



Legislation Text

File #: 17-0236, **Version:** 1

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

PURPOSE/BACKGROUND:

This housekeeping amendment is necessary to comply with recently enacted legislation of the General Assembly. It adds a new Division 1 title to current Article III of the encroachment section of Chapter 34, Streets and Sidewalks, and adds Division 2, covering co-location encroachments of wireless communications infrastructure. Staff recommends approval of this ordinance to be compliant with the Virginia code.

Discussion:

N/A

Impact:

N/A

Recommendation:

Approve Ordinance.

BE IT ORDAINED by the Council of the City of Hampton, Virginia, that Chapter 34 of the City Code of the City of Hampton entitled "Streets and Sidewalks" is amended and reenacted to read as follows:

Chapter 34 - STREETS AND SIDEWALKS

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.

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DIVISION 2. - WIRELESS COMMUNICATIONS INFRASTRUCTURE

Sec. 34-90. - Definitions.

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

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

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.

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 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

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 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 cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 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.

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.

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

Sec. 34-91. - Application, permit, and permit fees.

Application and permit generally.

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

The department shall approve or disapprove any such requested permit within 60 days of receipt of the complete application. Within 10 days after receipt of an application and a valid electronic mail address for the applicant, the department 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 shall be in writing and accompanied by an explanation for the disapproval. The department may extend the 60-day period in writing for a period not to exceed an additional 30 days.

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

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

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

(c) No fee shall be imposed and no application or permit shall be required for 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. The department shall require a single-use right-of-way permit if such activities (i) involve working within the highway travel lane or require closure of a highway travel lane; (ii) disturb the pavement, shoulder, roadway, or ditch line; (iii) include placement on limited access rights-of-way; or (iv) require 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 law reference: Access to locality rights-of-way for installation and maintenance of small cell facilities on existing structures, Code of Virginia § 56-484.29.

Sec. 34-92. - Term and relocation.

(a) Except as provided in 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.

(b) Nothing in this division prohibits the department 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.

(c) Such relocation shall be completed as soon as reasonably possible within the time set forth in any written request by the department, as long as the department provides the permittee with a minimum of 180 days' advance written notice to comply with such relocation, unless circumstances beyond the control of the department 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.

(d) If the department 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 department shall have no obligation to collect such funds.

(e) If relocation is deemed necessary, the department shall work cooperatively with the permittee to minimize any negative impact to the wireless signal caused by the relocation. In the event of an

emergency, the permittee and the department shall work diligently to accomplish such emergency relocation.

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

Secs. 34-93 - 34.110. - Reserved.