

## **Virginia Senate Bill 1282 (Chapter 835)**

### **1 When does the statute take effect?**

- 7/1/17

### **2 Is there a grandfather provision for rates on existing leased municipal facilities?**

- This law is silent as to existing rates, but does state: (§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities on existing structures.) “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.” 4, Local Government Code, as added by this Act.”

### **3 What structures are included in the statute?**

- (Article 7.2 - Zoning for Wireless Communications Infrastructure) “‘Existing structure’ means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality or the Department 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.”
- (Article 7.2 - Zoning for Wireless Communications Infrastructure) “‘Utility pole’ means 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.”
- (Article 7.2 - Zoning for Wireless Communications Infrastructure) “‘Wireless support structure’ means 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.”

### **4 Does the statute apply definitions for telecommunications facility, small cell, micro transmitter or similar? If so, what are the definitions?**

- (Article 7.2 - Zoning for Wireless Communications Infrastructure) “‘Antenna’ means communications equipment that transmits or receives

electromagnetic radio signals used in the provision of any type of wireless communications services.”

- (Article 7.2 - Zoning for Wireless Communications Infrastructure) “‘Micro-wireless facility’ means 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.”
- (Article 7.2 - Zoning for Wireless Communications Infrastructure) “‘Small cell facility means 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, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.”
- (Article 7.2 - Zoning for Wireless Communications Infrastructure) “‘Wireless facility’ means equipment at a fixed location that enables wireless communications 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.”

## 5 Are there maximum rates for providing access to municipally owned structures (lease or license rates)?

- (§ 56-484.28. Access to public rights-of-way operated and maintained by the Department for the installation and maintenance of small cell facilities on existing structures) “The Department shall not impose any fee for the use of the right-of-way 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.”
- (§ 56-484.28. Access to public rights-of-way operated and maintained by the Department for the installation and maintenance of small cell facilities on existing structures.) “The Department shall not impose any fee or

require a permit 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.”

- (§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities on existing structures.) “Localities 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. However, a locality may prescribe and charge a reasonable fee not to exceed \$250 for processing a permit application under subsection A.
  - C. Localities shall not impose any fee or require any application or permit 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. However, the locality may require a single use 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.”
- (§ 56-484.31. Attachment of small cell facilities on government-owned structures.) “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 government-owned buildings may be based on fair market value.”

**6 Is a transfer of municipal assets to another ownership entity prohibited?**

- The new law does not address this issue.

**7 Is there a restriction on exclusive management or subleasing of municipal assets?**

- The new law does not address this issue.

**8 Are municipally owned public utilities exempt?**

- The new law exempts “utility poles, structures, or property of an electric utility owned or operated by a municipality or other political subdivision” while permitting attachment of small cell facilities to “government-owned structures” (undefined). (§ 56-484.31. Attachment of small cell facilities on government-owned structures.)

## **9 Does the state have a home rule provision?**

- No, Virginia is considered a Dillon rule state.

## **10 Can there be application fees? If so, what amount?**

- (§ 15.2-2316.4. Zoning; small cell facilities.) “A locality may prescribe and charge a reasonable fee for processing the application not to exceed:
  - a. \$100 each for up to five small cell facilities on a permit application; and
  - b. \$50 for each additional small cell facility on a permit application.”
- (§ 56-484.28. Access to public rights-of-way operated and maintained by the Department for the installation and maintenance of small cell facilities on existing structures) “The Department shall not impose any fee for the use of the right-of-way 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. However, the Department may prescribe and charge a reasonable fee not to exceed \$750 for processing an application for a districtwide permit or \$150 for processing an application for a single use permit.”
- (§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities on existing structures.) “Localities 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. However, a locality may prescribe and charge a reasonable fee not to exceed \$250 for processing a permit application under subsection A.
  - C. Localities shall not impose any fee or require any application or permit 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. However, the locality may require a single use 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.”

## **11 Can there be inspection fees? If so, what amount?**

- The new law does not specifically provide for inspection fees. (§ 56-484.28. Access to public rights-of-way operated and maintained by the Department for the installation and maintenance of small cell facilities on existing structures) “The Department shall not impose any fee for the use of the right-of-way 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. However, the Department may prescribe and charge a reasonable fee not to exceed \$750 for processing an application for a districtwide permit or \$150 for processing an application for a single use permit.”
- (§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities on existing structures.) “C. Localities shall not impose any fee or require any application or permit 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. However, the locality may require a single use 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.”

## **12 Can local zoning or building codes apply restrictions? If so, what are the allowable restrictions?**

- (§ 15.2-2316.4. Zoning; small cell facilities.) “A locality shall not require that a special exception, special use permit, or variance be obtained for any small cell facility installed by a wireless services provider or wireless infrastructure provider on an existing structure, 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) notifies the locality in which the permitting process occurs.

- B. Localities may require administrative review for the issuance of any required zoning permits for the installation of a small cell facility by a wireless services provider or wireless infrastructure provider on an existing structure.”
- (§ 56-484.27. Access to the public rights-of-way by wireless services providers and wireless infrastructure providers; generally.) “No locality or the Department shall impose on wireless services providers or wireless infrastructure providers any restrictions or requirements concerning the use of the public rights-of-way, including the permitting process, the zoning process, notice, time and location of excavations and repair work, enforcement of the statewide building code, and inspections, that are unfair, unreasonable, or discriminatory.”
- (§ 15.2-2316.4. Zoning; small cell facilities.) “The locality may disapprove a proposed location or installation of a small cell facility only for the following reasons:
  - a. 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;
  - b. The public safety or other critical public service needs;
  - c. 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
  - d. 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.”
- (§ 15.2-2316.4. Zoning; small cell facilities.) “Nothing in this section shall preclude a locality from adopting reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities.”

### **13 Are strand mounted devices or facilities exempt?**

- Yes, these devices/facilities are exempt. (§ 15.2-2316.4. Zoning; small cell facilities.) “Notwithstanding anything to the contrary in this section, 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 shall be exempt from locality-imposed permitting requirements and fees.”



- (§ 56-484.28. Access to public rights-of-way operated and maintained by the Department for the installation and maintenance of small cell facilities on existing structures.) “The Department shall not impose any fee or require a permit 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. However, the Department may require a single use 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.”

#### **14 Are privately owned structures in ROW exempt?**

- Privately owned structures in ROW are exempt under this law as it states (§ 15.2-2316.4. Zoning; small cell facilities.) “2. A locality may prescribe and charge a reasonable fee for processing the application not to exceed: c. 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;”

#### **15 Are there design restrictions? If so what are they?**

- (Article 7.2 - Zoning for Wireless Communications Infrastructure) “‘Micro-wireless facility’ means 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.”
- (Article 7.2 - Zoning for Wireless Communications Infrastructure) “‘Small cell facility means 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, back-up power systems, grounding equipment,

power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.”

## 16 What are the shot clocks as defined by statute?

- (§ 15.2-2316.4. Zoning; small cell facilities.) “A locality shall approve or disapprove the application 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 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. The 60-day period may be extended by the locality in writing for a period not to exceed an additional 30 days. The application shall be deemed approved if the locality fails to act within the initial 60 days or an extended 30-day period.”
- (§ 56-484.28. Access to public rights-of-way operated and maintained by the Department for the installation and maintenance of small cell facilities on existing structures.) “If the application is received on or after September 1, 2017, (i) the Department shall issue the districtwide permit within 30 days after receipt of the application and (ii) the districtwide permit shall be deemed granted if not issued within 30 days after 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.”
- (§ 56-484.28. Access to public rights-of-way operated and maintained by the Department for the installation and maintenance of small cell facilities on existing structures.) “If the application is received on or after September 1, 2017, (a) the Department shall approve or disapprove the application within 60 days after receipt of the application, which 60-day period may be extended by the Department in writing for a period not to exceed an additional 30 days and (b) the application shall be deemed approved if the Department fails to approve or disapprove the application within the initial 60 days and any extension thereof.”
- (§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities on existing structures.) “Within 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 shall be in writing and accompanied by an explanation for



the disapproval. The 60-day period may be extended by the locality in writing for a period not to exceed an additional 30 days. The permit request shall be deemed approved if the locality 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.”

- (§ 56-484.30. Agreements for use of public right-of-way to construct new wireless support structures; relocation of wireless support structures.) “Subject to any applicable requirements of Article VII, Section 9 of the Constitution of Virginia, public right-of-way permits or agreements for the construction of wireless support structures issued on or after July 1, 2017, shall be for an initial term of at least 10 years, with at least three options for renewal for terms of five years, subject to terms providing for earlier termination for cause or by mutual agreement.”
- (§ 56-484.30. Agreements for use of public right-of-way to construct new wireless support structures; relocation of wireless support structures.) “Such relocation [necessary due to a transportation project, hazard removal, or material change to ROW] shall be completed as soon as reasonably possible within the time set forth in any written request by the Department or a locality for such relocation, as long as the Department or a locality 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 or the locality require a shorter period of advance notice.”
- (§ 56-484.31. Attachment of small cell facilities on government-owned structures.) “For utility poles owned by a locality or the Commonwealth that do not support aerial cables used for video, communications, or electric service, the government entity owning or controlling the utility pole 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 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good faith estimate by the wireless services provider or a wireless infrastructure provider.”

## 17 Does the statute require local acceptance of bulk applications?

- (§ 15.2-2316.4. Zoning; small cell facilities.) “Localities shall permit an applicant to submit up to 35 permit requests on a single application.”

**18 Is the city required to complete the make ready work? If so, is there a limit on what they can charge and any requirements they must meet?**

- (§ 56-484.31. Attachment of small cell facilities on government-owned structures.) “For utility poles owned by a locality or the Commonwealth 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 government entity owning or controlling the utility pole for any make-ready work necessary to enable the utility pole to support the requested co-location shall include pole replacement if necessary.”
- (§ 56-484.31. Attachment of small cell facilities on government-owned structures.) “For utility poles owned by a locality or the Commonwealth that do not support aerial cables used for video, communications, or electric service, the government entity owning or controlling the utility pole 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 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good faith estimate by the wireless services provider or a wireless infrastructure provider.”
- (§ 56-484.31. Attachment of small cell facilities on government-owned structures.) “The government entity owning or controlling the utility pole 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.”