



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda item # 1

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

September 18, 2018

MOTION

Made By: Mr. Miller, Seconded By: Mr. Connors
Action: Motion Carried, Unanimously

**Title: Authorization to Amend the *Land Use Permit Regulations (24VAC30-151)* to Adjust
Wireless Support Structure Fees in Accordance with Chapter 837 of the 2018 Acts of
Assembly**

WHEREAS, the Commonwealth Transportation Board (CTB) adopted the *Land Use Permit Regulations (24VAC30-151)* on October 15, 2009, which set out annual fees for communication towers in highway right of way; and

WHEREAS, Chapter 837 of the 2018 Acts of Assembly established an annual wireless support structure public rights-of-way use fee to replace all fees of general application, except permit processing fees; and

WHEREAS, the fees set out in Chapter 837 of the 2018 Acts of Assembly are different from the fees adopted by the CTB on October 15, 2009; and

WHEREAS, the Virginia Administrative Process Act (VAPA) allows for any regulatory amendments necessary for the implementation of newly enacted laws to be exempt from the procedures of the VAPA, if the regulatory amendments are filed within 90 days of the effective date of the changes in the law; and

WHEREAS, VDOT staff developed proposed amendments (attached hereto as Attachment A) to the CTB's *Land Use Permit Regulations* that are necessary to make the *Land Use Permit Regulations* consistent with Chapter 837 of the 2018 Acts of Assembly.

Resolution of the Board

Authorization to Amend the Land Use Permit Regulations (24VAC30-151) to Adjust Wireless Structure Fees in Accordance with Chapter 837 of the 2018 Acts of Assembly

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NOW THEREFORE BE IT RESOLVED, the Commonwealth Transportation Board approves the proposed amendments to the *Land Use Permit Regulations* (24VAC30-151) as shown in Attachment A in accordance with Chapter 837 of the 2018 Acts of Assembly; and

BE IT FURTHER RESOLVED, 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

Authorization to Amend the Land Use Permit Regulations (24VAC30-151) to Adjust Wireless Support Structure Fees in Accordance with Chapter 837 of the 2018 Acts of Assembly

Issue: Chapter 837 of the 2018 Acts of Assembly established an annual wireless support structure public rights-of-way use fee to replace all fees of general application, except permit processing and other plan review fees. The CTB's Land Use Permit Regulations, adopted in 2009, set out annual fees for the installation and maintenance of communication towers within the right-of-way and, however, amendments to the *Land Use Permit Regulations* must be adopted by the CTB to make the annual fees specified in those regulations consistent with the fees specified in Chapter 837.

Facts: Chapter 837 allows VDOT to continue charging current annual fees for existing towers until the current term of the respective agreement or permit for each those towers expires. The Land Use Permit Regulations currently set the annual fee for communication towers at \$24,000 per year. There are currently 79 macro-cell communication towers in the right-of-way, of which 30 of which are not owned by VDOT and will be subject to the fee schedule contained in Chapter 837 once the current term of the respective agreement or permit for each of those towers expires. VDOT collects a total of approximately \$720,000 from fees for those structures from the primary occupiers.

Under Chapter 837, new poles and towers are to be charged fees that vary based upon height (from \$1,000 for poles or towers under 50 feet in height to \$5,000 for towers over 120 feet in height), with a 5-year inflation clause tied to changes in the consumer price index. If existing towers were charged fees as set out in Chapter 837, VDOT would collect approximately \$150,000 for the 30 non-VDOT owned structures.

The Virginia Administrative Process Act (VAPA) allows for any regulatory amendments necessary for the implementation of newly enacted laws to be exempt from the procedures of the VAPA, if the regulatory amendments are filed within 90 days of the effective date of the changes in the law. Chapter 837 became effective on July 1, 2018.

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 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 to make the Land Use Permit Regulations consistent with Chapter 837.

Options: Approve or Deny

Public Comments/Reactions: Not applicable

Amendment to the Land Use Permit Regulations (24VAC30-151) to Adjust Wireless Support Structure Fees in Accordance with Chapter 837 of the 2018 Acts of Assembly

24VAC30-151-730. Accommodation Fees.

After initial installation, the ~~The~~ Commissioner of Highways or a designee shall determine the annual compensation for the use of the right-of-way by a utility, except as provided in [24VAC30-151-740](#). The rates shall be established on the following basis:

- ~~1~~A. Limited Access Crossings - \$50 per crossing.
- ~~2~~B. Limited Access Longitudinal Installation - \$250 per mile annual use payment.
- ~~3~~C. Wireless Communication Tower Facility Sites (limited and nonlimited access):
 - ~~a~~1. \$24,000 annual use payment for a communication tower site permitted prior to July 1, 2018, until the current term of the permit expires, and
 - ~~b~~2. \$14,000 annual use payment for a non-small cell co-location on a tower site wireless support structure. This payment does not include equipment mounted to an existing wooden utility pole.
 3. Wireless support structure installed under a land use permit issued on or after July 1, 2018, shall have an annual use payment based upon the following, which shall be adjusted every five years, in accordance with § 56-484.32 of the Code of Virginia:
 - a. \$1,000 for any wireless support structure at or below 50 feet in height;
 - b. \$3,000 for any wireless support structure above 50 feet and at or below 120 feet in height;
 - c. \$5,000 for any wireless support structure above 120 feet in height; and
 - d. \$1 per square foot for any other equipment, shelter, or associated facilities constructed on the ground.