LRSN) from the City's Geographic Information System;
 - (ii) The name of the owner of the existing structure and an agreement or other evidence showing the owner has granted permission to the applicant to co-locate on the existing structure, which evidence may include the owner's signature on the application or other documents;
 - (iii) Copies of any approvals for the site granted by a federal agency, including conditions imposed by that agency;
 - (iv) Engineer-certified intermodulation study and other documentation to the extent permitted by law demonstrating that the non-small cell facility and operation thereof will not interfere with City pre-existing communications facilities;
 - (v) Plans clearly depicting the dimensions and specifications of the non-small cell facility, including the antennae, base station, and all assorted wireless equipment;
 - (vi) Detailed elevation drawings showing the co-location of the non-small cell facility, including the base station and all other associated equipment on the existing structure; and
 - (vii) To the extent permitted by law, such additional materials as are listed on the application form established by the Department and are reasonably required by the Department to determine the approvability of a permit in accordance with this Section 34-97.
- (d) Any application not including the required application fee and all of the information listed in this section may be deemed incomplete by the Department.
- (e) Requirements for a franchise, license, or encroachment agreement:
- (1) A franchise, license, or encroachment agreement to permit a wireless services provider or a wireless infrastructure provider to attach non-small cell facilities to City-owned structures shall be negotiated in good faith to arrive at mutually agreeable contract terms and conditions, which may include but shall not be limited to, compliance with the City of Hampton Wireless Infrastructure and Small Cell Facility Design Standards; responsibility for all costs pertaining to the installation, placement, maintenance, replacement or removal of the wireless facility on or from the city-owned existing

structure; responsibility for repairing all damage to the city-owned existing structure resulting from the installation, placement, maintenance, replacement or removal of the wireless facility on or from the existing structure, or for paying the cost incurred by the city to repair the city facility; notification requirements prior to commencement of work; bond requirements; and the right of the city to remove any city facility at any time for the protection of the public health, safety or welfare, with or without notice to the owner of the co-located wireless facilities.

- (2) Subject to any applicable requirements of Article VII, Section 9 of the Constitution of Virginia, a franchise, encroachment, or other similar license agreement for the construction of wireless support structures issued on or after July 1, 2017, shall be for an initial term of at least ten (10) years, with at least three (3) options for renewal for terms of five (5) years, subject to terms providing for earlier termination for cause or by mutual agreement.
- (f) The application review process for co-locations of non-small cell wireless facilities within public rights-of-way on City-owned existing structures shall comply with the following requirements:
- (1) Provided the applicant has and paid the appropriate application fee, within ten (10) days after receipt of an application and a valid electronic mail address for the applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval.
 - (2) During review of a complete application, the Department may request the applicant to provide additional information which is reasonably required to the extent permitted by law to determine the approvability of a permit in accordance with this Section 34-97.
 - (3) Within ninety (90) days of submittal of a complete application, the Department shall (i) approve the individual permit request; or (ii) deny the individual permit request in writing, including a written explanation of the reason[s] for denial. The ninety (90)-day period may be extended by mutual agreement in writing between the applicant and the Department. The application shall be deemed approved if the Department fails to act within the greater of the initial ninety (90) days or within any mutually agreed extension thereof.
- (g) Standards of Review for Applications and Bases for Denial.
- (1) Upon confirmation that an application is complete, the Department shall review the permit requests. No individual permit request included in a complete application shall be denied except for one or more of the following reasons:
 - (i) Lack of conformance with this division; applicable franchise, encroachment, or other license agreement; applicable federal and state law; or the City of Hampton Wireless Infrastructure and Small Cell Facility Design Standards;
 - (ii) The proposed wireless facilities have a negative aesthetic impact on the

- surrounding area, considering the size and design of the facilities and the historic, residential, or commercial character of the surrounding area;
- (iii) The proposed wireless facilities pose a risk to the public safety, including but not limited to public travel within the public way;
 - (iv) The proposed wireless facilities are inconsistent with the city's existing or planned public safety communications system; or
 - (v) Alternative, less impactful locations which reasonably meet the needs of the applicant are available for placement of the wireless facilities as allowed by law.

State Code Reference: §§ 56-484.26 et seq., and 15.2-2316.3, et seq.

Sec. 34-98. - New Structure Installations within Public Rights-of-Way; Administrative Eligible Review

Applications to install new structures that meet the definition of administrative review-eligible project shall comply with the following requirement:

- (a) No Wireless infrastructure provider shall install a new structure that meets the definition of an administrative review eligible project in or on any City-owned existing structure located within any public rights of way without first obtaining a Wireless Infrastructure Permit (WIP) from the Department and a franchise, encroachment or other license agreement in accordance with this division.
 - (1) Notwithstanding the foregoing, a WIP shall not be required for (i) routine maintenance or (ii) the replacement of wireless facilities or wireless support structures within a six-foot perimeter with wireless facilities or wireless support structures that are substantially similar or the same size or smaller.
- (b) Application for Permit. The Department shall establish a standard application form for Wireless Infrastructure Permits under this section.
 - (1) Applicants shall submit one (1) application per proposed new structure location.
 - (2) Applicants shall deliver applications to the Department, together with an application fee. No application shall be reviewed unless and until the application fee has been paid.
 - (3) The application fee shall be \$500.00.
- (c) Materials to be submitted with WIP applications to install new structures that meet the definition of administrative review-eligible project:
 - (1) When filing an application, an applicant shall submit the applicant's name and a valid electronic mail address at which the applicant may be contacted;
 - (2) When filing an application, for each individual permit requested in the application, the applicant shall provide, unless waived or modified by the Department:
 - (i) The address and latitude/longitude of the proposed new structure, and the

nearest Land Record Serial Number (LRSN) from the City's Geographic Information System;

- (ii) Plans clearly depicting the dimensions and specifications of the new structure and all wireless facilities to be attached to the new structure, including the antennae, base station, and all assorted wireless equipment. The plans shall depict all materials existing conditions in the vicinity of the new structure, including but not limited to limits of the public right-of-way; all existing public and privately-owned utility and infrastructure improvements, such as water mains, water meters, sanitary sewer, storm sewer, electrical, gas, telecommunications, manholes, stormwater basins, sidewalks, curbs, gutters, street trees, and traffic signal facilities. For convenience of site planning, it is highly recommended that the plans also depict the proposed routing of utilities to the new structure;
- (iii) Engineer-certified intermodulation study; and other documentation to the extent permitted by law demonstrating that the wireless facilities to be attached to the new structure, and operation thereof, will not interfere with City pre-existing communications facilities;
- (iv) Detailed elevation drawings, including the materials to be used, showing the new structure and wireless facilities to be attached to the new structure, including the base station and all other associated equipment;
- (v) A copy of the written notice given to adjacent landowners at least 15 days before the application is submitted, in accordance with any notice requirements the City may prescribe.
- (vi) Upon request from the Department, a copy of the franchise, encroachment, or other similar license agreement, if applicable, from the City Council allowing the installation of new structures in the City right-of-way; and
- (vii) To the extent permitted by law, such additional materials as are listed on the application form established by the Department and are reasonably required by the city engineer to determine the approvability of a permit in accordance with this Section 34-98.

(d) Any application not including the required application fee and all of the information listed in this section may be deemed incomplete by the Department.

(e) The application review process for new structures to be installed within public rights-of-way on City-owned existing structures shall comply with the following requirements:

- (1) Provided the applicant has and paid the appropriate application fee, within ten (10) days after receipt of an application and a valid electronic mail address for the applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval. If the Department is aware of any modifications to the project as described in the application that if made would permit the

locality to approve the proposed project, the locality shall identify them in the written statement.

- (2) During review of a complete application, the Department may request the applicant to provide additional information which is reasonably required to the extent permitted by law to determine the approvability of a permit in accordance with this Section 34-98.
- (3) Within ninety (90) days of submittal of a complete application, the Department shall (i) approve the individual permit request; or (ii) deny the individual permit request in writing, including a written explanation of the reason[s] for denial. The ninety (90)-day period may be extended by mutual agreement in writing between the applicant and the Department. The application shall be deemed approved if the Department fails to act within the greater of the initial ninety (90) days or within any mutually agreed extension thereof.

(f) Standards of Review for Application and Bases for Denial.

- (1) Upon confirmation that an application is complete, the Department shall review the permit requests. No individual permit request included in a complete application shall be denied except for one or more of the following reasons:
 - (i) Lack of conformance with this division; applicable franchise, encroachment, or other license agreement; applicable federal and state law; or the City of Hampton Wireless Infrastructure and Small Cell Facility Design Standards;
 - (ii) The proposed new structure does not meet the definition of an administrative-eligible review project.
 - (iii) The proposed wireless support structure or wireless facilities does not comply with applicable law and the terms of the wireless facilities franchise agreement, if applicable;
 - (iv) The proposed wireless support structure is not reasonably consistent with existing structures and aesthetics, is not in harmony with the surrounding improvements, or does not conceal within the pole all wires and supporting equipment to the greatest extent possible;
 - (v) The proposed wireless support structure or wireless facilities poses a risk to the public safety, including, but not limited to, public travel within the public way;
 - (vi) The proposed wireless support structure or wireless facilities is inconsistent with the City's existing or planned public safety communications system;
 - (vii) Alternative, less impactful locations which reasonably meet the needs of the applicant are available for placement of the wireless facilities intended to be attached to the wireless support structure as allowed by law.

(g) Use by City of new structures installed in public rights of way.

To the extent permitted by law, the City reserves the right to request the placement of city-owned communication and signal wires and other related equipment and facilities on all wireless support structures erected in its public ways, free of cost or expense to the City, provided that the

City equipment and facilities do not interfere with the structural integrity of the wireless support structure and do not interfere with the use of the wireless support structure by the owner and other existing users. An applicant's refusal of a request shall not be considered as a factor in the review and approval or denial of a permit application.

State Code Reference: §§ 56-484.26 et seq., and 15.2-2316.3, et seq.

Sec. 34-99. - New Structure Installations within Public Rights-of-Way; Standard Process Project

Applications to install new structures that meet the definition of a standard process project in public rights-of-way shall comply with the following requirements:

- (a) No wireless infrastructure provider shall install new structures that meet the definition of standard process project within any public rights of way without first obtaining an individual encroachment agreement as set forth in Division 1 of this article. Notwithstanding the foregoing, if a franchise, encroachment, or similar license agreement has been approved by the City Council pertaining to standard process projects, then the terms and conditions of the franchise or similar license agreement shall govern the review and installation process.
 - (1) If a small cell wireless facility is proposed to be attached to the new structure, then the franchise, encroachment, or similar license agreement shall comply with the requirements of Section 34-95(e).
 - (2) If a non-small cell wireless facility is proposed to be attached to the new structure, then the franchise, encroachment, or similar license agreement shall comply with the requirements of Section 34-97(e).

- (b) Application for Permit. The Department shall establish a standard application form for Wireless Infrastructure Permits under this section.
 - (1) Applicants shall submit one (1) application per proposed new structure location.
 - (2) Applicants shall deliver applications to the Department, together with an application fee. No application shall be reviewed unless and until the application fee has been paid.
 - (3) The application fee shall be an initial fee of \$500.00 paid at the time of the application submittal. Should the actual direct costs to process the application, including permits and inspections, exceed \$500.00, then the applicant shall pay the remaining costs to the City upon written notification by the City.

- (c) Materials to be submitted with WIP applications to install new structures that meet the definition of standard process project:
 - (1) When filing an application, an applicant shall submit the applicant's name and a valid electronic mail address at which the applicant may be contacted;
 - (2) When filing an application, for each individual permit requested in the application, the applicant shall provide, unless waived or modified by the Department:

- (i) The address and latitude/longitude of the proposed new structure, and the nearest Land Record Serial Number (LRSN) from the City's Geographic Information System;
 - (ii) Plans clearly depicting the dimensions and specifications of the new structure and all wireless facilities to be attached to the new structure, including the antennae, base station, and all assorted wireless equipment. The plans shall depict all materials existing conditions in the vicinity of the new structure, including but not limited to limits of the public right-of-way; all existing public and privately-owned utility and infrastructure improvements, such as water mains, water meters, sanitary sewer, storm sewer, electrical, gas, telecommunications, manholes, stormwater basins, sidewalks, curbs, gutters, street trees, and traffic signal facilities. In addition, the plans shall depict the proposed routing of utilities to the new structure;
 - (iii) Engineer-certified intermodulation study; and other documentation to the extent permitted by law demonstrating that the wireless facilities to be attached to the new structure, and operation thereof, will not interfere with City pre-existing communications facilities;
 - (iv) Detailed elevation drawings, including the materials to be used, showing the new structure and wireless facilities to be attached to the new structure, including the base station and all other associated equipment;
 - (v) A copy of the written notice given to to adjacent landowners at least 15 days before the application is submitted, in accordance with any notice requirements the City may prescribe.
 - (vi) Upon request from the Department, a copy of the franchise, encroachment, or other similar license agreement, if applicable, from the City Council to allowing the installation of new structures in the City right-of-way, in accordance with subsection (a) of this section; and
 - (vii) To the extent permitted by law, such additional materials as are listed on the application form established by the Department and are reasonably required by the city engineer to determine the approvability of a permit in accordance with this Section 34-99.
- (d) The application review process for new structures to be installed within public rights-of-way on City-owned existing structures shall comply with the following requirements:
- (1) Provided the applicant has and paid the appropriate application fee, within ten (10) days after receipt of an application and a valid electronic mail address for the applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval. If the Department is aware of any modifications to the project as described in the application that if made would permit the

locality to approve the proposed project, the locality shall identify them in the written statement.

- (2) During review of a complete application, the Department may request the applicant to provide additional information which is reasonably required to the extent permitted by law to determine the approvability of a permit in accordance with this Section 34-99.
- (3) Within ninety (90) days of submittal of a complete application, the Department shall (i) approve the individual permit request; or (ii) deny the individual permit request in writing, including a written explanation of the reason[s] for denial. The ninety (90)-day period may be extended by mutual agreement in writing between the applicant and the Department. The application shall be deemed approved if the Department fails to act within the greater of the initial ninety (90) days or within any mutually agreed extension thereof.

(e) Standards of Review for Application and Bases for Denial.

- (1) Upon confirmation that an application is complete, the Department shall review the permit requests. No individual permit request included in a complete application shall be denied except for one or more of the following reasons:
 - (i) Lack of conformance with this division; applicable franchise, encroachment, or other license agreement; applicable federal and state law; or the City of Hampton Wireless Infrastructure and Small Cell Facility Design Standards;
 - (ii) The proposed new structure does not meet the definition of an standard process review project.
 - (iii) The proposed wireless support structure or wireless facilities does not comply with applicable law and the terms of the wireless facilities franchise, encroachment, or other license agreement, if applicable;
 - (iv) The proposed wireless support structure is not reasonably consistent with existing structures and aesthetics, is not in harmony with the surrounding improvements, or does not conceal within the pole all wires and supporting equipment to the greatest extent possible;
 - (v) The proposed wireless support structure or wireless facilities poses a risk to the public safety, including, but not limited to, public travel within the public way;
 - (vi) The proposed wireless support structure or wireless facilities is inconsistent with the City's existing or planned public safety communications system;
 - (vii) Alternative, less impactful locations which reasonably meet the needs of the applicant are available for placement of the wireless facilities intended to be attached to the wireless support structure as allowed by law.

(f) Use by City of new structures installed in public rights of way.

To the extent permitted by law, the City reserves the right to request the placement of city-owned communication and signal wires and other related equipment and facilities on all wireless support structures erected in its public ways, free of cost or expense to the City, provided that the

City equipment and facilities do not interfere with the structural integrity of the wireless support structure and do not interfere with the use of the wireless support structure by the owner and other existing users. An applicant's refusal of a request shall not be considered as a factor in the review and approval or denial of a permit application.

State Code Reference: §§ 56-484.26 et seq., and 15.2-2316.3, et seq.

Sec. 34-100. - Additional Provisions

- (a) The Department reserves the right to attach additional conditions and requirements to any WIP to the extent permitted by law.
- (b) Relocation and Removal
 - (1) Nothing herein is intended to prohibit the City from requiring permittees to relocate wireless support structures when relocation is necessary due to a transportation project, the need to remove a hazard from the right-of-way when the Commissioner of Highways determines such removal is necessary to ensure the safety of the traveling public, or material change to the right-of-way, so long as other users of the right-of-way that are in similar conflict with the use of the right-of-way are required to relocate. Such relocation shall be completed as soon as reasonably possible within the time set forth in any written request by the City for such relocation, as long as the City provides the permittee with a minimum of 180 days' advance written notice to comply with such relocation, unless circumstances beyond the control of the City require a shorter period of advance notice. The permittee shall bear only the proportional cost of the relocation that is caused by the transportation project and shall not bear any cost related to private benefit or where the permittee was on private right-of-way. If the City bears any of the cost of the relocation, the permittee shall not be obligated to commence the relocation until it receives the funds for such relocation. The permittee shall have no liability for any delays caused by a failure to receive funds for the cost of such relocation, and the City shall have no obligation to collect such funds. If relocation is deemed necessary, the City shall work cooperatively with the permittee to minimize any negative impact to the wireless signal caused by the relocation. There may be emergencies when relocation is required to commence in an expedited manner, and in such situations the permittee and the City shall work diligently to accomplish such emergency relocation.
 - (2) Obsolete, unused, or abandoned small cell facilities shall be removed within twelve (12) months of obsolescence, cessation of use or abandonment. A bond shall be required, of sufficient amount, to cover removal.
- (c) Insurance. Prior to the issuance of any WIP, the wireless infrastructure provider shall provide a certificate of insurance showing that the wireless infrastructure provider has a public liability insurance policy with limits of not less than one hundred thousand dollars (\$100,000.00) covering all wireless infrastructure within the public rights of way. The City shall be a named additional insured on such policy.

State Code Reference: §§ 56-484.26 et seq., and 15.2-2316.3, et seq.

Sec. 34-101-34-110. - Reserved.

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