



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda item # 3

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

June 20, 2018

MOTION

Made By: Mr. Yates, Seconded By: Ms. Hynes
Action: Motion Carried, Unanimously

Title: Authorization to Amend the Rules and Regulations for the Administration of Parking Lots and Environs (24VAC30-100) and the Land Use Permit Regulations (24VAC30-151) to Allow Mobile Food Vending at Planning District 8 Commuter Lots in Accordance with Chapter 765 of the 2016 Acts of Assembly

WHEREAS, the Commonwealth Transportation Board (CTB) adopted the *Land Use Permit Regulations* (24VAC30-151) on October 15, 2009, which prohibited vending on state highway right of way; and

WHEREAS, the CTB adopted the *Rules and Regulations for the Administration of Parking Lots and Environs* (24VAC30-100) on July 18, 1974, which set out conditions for the use of commuter lots; and

WHEREAS, Chapter 765 of the 2016 Acts of Assembly directs the Virginia Department of Transportation (VDOT) to develop guidelines, consistent with the CTB's regulations and policies, for issuing permits for the operation of mobile food vending on commuter parking lots in Planning District Eight; and

WHEREAS, Chapter 765 of the 2016 Acts of Assembly further authorizes the VDOT to establish fees for such permits, and exempts all regulatory changes necessary to adopt the guidelines and fees from the requirements of the Virginia Administrative Process Act ; and

WHEREAS, VDOT issued a general notice on July 28, 2016, that was published in the Virginia Register and online through the Department of Planning & Budget's Virginia Regulatory Town Hall soliciting comments regarding mobile food vending on VDOT-owned commuter parking lots in Northern Virginia; and

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WHEREAS, VDOT contacted Fairfax County, Loudoun County, Prince William County, the DC-Maryland-Virginia Food Truck Association, and other interested parties for comments; and

WHEREAS, a second notice was published online through the Department of Planning & Budget's Virginia Regulatory Town Hall on October 17, 2017, and expired on December 6, 2017, and a total of 18 comments were received from 7 commenters; and

WHEREAS, VDOT staff developed proposed amendments (attached hereto as Attachment A) to the CTB's *Rules and Regulations for the Administration of Parking Lots and Environs* and *Land Use Permit Regulations* to permit mobile food vending in commuter lots in Planning District 8 and establish fees for such permits; and

WHEREAS, comments received to date have been positive and in support of the recommended action.

NOW THEREFORE BE IT RESOLVED, the Commonwealth Transportation Board approves the proposed amendments to the *Rules and Regulations for the Administration of Parking Lots and Environs* (24VAC30-100) and *Land Use Permit Regulations* (24VAC30-151) as shown in Attachment A in accordance with Chapter 765 of the 2016 Acts of Assembly; and

BE IT FURTHER RESOLVED, that the Commonwealth Transportation Board directs the Virginia Department of Transportation to take all steps necessary under procedures established by the *Code of Virginia*, the Governor, the Registrar of Regulations, and the Department of Planning and Budget for the amendment of exempt regulations under the Administrative Process Act.

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CTB Decision Brief

Mobile Food Vending at Planning District 8 Commuter Lots (Chapter 768 of the 2016 Acts of Assembly)

Issue: Chapter 765 of the 2016 Acts of Assembly directs the CTB to permit mobile food vending on commuter lots in Planning District 8 and directs VDOT to develop guidelines establishing criteria to use in evaluating each mobile food vending permit application to ensure that neither the function and purpose of the affected commuter parking lot nor the motor vehicle traffic flow and motorist and pedestrian safety will be adversely affected by the operation of the mobile food vendors. Chapter 765 also authorizes VDOT to establish fees for such mobile food vending permits. Amendments to the *Rules and Regulations for Administration of Parking Lots and Environs* and the *Land Use Permit Regulations* must be adopted by the CTB.

Facts: VDOT operates 27 commuter lots in the Northern Virginia District, but 2 lots and a portion of another are considered within Interstate right-of-way and therefore are prohibited from being commercialized by federal law. There are 7 lots that are considered “fringe” by FHWA, and under federal law commercial vendors operating within them must pay market rates to VDOT for the right to conduct such activities. Market rates can be based upon square footage leases or on fees charged for similar activities by other organizations.

Mobile food vendors are regulated by the Department of Health and localities (vendor permits or licenses, which require background checks).

The CTB has adopted *Rules and Regulations for Administration of Parking Lots and Environs*, which allow things to be offered for sale in such areas if approved by the Commissioner (see subsection H of 24VAC30-100-10), but the *Land Use Permit Regulations* adopted by the CTB prohibit vendors from operating in the right-of-way in most situations (see 24VAC30-151-670). Chapter 765 of the 2016 Acts of Assembly exempts any amendments the CTB makes to its regulations from the requirements of the Virginia Administrative Process Act if those amendments are as a result of implementing the provisions of that Act.

VDOT staff prepared proposed amendments to the aforementioned regulations, which are attached hereto as Attachment A, and VDOT posted notices of the proposed regulatory change on Virginia’s Town Hall website, emailed interested parties, including vendors, localities, and the DC, Maryland, Virginia Mobile Food Truck Association. Additionally, VDOT met with a group of vendors assembled by Senator McPike (patron of the legislation). The proposed amendments authorize the issuance of permits to allow mobile food vending in accordance with Chapter 765 of the 2016 Acts of Assembly and establish fees for such permits.

VDOT staff separately prepared guidelines establishing criteria to use in evaluating each mobile food vending permit application to ensure that neither the function and purpose of

the affected commuter parking lot, nor the motor vehicle traffic flow and motorist and pedestrian safety, will be adversely affected by the operation of the mobile food vendors. The guidelines are attached hereto as Attachment B.

Recommendations: VDOT recommends that the regulatory amendments attached to the draft resolution be approved.

Action Required by CTB: The Code of Virginia requires a majority vote of the CTB before amendments to the two impacted regulations may be made. The CTB will be presented with a resolution for a formal vote.

Result, if Approved: If approved, VDOT will take all steps necessary to finalize the regulatory amendments and allow mobile food vending in Planning District 8 commuter lots operated by the Department. Vendors will be able to serve food to commuters at the lots.

Options: Approve, Deny, Defer

Public Comments/Reactions: Comments received were generally supportive of the effort, requesting limitations on the number of vendors during weekdays and including measures to ensuring the safety and operation of each lot.

While the comments received desired the shortest time for permits (monthly, if possible), such short periods inordinately impact permit staff in VDOT's busiest district. 2 month permits are seen as a reasonable compromise.

Several comments received supported the issuance of permits via a lottery or random assignment process. The proposed regulatory amendments do not prohibit this, but implementation could be expected to increase VDOT staff involvement and thus costs, so initial permit issuance is planned to be on a first come basis (when application for a permit is made). If this proves problematic, VDOT can initiate a random drawing system.

There was one comment suggesting that the proposed fee for the vending permits was excessive. The proposed fees are similar to Fairfax County Park Authority's mobile food vending fees.

Chapter 151

24VAC30-151-670. Prohibited Use of Right-of-Way.

No permit shall be issued for the following uses of the right-of-way:

1. Signs. Signs not otherwise allowed in this chapter shall not be placed on the highway right-of-way or overhang the right-of-way.
2. Vendors on right-of-way. Permits will not be issued to vendors for operation of business within state rights-of-way, except:
 - a. As may be allowed for waysides and rest areas under the Rules and Regulations for the Administration of Waysides and Rest Areas (see 24VAC30-151-760 and 24VAC30-50-10) and the Rules and Regulations for the Administration of Parking Lots and Environs (see 24VAC30-151-760 and 24VAC30-100-10).
 - b. Vendors of newspapers and written materials enjoy constitutional protection under the First Amendment to place or operate their services within rights-of-way, provided they neither impede traffic nor impact the safety of the traveling public. Newspaper vending machine size, placement, and location shall be as directed by the district administrator's designee for that area.
 - c. To localities to administer mobile food vending on nonlimited access highways, where the vending operations are regulated by local ordinances, operated consistent with such ordinances, and in accordance with the Commonwealth Transportation Board's regulations and policies.
3. Dwellings. No private dwellings, garages, or similar structures shall be placed or constructed within the right-of-way, except as may be allowed under 24VAC30-151-220 and 24VAC30-151-230.

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24VAC30-151-710. Fees.

A. Single use permit. A nonrefundable application fee shall be charged to offset the cost of reviewing and processing the permit application and inspecting the project work, in accordance with the requirements below:

1. The application fee for a single permit is \$100.
2. Additive costs shall be applied as indicated below. The district administrator's designee will determine the total permit fees using the following schedule:

Activity	Fee
Private Entrances	none

Attachment A

Activity	Fee
Commercial Entrance	\$150 for first entrance \$50 for each additional entrance
Street Connection	\$150 for first connection \$50 for each additional connection
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Underground Utility - Parallel	\$10 per 100 linear feet
Overhead or Underground Crossing	\$10 per crossing
Excavation Charge (including Test Bores and Emergency Opening)	\$10 per opening
<u>Two-Month Commuter Lot Mobile Food Vending (Available in Planning District 8 Only)(weekdays and weekends)</u>	<u>\$150</u>
<u>Single Weekend Commuter Lot Mobile Food Vending (Available in Planning District 8 Only)(per weekend)</u>	<u>\$10</u>

3. Time extensions for active permits shall incur a monetary charge equal to one-half the application fee charged to the initial permit. Expired permits may be reinstated; however, fees for reinstatement of expired permits shall equal the application fee. Notwithstanding 24VAC30-151-80, commuter lot mobile food vending permits may not be extended or reinstated.

4. If a permit is cancelled prior to the beginning of ~~work~~ the permitted activity, the application fee and one-half of the additive fee will be retained as compensation for costs incurred by VDOT during plan review.

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Chapter 100

24VAC30-100-10. Parking lots and environs.

A. While in this area all persons shall be subject to such regulations as the commissioner may designate by posted signs or public notice posted within the area.

B. No vehicle shall be parked in such a manner as to occupy more than one parking space.

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G. No threatening, abusive, boisterous, insulting or indecent language, or gesture shall be used within this area; furthermore, no oration or other public demonstration be made, except by permit from the commissioner.

H. No person shall offer any article or thing for sale within this area except by permission of the commissioner.

I. Mobile food vending.

1. Mobile food vending shall be allowed within commuter lots in Planning District 8 except lots which meet at least one of the following conditions:

a. Commuter lots or the portions thereof determined to be part of the Interstate system.

b. Commuter lots that, as of last VDOT survey, had occupancy rates of 98% or higher, except that mobile food vending may be permitted in such lots (i) if a paved area, the use of which does not include one or more parking spaces or block one or more parking spaces, is available within the lot, (ii) if vending is from a non-motorized cart on sidewalks, provided that the vehicle used to transport the cart is not parked within the commuter lot, or (iii) on weekends.

c. Commuter lots that have been requested by the locality to not be made available for mobile food vending.

2. Permission for mobile food vending shall be granted through a land use permit issued to the mobile food vendor in accordance with the Land Use Permit Regulations set forth in 24VAC30-151-10 et seq.

3. In order for a mobile food vendor to be granted or to retain a land use permit for mobile food vending at commuter lots pursuant to this subsection, the vendor must comply with all of the following:

a. All relevant locality and Department of Health policies and requirements for mobile food vending.

b. All land use permit conditions and requirements set forth within or attached to the land use permit, which may include provisions relating to the location of the vending unit, the collection and disposal of litter, limiting vending times, required minimum insurance, and the provision of surety.

Attachment A

c. Posted signs or public notices setting out regulations or requirements for the use of the commuter lot.

d. Mobile food vending shall be conducted with pedestrians only and shall not be conducted directly with occupants of vehicles.

e. Neither the mobile food vendor nor the vendor's operation shall interfere with the operation of the commuter lot and the safety of the lot's users, and the determination of whether the mobile food vendor or the vendor's operation is interfering with the operation of the commuter lot or the lot's users shall be solely within the discretion of VDOT.

f. The mobile food vendor shall post no advertising within or upon the grounds of the commuter lot. Advertising on the mobile food vending unit (vehicle, trailer, or pushcart), promoting the products or services offered by the mobile food vendor at that mobile food vending unit, is not considered a violation of this section.

Failure to comply with the requirements of this subdivision 3 will result in the revocation of the permit.

H. Except as authorized by the terms of a land use permit issued to a mobile food vendor, no person shall light, kindle, or use any fire within this area.

I. No person shall discharge or set off within this area, any firearms or fireworks, except by permit from the commissioner.

K. Any person violating any of the preceding rules and regulations shall be guilty of a misdemeanor and, upon conviction, be fined not less than five dollars nor more than \$100 for each offense.



**Land Use Permit
LUP-CFV
Mobile Food Vending in Commuter Lots (Planning District Eight Only)
May 30, 2018**

Information for Land Use Permit Issuance

I, the undersigned, hereby acknowledge that I am fully cognizant of all of the following requirements associated with the issuance of a Virginia Department of Transportation (VDOT) land use permit authorizing mobile food vending at a VDOT park and ride lot.

Business Name: _____ **Federal Tax ID No.** _____

Address: _____

City: _____ **State:** _____ **Zip Code:** _____

Business Representative's Name: _____

Business Representative's Signature: _____

Telephone Number: (_____) _____ - _____ **E-mail Address:** _____

VDOT Land Use Permit Required by Law

The General Rules and Regulations of the Commonwealth Transportation Board provide that no work of any nature shall be performed on any real property under the ownership, control, or jurisdiction of VDOT until written permission has been obtained from VDOT. Written permission is granted for a mobile food vendor to operate in a specific VDOT park and ride lot through the issuance of a land use permit.

By issuing a permit, VDOT is giving permission only for whatever rights it has in the right-of-way; the permittee is responsible for obtaining permission from others who may also have an interest in the property.

Application Requirements

This form, accompanied by a surety and the required fee shall be submitted to the VDOT land use permit office covering the park and ride lot where the activity is to occur.

Additionally, the applicant shall provide:

1. The name and location of the VDOT park and ride lot where they desire to operate their mobile food vending operation;
2. The type of mobile unit involved (van, trailer, or cart) and, in the case of trailer or cart, where the transporting vehicle will be placed;
3. A sketch showing where on the park and ride lot they would like to park or situate their van, trailer, or cart; and
4. A copy of documentation showing they have authorization from the county and the Virginia Department of Health (VDH) to conduct mobile food vending

Contact Information

Contact information for VDOT offices in Northern Virginia Construction District may be obtained on the VDOT web site at: http://www.virginiadot.org/about/nova_quick.asp.

Permit Term and Fees

Land use permits authorizing mobile food vending in park and ride lots are valid for either:

- A period of two (2) months. The 2-month fee is \$250;
 - January-February
 - February-March
 - March-April
 - April-May
 - May-June
 - June-July
 - July-August
 - August-September
 - September-October
 - October-November
 - November-December
 - December-January

or

- A single weekend (Saturday and Sunday). The weekend fee is \$110.

Weekend requested: _____

(check box for the permit term requested or insert weekend dates on line)

Commuter lot mobile food vending permits may not be renewed nor extended; requests for vending to continue must be made through the submission of a new permit request. If a mobile food vendor has applied for permission to operate in the same location as another and safe vending space is not available for both, the first to submit their application to the VDOT land use permit office (covering the park and ride lot in question) shall be granted and the other applicant’s fee and surety will be returned.

Surety Requirement

The applicant shall provide a surety in the amount of \$1,000 to guarantee the restoration of VDOT facilities in the event of damage, litter pick-up and disposal, or both. The surety may be in the form of cash, check or [LUP-SB](#) surety bond. The surety obligation will only be refunded or released upon:

- 1) Formal request from the permittee indicating that they are discontinuing their mobile food vending operation at the park and ride lot, or, at the end of the permit (if not extended or re-instated); and
- 2) Completion of a final inspection by VDOT of the vending site where the vending operation has been conducted; and
- 3) Appropriate restoration of the right-of-way, including litter pick-up and disposal, whichever may be deemed necessary to return the right-of-way to pre-operation condition.

General Requirements

- 1) Applicant acceptance and use of a VDOT land use permit is prima facie evidence that the applicant is fully cognizant of all required permit provisions for mobile food vending at VDOT park and ride lots.

- 2) The mobile food vendor shall, at a minimum, abide by the following requirements for mobile food vending in VDOT park and ride lots:
 - a. The permittee's mobile food vending vehicle or trailer shall be located in marked or signed parking spaces or other area designated by the local VDOT office. A vending cart, if used, shall be located on a graveled or paved space that allows adequate pedestrian circulation.
 - b. The mobile food vending vehicle, trailer, or cart shall not be parked so as to obstruct sight lines at intersections or entrances or to interfere with the safe and efficient operation of the park and ride lot.
 - c. The permittee shall not place, put, or affix advertisements within the park and ride lot.
 - d. Vending directly to motor vehicle occupants is prohibited. Vending will be to pedestrians and only from the sidewalk side of the vending vehicle or trailer.
 - e. The permittee shall comply with all relevant local requirements, including noise ordinances, while vending in VDOT park and ride lots.
 - f. The permittee shall provide a waste receptacle for the use of customers while vending and shall maintain the area around their vehicle, trailer, or cart free of loose litter. The waste receptacle provided by the vendor shall be emptied by the permittee at least once each day, in a manner consistent with local ordinances, but the litter from that receptacle shall not be placed within any VDOT or locality-provided waste receptacles at the park and ride lot.
 - g. The vendor shall secure and maintain insurance to protect against liability for personal injury and property damage up to one million dollars (\$ 1,000,000) for each occurrence. Said insurance must remain valid as long as the vendor sells their wares on a VDOT park and ride lot.
- 3) All applicants to whom permits are issued shall at all times indemnify and save harmless the Commonwealth Transportation Board, members of the Board, the Commonwealth, and all Commonwealth employees, agents, and officers, from responsibility, damage, or liability arising from the exercise of the privileges granted in such permit to the extent allowed by law including any sums ordered to be paid or expended by VDOT to any governmental entity as a fine, penalty or damages for any violation of any applicable environmental law, or to remediate any hazardous or other material, including illicit discharge into VDOT maintained storm sewer systems.
- 4) The permittee shall immediately correct any situation that may arise as a result of these activities that VDOT deems hazardous to the traveling public.
- 5) The permittee shall maintain a copy of the VDOT land use permit and relevant locality permits (or other form of local authorization), VDH permit, and proof of insurance at the mobile food vending site and make them readily available for inspection when requested by VDOT.
- 6) VDOT reserves the right to suspend any or all mobile food vending operations in VDOT park and ride lots in response to maintenance, public safety, or operational concerns and shall be held harmless for any resulting monetary losses by the vendor resulting from said suspension.
- 7) Roadway drainage shall not be blocked or diverted by the temporary occupation of state maintained right-of-way by mobile food vendors. The shoulders, ditches, sidewalk, roadside, drainage facilities, and pavement shall be kept in an operable condition satisfactory to VDOT.

Authorized Hours and Days of Operation

The permittee is authorized to sell food from 5:00 AM Monday through 9:00 PM Friday in the designated park and ride lot.

Permittee Notice

The preceding provisions are intentionally condensed in format and should not be loosely interpreted by the permittee without consultation with the VDOT area land use engineer or the central office permit manager and affirmation from the [Land Use Permit Regulations](#).