

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding a section numbered 15.2-2316.4:4, relating to zoning;*
 3 *wireless facility modifications; application process.*

4 [H 277]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That the Code of Virginia is amended by adding a section numbered 15.2-2316.4:4 as follows:**8 **§ 15.2-2316.4:4. Wireless facility modifications.**9 *A. Notwithstanding the provisions of this article, a locality shall not deny an application for the*
 10 *modification of an existing wireless facility if:*11 *1. The requested modification would not substantially change the physical dimensions of the existing*
 12 *wireless facility;*13 *2. The requested modification involves the (i) co-location of new transmission equipment, (ii) removal of*
 14 *transmission equipment, or (iii) replacement of transmission equipment; and*15 *3. The request meets the requirements of this section.*16 *For the purposes of this subsection, a modification that entails any excavation or deployment adjacent to*
 17 *an existing wireless support structure or base station, except for wireless support structures or base stations*
 18 *in public rights-of-way, does not substantially change the physical dimensions of the existing wireless facility*
 19 *if it entails the excavation or deployment of transmission equipment within 30 feet, in any direction, of the*
 20 *existing wireless support structure or base station. The site boundary from which the 30 feet is measured*
 21 *shall exclude any access or utility easements related to the existing wireless support structure or base station.*22 *B. When an applicant asserts, in writing, that a request for modification is permitted pursuant to this*
 23 *section, a locality may require the applicant to provide documentation or information only to the extent*
 24 *reasonably related to determining whether the request meets the requirements of this section. A locality shall*
 25 *not require an applicant to submit any other documentation, including documentation intended to illustrate*
 26 *the need for such wireless facilities or to justify the business decision to modify such wireless facilities.*27 *C. A locality shall not impose fees or charges on the applicant that exceed the one-time, non-recurring*
 28 *reasonable costs actually incurred by the locality to review the application. A locality may impose a fee, not*
 29 *to exceed \$1,000, for technical consultation and the review of a co-location or eligible facilities request*
 30 *application. Such fee shall be based on the actual, direct, and reasonable administrative costs incurred for*
 31 *the review, processing, and approval of an application. A locality may engage a third-party consultant for*
 32 *technical consultation and the review of a co-location application. The fee imposed by a locality for the*
 33 *review of an application shall not be used for travel expenses incurred during a third-party review of a co-*
 34 *location application or reimbursement for a consultant or other third party based on a contingent fee basis or*
 35 *results-based arrangement.*36 *D. A locality shall approve an application made pursuant to this section within 60 days of the date on*
 37 *which an applicant submits such application, unless the locality determines that the application does not*
 38 *meet the requirements of this section. The 60-day period may be tolled only by mutual agreement or in cases*
 39 *where the reviewing locality determines that an application is incomplete.*40 *1. To toll the timeframe for incompleteness, the reviewing locality shall provide written notice to the*
 41 *applicant within 30 days of receipt of the application and shall clearly and specifically delineate all missing*
 42 *documents or information in such notice. Such delineated information is limited to documents or information*
 43 *meeting the provisions of subsection B. The timeframe for review shall begin running again whenever the*
 44 *applicant submits a supplemental application in response to the locality's notice of incompleteness.*45 *2. Following the submission of a supplemental application, a locality shall have 10 days to notify the*
 46 *applicant that the supplemental application did not provide the information identified in the original notice*
 47 *delineating missing information. The timeframe shall be tolled in the case of second or subsequent notices*
 48 *pursuant to the procedures outlined in this subdivision. Second or subsequent notices of incompleteness shall*
 49 *not specify any missing documents or information that were not delineated in the original notice of*
 50 *incompleteness.*51 *E. If a locality fails to approve or deny an application seeking approval under this section within the*
 52 *timeframe for review, accounting for any tolling pursuant to subsection D, the application shall be deemed*
 53 *approved. The deemed approval shall not become effective until the applicant notifies the locality, in writing,*
 54 *that the application has been deemed approved pursuant to this subsection. Upon receipt of the notification*
 55 *from the applicant, the locality shall, within 30 calendar days, (i) issue all permits and authorizations*
 56 *necessary for the completion of the project described in the application or (ii) seek judicial review of the*

57 *operation of this section on the application.*

58 *F. Any applicant or locality may bring claims related to this section to any court of competent*
59 *jurisdiction. For any party other than an applicant or locality, neither the issuance of permits or*
60 *authorizations by a locality regarding an application nor an approval granted pursuant to subsection E due*
61 *to a locality's failure to approve or deny an application shall be deemed a final decision or action appealable*
62 *under applicable law.*