

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend the Code of Virginia by adding in Chapter 22 of Title 15.2 an article numbered 7.2,  
3 consisting of sections numbered 15.2-2316.3, 15.2-2316.4, and 15.2-2316.5, and by adding in Title  
4 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.31, relating  
5 to wireless communications infrastructure.

6 [S 1282]  
7 Approved

8 Be it enacted by the General Assembly of Virginia:

9 1. That the Code of Virginia is amended by adding in Chapter 22 of Title 15.2 an article  
10 numbered 7.2, consisting of sections numbered 15.2-2316.3, 15.2-2316.4, and 15.2-2316.5, and by  
11 adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through  
12 56-484.31, as follows:

13 Article 7.2.

14 Zoning for Wireless Communications Infrastructure.

15 § 15.2-2316.3. Definitions.

16 As used in this article, unless the context requires a different meaning:

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

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

23 "Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on,  
24 under, 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" means the Department of Transportation.

27 "Existing structure" means any structure that is installed or approved for installation at the time a  
28 wireless services provider or wireless infrastructure provider provides notice to a locality or the  
29 Department of an agreement with the owner of the structure to co-locate equipment on that structure.

30 "Existing structure" includes any structure that is currently supporting, designed to support, or capable  
31 of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles,  
32 flag poles, signs, and water towers.

33 "Micro-wireless facility" means 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 longer  
35 than 11 inches.

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

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

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

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

56 "Wireless infrastructure provider" means any person that builds or installs transmission equipment,

57 wireless facilities, or wireless support structures, but that is not a wireless services provider.

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

63 "Wireless services provider" means a provider of wireless services.

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

68 **§ 15.2-2316.4. Zoning; small cell facilities.**

69 A. A locality shall not require that a special exception, special use permit, or variance be obtained  
 70 for any small cell facility installed by a wireless services provider or wireless infrastructure provider on  
 71 an existing structure, provided that the wireless services provider or wireless infrastructure provider (i)  
 72 has permission from the owner of the structure to co-locate equipment on that structure and (ii) notifies  
 73 the locality in which the permitting process occurs.

74 B. Localities may require administrative review for the issuance of any required zoning permits for  
 75 the installation of a small cell facility by a wireless services provider or wireless infrastructure provider  
 76 on an existing structure. Localities shall permit an applicant to submit up to 35 permit requests on a  
 77 single application. In addition:

78 1. A locality shall approve or disapprove the application within 60 days of receipt of the complete  
 79 application. Within 10 days after receipt of an application and a valid electronic mail address for the  
 80 applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete  
 81 and specify any missing information; otherwise, the application shall be deemed complete. Any  
 82 disapproval of the application shall be in writing and accompanied by an explanation for the  
 83 disapproval. The 60-day period may be extended by the locality in writing for a period not to exceed an  
 84 additional 30 days. The application shall be deemed approved if the locality fails to act within the  
 85 initial 60 days or an extended 30-day period.

86 2. A locality may prescribe and charge a reasonable fee for processing the application not to  
 87 exceed:

88 a. \$100 each for up to five small cell facilities on a permit application; and

89 b. \$50 for each additional small cell facility on a permit application.

90 3. Approval for a permit shall not be unreasonably conditioned, withheld, or delayed.

91 4. The locality may disapprove a proposed location or installation of a small cell facility only for the  
 92 following reasons:

93 a. Material potential interference with other pre-existing communications facilities or with future  
 94 communications facilities that have already been designed and planned for a specific location or that  
 95 have been reserved for future public safety communications facilities;

96 b. The public safety or other critical public service needs;

97 c. Only in the case of an installation on or in publicly owned or publicly controlled property,  
 98 excluding privately owned structures where the applicant has an agreement for attachment to the  
 99 structure, aesthetic impact or the absence of all required approvals from all departments, authorities,  
 100 and agencies with jurisdiction over such property; and

101 d. Conflict with an applicable local ordinance adopted pursuant to § 15.2-2306 or pursuant to local  
 102 charter on a historic property that is not eligible for the review process established under 54 U.S.C.  
 103 § 306108.

104 5. Nothing shall prohibit an applicant from voluntarily submitting, and the locality from accepting,  
 105 any conditions that otherwise address potential visual or aesthetic effects resulting from the placement  
 106 of small cell facilities.

107 6. Nothing in this section shall preclude a locality from adopting reasonable rules with respect to the  
 108 removal of abandoned wireless support structures or wireless facilities.

109 C. Notwithstanding anything to the contrary in this section, the installation, placement, maintenance,  
 110 or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between  
 111 existing utility poles in compliance with national safety codes shall be exempt from locality-imposed  
 112 permitting requirements and fees.

113 **§ 15.2-2316.5. Moratorium prohibited.**

114 A locality shall not adopt a moratorium on considering zoning applications submitted by wireless  
 115 services providers or wireless infrastructure providers.

116 CHAPTER 15.1.

117 WIRELESS COMMUNICATIONS INFRASTRUCTURE.

118 **§ 56-484.26. Definitions.**

119 *As used in this chapter, unless the context requires a different meaning:*

120 *"Antenna" means communications equipment that transmits or receives electromagnetic radio signals*  
 121 *used in the provision of any type of wireless communications services.*

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

125 *"Department" means the Department of Transportation.*

126 *"Districtwide permit" means a permit granted by the Department to a wireless services provider or*  
 127 *wireless infrastructure provider that allows the permittee to use the rights-of-way under the*  
 128 *Department's jurisdiction to install or maintain small cell facilities on existing structures in one of the*  
 129 *Commonwealth's nine construction districts. A districtwide permit allows the permittee to perform*  
 130 *multiple occurrences of activities necessary to install or maintain small cell facilities on non-limited*  
 131 *access right-of-way without obtaining a single use permit for each occurrence. The central office permit*  
 132 *manager shall be responsible for the issuance of all districtwide permits. The Department may authorize*  
 133 *districtwide permits covering multiple districts.*

134 *"Existing structure" means any structure that is installed or approved for installation at the time a*  
 135 *wireless services provider or wireless infrastructure provider provides notice to a locality or the*  
 136 *Department of an agreement with the owner of the structure to co-locate equipment on that structure.*

137 *"Existing structure" includes any structure that is currently supporting, designed to support, or capable*  
 138 *of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles,*  
 139 *flag poles, signs, and water towers.*

140 *"Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in*  
 141 *length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer*  
 142 *than 11 inches.*

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

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

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

158 *"Wireless facility" means equipment at a fixed location that enables wireless services between user*  
 159 *equipment and a communications network, including (i) equipment associated with wireless services,*  
 160 *such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed*  
 161 *wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial, or*  
 162 *fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of*  
 163 *technological configuration.*

164 *"Wireless infrastructure provider" means any person, including a person authorized to provide*  
 165 *telecommunications service in the state, that builds or installs transmission equipment, wireless facilities,*  
 166 *or wireless support structures, but that is not a wireless services provider.*

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

172 *"Wireless services provider" means a provider of wireless services.*

173 *"Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed*  
 174 *or self-supporting, or suitable existing structure or alternative structure designed to support or capable*  
 175 *of supporting wireless facilities. "Wireless support structure" does not include any telephone or*  
 176 *electrical utility pole or any tower used for the distribution or transmission of electrical service.*

177 **§ 56-484.27. Access to the public rights-of-way by wireless services providers and wireless**  
 178 **infrastructure providers; generally.**

179 A. No locality or the Department shall impose on wireless services providers or wireless  
 180 infrastructure providers any restrictions or requirements concerning the use of the public rights-of-way,  
 181 including the permitting process, the zoning process, notice, time and location of excavations and repair  
 182 work, enforcement of the statewide building code, and inspections, that are unfair, unreasonable, or  
 183 discriminatory.

184 B. No locality or the Department shall require a wireless services provider or wireless infrastructure  
 185 provider to provide in-kind services or physical assets as a condition of consent to use public  
 186 rights-of-way or easements. This shall not limit the ability of localities, their authorities or commissions  
 187 that provide utility services, or the Department to enter into voluntary pole attachment, tower  
 188 occupancy, conduit occupancy, or conduit construction agreements with wireless services providers or  
 189 wireless infrastructure providers.

190 C. No locality or the Department shall adopt a moratorium on considering requests for access to the  
 191 public rights-of-way from wireless services providers or wireless infrastructure providers.

192 **§ 56-484.28. Access to public rights-of-way operated and maintained by the Department for the**  
 193 **installation and maintenance of small cell facilities on existing structures.**

194 A. Upon application by a wireless services provider or wireless infrastructure provider, the  
 195 Department shall issue a districtwide permit, consistent with applicable regulations that do not conflict  
 196 with this chapter, granting access to public rights-of-way that it operates and maintains to install and  
 197 maintain small cell facilities on existing structures in the rights-of-way. The application shall include a  
 198 copy of the agreement under which the applicant has permission from the owner of the structure to the  
 199 co-location of equipment on that structure. If the application is received on or after September 1, 2017,  
 200 (i) the Department shall issue the districtwide permit within 30 days after receipt of the application and  
 201 (ii) the districtwide permit shall be deemed granted if not issued within 30 days after receipt of the  
 202 complete application. Within 10 days after receipt of an application and a valid electronic mail address  
 203 for the applicant, the Department shall notify the applicant by electronic mail whether the application is  
 204 incomplete and specify any missing information; otherwise, the application shall be deemed complete. A  
 205 districtwide permit issued for the original installation shall allow the permittee to repair, replace, or  
 206 perform routine maintenance operations to small cell facilities once installed.

207 B. The Department may require a separate single use permit to allow a wireless services provider or  
 208 wireless infrastructure provider to install and maintain small cell facilities on an existing structure when  
 209 such activity requires (i) working within the highway travel lane or requiring closure of a highway  
 210 travel lane; (ii) disturbing the pavement, shoulder, roadway, or ditch line; (iii) placement on limited  
 211 access rights-of-way; or (iv) any specific precautions to ensure the safety of the traveling public or the  
 212 protection of public infrastructure or the operation thereof. Upon application by a wireless services  
 213 provider or wireless infrastructure provider, the Department may issue a single use permit granting  
 214 access to install and maintain small cell facilities in such circumstances. If the application is received  
 215 on or after September 1, 2017, (a) the Department shall approve or disapprove the application within  
 216 60 days after receipt of the application, which 60-day period may be extended by the Department in  
 217 writing for a period not to exceed an additional 30 days and (b) the application shall be deemed  
 218 approved if the Department fails to approve or disapprove the application within the initial 60 days and  
 219 any extension thereof. Any disapproval of an application for a single use permit shall be in writing and  
 220 accompanied by an explanation of the reasons for the disapproval.

221 C. The Department shall not impose any fee for the use of the right-of-way on a wireless services  
 222 provider or wireless infrastructure provider to attach or co-locate small cell facilities on an existing  
 223 structure in the right-of-way. However, the Department may prescribe and charge a reasonable fee not  
 224 to exceed \$250 for processing an application for a districtwide or single use permit.

225 D. The Department shall not impose any fee or require a permit for the installation, placement,  
 226 maintenance, or replacement of micro-wireless facilities that are suspended on cables or lines that are  
 227 strung between existing utility poles in compliance with national safety codes. However, the Department  
 228 may require a single use permit if such activities (i) involve working within the highway travel lane or  
 229 require closure of a highway travel lane; (ii) disturb the pavement, shoulder, roadway, or ditch line;  
 230 (iii) include placement on limited access rights-of-way; or (iv) require any specific precautions to ensure  
 231 the safety of the traveling public or the protection of public infrastructure or the operation thereof, and  
 232 either were not authorized in or will be conducted in a time, place, or manner that is inconsistent with  
 233 terms of the existing permit for that facility or the structure upon which it is attached.

234 **§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities**  
 235 **on existing structures.**

236 A. Upon application by a wireless services provider or wireless infrastructure provider, a locality  
 237 may issue a permit granting access to the public rights-of-way it operates and maintains to install and  
 238 maintain small cell facilities on existing structures. Such a permit shall grant access to all rights-of-way  
 239 in the locality for the purpose of installing small cell facilities on existing structures, provided that the

240 wireless services provider or wireless infrastructure provider (i) has permission from the owner of the  
 241 structure to co-locate equipment on that structure and (ii) provides notice of the agreement and  
 242 co-location to the locality. The locality shall approve or disapprove any such requested permit within 60  
 243 days of receipt of the complete application. Within 10 days after receipt of an application and a valid  
 244 electronic mail address for the applicant, the locality shall notify the applicant by electronic mail  
 245 whether the application is incomplete and specify any missing information; otherwise, the application  
 246 shall be deemed complete. Any disapproval shall be in writing and accompanied by an explanation for  
 247 the disapproval. The 60-day period may be extended by the locality in writing for a period not to  
 248 exceed an additional 30 days. The permit request shall be deemed approved if the locality fails to act  
 249 within the initial 60 days or an extended 30-day period. No such permit shall be required for providers  
 250 of telecommunications services and nonpublic providers of cable television, electric, natural gas, water,  
 251 and sanitary sewer services that, as of July 1, 2017, already have facilities lawfully occupying the public  
 252 rights-of-way under the locality's jurisdiction.

253 B. Localities shall not impose any fee for the use of the rights-of-way, except for zoning, subdivision,  
 254 site plan, and comprehensive plan fees of general application, on a wireless services provider or  
 255 wireless infrastructure provider to attach or co-locate small cell facilities on an existing structure in the  
 256 right-of-way. However, a locality may prescribe and charge a reasonable fee not to exceed \$250 for  
 257 processing a permit application under subsection A.

258 C. Localities shall not impose any fee or require any application or permit for the installation,  
 259 placement, maintenance, or replacement of micro-wireless facilities that are suspended on cables or  
 260 lines that are strung between existing utility poles in compliance with national safety codes. However,  
 261 the locality may require a single use permit if such activities (i) involve working within the highway  
 262 travel lane or require closure of a highway travel lane; (ii) disturb the pavement, shoulder, roadway, or  
 263 ditch line; (iii) include placement on limited access rights-of-way; or (iv) require any specific  
 264 precautions to ensure the safety of the traveling public or the protection of public infrastructure or the  
 265 operation thereof, and either were not authorized in or will be conducted in a time, place, or manner  
 266 that is inconsistent with terms of the existing permit for that facility or the structure upon which it is  
 267 attached.

268 **§ 56-484.30. Agreements for use of public right-of-way to construct new wireless support**  
 269 **structures; relocation of wireless support structures.**

270 Subject to any applicable requirements of Article VII, Section 9 of the Constitution of Virginia,  
 271 public right-of-way permits or agreements for the construction of wireless support structures issued on  
 272 or after July 1, 2017, shall be for an initial term of at least 10 years, with at least three options for  
 273 renewal for terms of five years, subject to terms providing for earlier termination for cause or by  
 274 mutual agreement. Nothing herein is intended to prohibit the Department or localities from requiring  
 275 permittees to relocate wireless support structures when relocation is necessary due to a transportation  
 276 project or material change to the right-of-way, so long as other users of the right-of-way are required  
 277 to relocate. Such relocation shall be completed as soon as reasonably possible within the time set forth  
 278 in any written request by the Department or a locality for such relocation, as long as the Department or  
 279 a locality provides the permittee with a minimum of 180 days' advance written notice to comply with  
 280 such relocation, unless circumstances beyond the control of the Department or the locality require a  
 281 shorter period of advance notice. The permittee shall bear only the proportional cost of the relocation  
 282 that is caused by the transportation project and shall not bear any cost related to private benefit or  
 283 where the permittee was on private right-of-way. If the locality or the Department bears any of the cost  
 284 of the relocation, the permittee shall not be obligated to commence the relocation until it receives the  
 285 funds for such relocation. The permittee shall have no liability for any delays caused by a failure to  
 286 receive funds for the cost of such relocation, and the Department or a locality shall have no obligation  
 287 to collect such funds. If relocation is deemed necessary, the Department or locality shall work  
 288 cooperatively with the permittee to minimize any negative impact to the wireless signal caused by the  
 289 relocation. There may be emergencies when relocation is required to commence in an expedited manner,  
 290 and in such situations the permittee and the locality or Department shall work diligently to accomplish  
 291 such emergency relocation.

292 **§ 56-484.31. Attachment of small cell facilities on government-owned structures.**

293 A. If the Commonwealth or a locality agrees to permit a wireless services provider or a wireless  
 294 infrastructure provider to attach small cell facilities to government-owned structures, both the  
 295 government entity and the wireless services or wireless infrastructure provider shall negotiate in good  
 296 faith to arrive at a mutually agreeable contract terms and conditions.

297 B. The rates, terms, and conditions for such agreement shall be just and reasonable, cost-based,  
 298 nondiscriminatory, and competitively neutral, and shall comply with all applicable state and federal  
 299 laws. However, rates for attachments to government-owned buildings may be based on fair market  
 300 value.

301 C. For utility poles owned by a locality or the Commonwealth that support aerial cables used for  
302 video, communications, or electric service, the parties shall comply with the process for make-ready  
303 work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the government  
304 entity owning or controlling the utility pole for any make-ready work necessary to enable the utility pole  
305 to support the requested co-location shall include pole replacement if necessary.

306 D. For utility poles owned by a locality or the Commonwealth that do not support aerial cables used  
307 for video, communications, or electric service, the government entity owning or controlling the utility  
308 pole shall provide a good faith estimate for any make-ready work necessary to enable the utility pole to  
309 support the requested co-location, including pole replacement, if necessary, within 60 days after receipt  
310 of a complete application. Make-ready work, including any pole replacement, shall be completed within  
311 60 days of written acceptance of the good faith estimate by the wireless services provider or a wireless  
312 infrastructure provider.

313 E. The government entity owning or controlling the utility pole shall not require more make-ready  
314 work than required to meet applicable codes or industry standards. Charges for make-ready work,  
315 including any pole replacement, shall not exceed actual costs or the amount charged to other wireless  
316 services providers, providers of telecommunications services, and nonpublic providers of cable television  
317 and electric services for similar work and shall not include consultants' fees or expenses.

318 F. The annual recurring rate to co-locate a small cell facility on a government-owned utility pole  
319 shall not exceed the actual, direct, and reasonable costs related to the wireless services provider's or  
320 wireless infrastructure provider's use of space on the utility pole. In any controversy concerning the  
321 appropriateness of the rate, the government entity owning or controlling the utility pole shall have the  
322 burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs  
323 incurred for use of space on the utility pole for such period.

324 G. This section shall not apply to utility poles, structures, or property of an electric utility owned or  
325 operated by a municipality or other political subdivision.