



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 225-2940

Agenda item 15

**RESOLUTION
OF THE
COMMONWEALTH TRANSPORTATION BOARD**

March 17, 2021

MOTION

Made By: Mr. Malbon **Seconded By:** Mr. Miller

Action: Motion Carried, Unanimously

Title: Action Relating to the Initial Tolling Policies of the Hampton Roads Transportation Accountability Commission for the I-64 HREL Network Pursuant to the *Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network*

WHEREAS, § 33.2-2612 of the *Code of Virginia* permits the Hampton Roads Transportation Accountability Commission (HRTAC) to impose and collect tolls along the Hampton Roads Express Lanes Network only after entering into an agreement with the Commonwealth Transportation Board (CTB) and the Virginia Department of Transportation (VDOT); and

WHEREAS, HRTAC and VDOT developed the *Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network* (the Agreement), to be entered into among the CTB, VDOT, and HRTAC, under which the Hampton Roads Express Lanes Network would be tolled pursuant to tolling policies established principally by HRTAC, and the CTB, on August 14, 2020, approved the Agreement, authorizing the Secretary of Transportation and the Commissioner of Highways to execute the Agreement on behalf of the CTB and VDOT, respectively; and

WHEREAS, the Agreement, now executed, governs, among other things, (i) the procurement, financing, and delivery of the Hampton Roads Express Lanes Network, (ii) the tolling policies applicable to the Hampton Roads Express Lanes Network (iii) the imposition, collection, and enforcement of tolls on the Hampton Roads Express Lanes Network, (iv) the operation and maintenance of the tolling infrastructure and system, the HOT lanes, and applicable Interstate 64 facilities, and (v) the uses of toll revenues and the proceeds of toll-backed debt; and

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WHEREAS, the Agreement, in section 5.02(a)(iii)(3), provides that the Commissioner of Highways shall review the Initial Tolling Policies (as that term is defined in the Agreement) submitted by HRTAC (Initial Tolling Policies Submission), for purposes of assessing whether the proposed policies, without modification, are reasonably likely to result in a Tolling Policy Material Adverse Effect and present the Commissioner's analysis and findings to the CTB, and

WHEREAS, pursuant to the Agreement, in said presentation to the CTB, the Commissioner shall specify whether he or she intends to issue an Exception Notice or a No Exception Notice and the CTB, after receiving such presentation is required to take one of the following actions:

- (1) if the Commissioner's analysis and findings do not conclude that the proposed Initial Tolling Policies would be reasonably likely to result in a Tolling Policy Material Adverse Effect, the CTB shall direct the Commissioner to issue a No Exception Notice;
- (2) if the Commissioner's analysis and findings conclude that the proposed Initial Tolling Policies, without modification, would be reasonably likely to result in a Tolling Policy Material Adverse Effect, the CTB may either (A) direct the Commissioner to issue an Exception Notice, or (B) direct the Commissioner to issue a No Exception Notice if the CTB concludes that the proposed Initial Tolling Policies would trigger the definition of Tolling Policy Material Adverse Effect by only a marginal degree and elects, in its discretion, to waive strict enforcement;
- (3) direct the Commissioner to perform additional analysis with regard to the proposed Initial Tolling Policies and present to the CTB at a subsequent meeting or meetings, an update with respect to the additional analysis, after which the CTB shall take certain actions described in clauses (1), (2), (3), or (4) of this Section 5.02(a)(iii)_(*Setting of Initial Tolling Policies*); or
- (4) if the CTB has previously directed the Commissioner to perform additional analysis pursuant to Section 5.02(a)(iii)(3)_(*Setting of Initial Tolling Policies*), then at a subsequent meeting during which the Commissioner briefs the CTB with regard to such proposed Initial Tolling Policies, the CTB may opt not to vote on the issue in lieu of taking one of the actions described in Section 5.02(a)(iii)(1), (2), or (3) (*Setting of Initial Tolling Policies*), with the effect of such action being that upon the conclusion of such subsequent meeting, the Commissioner shall be deemed to have issued a No Exception Notice.

WHEREAS, on January 21, 2021, HRTAC, by resolution, approved, adopted and set HRTAC's Initial Tolling Policies (attached hereto as Exhibit A) and authorized its officers and representatives to present the Initial Tolling Policies to the Commissioner of Highways and to request that the Commissioner perform an analysis of the Initial Tolling Policies and to present them to the CTB with his analysis and findings; and

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WHEREAS, in accord with the Agreement, the CTB's direction pursuant to the August 14, 2020 action relating to the Agreement, and HRTAC's request, the Commissioner of Highways has (i) reviewed and provided the CTB the Initial Tolling Policies submitted by HRTAC; (i) performed various safety, traffic and operational analyses and concluded that the Initial Tolling Policies would not result in a Material Adverse Effect; and (iii) presented the results of the analyses to the CTB and requested that the CTB approve and direct issuance of a No Exception Notice.

NOW THEREFORE, BE IT RESOLVED that the Commonwealth Transportation Board hereby agrees with the Commissioner's analysis and findings that the proposed Initial Tolling Policies submitted by HRTAC pursuant to section 5.02 of the Agreement would not be reasonably likely to result in a Tolling Policy Material Adverse Effect, and directs the Commissioner to issue a No Exception Notice in accord with the Agreement.

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HRTAC RESOLUTION 2021-02

**RESOLUTION AUTHORIZING INITIAL TOLLING POLICIES
OF THE HAMPTON ROADS EXPRESS LANES NETWORK**

WHEREAS, the Hampton Roads Transportation Accountability Commission (the “Commission”), has been empowered under the Code of Virginia of 1950, as amended (the “Virginia Code”), pursuant to Virginia Code § 33.2-2607 and as set forth in Chapter 26, Title 33.2 of the Virginia Code (the “HRTAC Act”), to impose and collect tolls in amounts established by the Commission for the use of any new or improved highway, bridge or tunnel, to increase capacity on such facility or to address congestion within Planning District 23 as long as such facilities are constructed by the Commission (i) with federal, state, or local funds, (ii) solely with revenues of the Commission, or (iii) with revenues under the control of the Commission;

WHEREAS, the Commission has been further empowered under Virginia Code § 33.2-2612 to impose and collect tolls on high-occupancy toll lanes on Interstate 64 in the “facility”, being the vicinity of the interchange of Interstate 64 and Jefferson Avenue in Newport News to the Bowers Hill interchange of Interstate 64, Interstate 264, and Interstate 664 in Chesapeake (the “Initial Interstate 64 Express Lanes Network” or “Initial Network” as further described and defined in the Master Tolling Agreement, as later defined herein), provided that such tolls shall be collected by an electronic toll system that, to the extent possible, shall not impede the traffic flow of the Initial Network and may only be imposed on a portion of the Initial Network that has been designated as high-occupancy toll lanes by the Commonwealth Transportation Board (the “CTB”) pursuant to Virginia Code § 33.2-502, with the amount of the tolls to be varied by congestion level;

WHEREAS, the CTB has designated certain segments of the Initial Network as high-occupancy toll lanes pursuant to resolutions duly adopted on October 19, 2016, September 20, 2017, and on January 10, 2018;

WHEREAS, the Hampton Roads Transportation Planning Organization (the “HRTPO”), in its Resolution No. 2020-04, identified and adopted the Initial Network as a component of the Regional Priority Projects (added to its current version dated January 2020) identified by the HRTPO in its 2040 Long-Range Transportation Plan to collectively provide the greatest impact on reducing congestion for the greatest number of citizens residing in Hampton Roads and requested that the Commission pursue development of a funding, development, and implementation plan for the Initial Network to be advanced by the Commission based on project readiness;

WHEREAS, prior to the imposition of tolls under Virginia Code § 33.2-2612, the Commission is required to enter into an agreement with the CTB and the Virginia Department of Transportation (“VDOT” or the “Department”), an agency of the Commonwealth of Virginia, that addresses certain matters described in such Code section;

WHEREAS, the Commission, the CTB and the Department have entered into a Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network Tolling Agreement dated August 18, 2020 (the “Master Tolling Agreement” or “MTA”), which serves as the agreement required under Virginia Code § 33.2-2612;

WHEREAS, under the Master Tolling Agreement, prior to imposing tolls, the Commission is required to set the initial tolling policies for the Initial Network (referred to hereinafter and in the MTA as the “Initial Tolling Policies”) in accordance with the terms and procedures of the MTA;

WHEREAS, CDM Smith has been engaged to produce an investment grade traffic and revenue (“T&R”) study relating to the Initial Network (the “T&R Study”), which will provide traffic and revenue information that will be essential for developing and implementing a financing plan for the construction and implementation of the Initial Network;

WHEREAS, in furtherance of the finalization of the initial T&R Study and the Commission’s financing efforts, the Commission now desires to approve, adopt and set the Initial Tolling Policies;

WHEREAS, in connection with the foregoing, the Commission has reviewed the parameters and procedures that the Commission is required to observe under the Master Tolling Agreement and, at its December 10, 2020 meeting, the Commission was briefed by CDM Smith on the tolling and operations assumptions that CDM Smith is using in connection with the T&R Study;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION:

1. Approval, Adoption and Setting of Initial Tolling Policies. The Commission hereby approves, adopts and sets the policies set forth on Exhibit A attached hereto as the Commission’s Initial Tolling Policies, which, subject to the issuance or deemed issuance of a No Exception Notice (described below), will be effective and implemented in accordance with Section 5.2(a)(vii) of the Master Tolling Agreement, which reads as follows: “The Initial Tolling Policies will be effective and implemented on the first day that the first new segment (*i.e.*, a segment other than the Reversible HOT Lanes Segment) is opened (the “Initial Tolling Policies Effective Date”)”.

2. Additional Actions and Findings. The Commission hereby authorizes each officer and authorized representative of the Commission, including the Executive Director, to (i) present the Initial Tolling Policies to the Commissioner of Highways and request, in accordance with Section 5.02(a)(iii) of the Master Tolling Agreement, that the Commissioner review such policies as required under the MTA and present them to the CTB with the Commissioner’s analysis and findings as to whether he or she intends to issue an Exception Notice or a No Exception Notice (as each is defined in the MTA), (ii) execute and deliver on the Commission’s behalf such other instruments, documents or certificates, and to do and perform such things and acts, as he or she shall deem necessary or appropriate to cause the issuance or deemed issuance of a No Exception Notice with respect to the Initial Tolling Policies, and (iii) report to the Commission at such time as a No Exception Notice has been issued or has been deemed to have been issued with respect to the Initial Tolling Policies in accordance with the terms of the MTA.

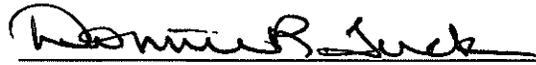
3. Effective Date. This Resolution shall take effect immediately.

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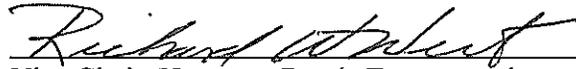
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The undersigned hereby certify that this is a true and correct copy of a resolution duly adopted at a meeting of the Hampton Roads Transportation Accountability Commission held on January 21, 2021.



Chair, Hampton Roads Transportation
Accountability Commission



Vice Chair, Hampton Roads Transportation
Accountability Commission

EXHIBIT A to HRTAC RESOLUTION 2021-02

Initial Tolling Policies

1. Covered Lanes: HOT lanes in the Initial Network created under MTA.
2. Hours of Operation: HOT lane tolling will be in effect 24 hours daily (24/7/365) (excluding traffic reversal periods in Segment 1).
3. Tolling Points: Tolling points within the Initial Network, generally expected to be not more than one per segment (as delineated in the MTA), will be established in accordance with the concept of operations plan developed collaboratively between HRTAC and VDOT team.
4. Toll Collection Methods: Toll collection will employ open road (nonstop) tolling technology (no toll booths); electronic only; enforcement consistent with Virginia Code Section 33.2-503; E-ZPass or E-ZPass Flex transponder required (does not preclude the use of pre-arranged payment accounts approved by the Commission, such as mobile apps).
5. Reporting/Billing: User tolls will be assessed by combining contiguous gantry records into a single trip transaction (trip-building), with rounding up to the nearest penny.
6. Rates/Pricing: HOT lane usage (tolls) will be priced using Congestion Pricing, applying dynamic toll setting in relation to traffic density with amounts charged not less than the applicable minimums. The applicable minimums will be \$0.06 per mile or \$0.25 per gantry, whichever is greater, which amounts will be increased annually, effective July 1 of every year, beginning July 1, 2021, based on the greater of (i) the year-over-year change in the United States Average Consumer Price Index (All Cities, All Urban Consumers, All Items, 1982-1984=100) (CPI-U) or its successor Consumer Price Index, as published by the Bureau of Labor Statistics for the U.S. Department of Labor for the most recently available preceding twelve month period, or (ii) 2.5%. Such dynamic toll setting shall be administered in a manner that ensures compliance with 23 U.S.C. Section 166.
7. Permitted Vehicles/Toll Exemptions: All eligible vehicles may use the HOT lanes, and each vehicle using the HOT lanes will be tolled unless an exemption below applies:
 - Vehicles meeting the applicable high occupancy requirement set by the Commission; initially HOV2+ (self-declared via E-ZPass “Flex” transponder; HOV drivers will need E-ZPass Flex switched to HOV mode to use the lanes for free).
 - Motorcycles
 - Buses
 - Emergency vehicles - firefighting vehicles and emergency medical services vehicles (on duty)
 - Law enforcement vehicles (on duty)

- Contractors providing services directly for the facility
8. Vehicles Prohibited from Using HOT Lanes: Trucks, as defined in accordance with the MTA