

**CITY COUNCIL RESEARCH DIVISION
LEGISLATIVE SUMMARY**



JEFFREY R. CLEMENTS
Chief of Research
(904) 255-5137

117 West Duval Street
City Hall, Suite 425
Jacksonville, FL 32202
FAX (904) 255-5229

Bill Type and Number: Ordinance 2019-770

Introducer/Sponsor(s): Council President Wilson

Date of Introduction: October 22, 2019

Committee(s) of Reference: LUZ

Date of Analysis: October 24, 2019

Type of Action: Ordinance Code amendment

Bill Summary: The bill amends numerous provisions in Part 4 – Communication Facilities in City Rights –of-Way) of Ordinance Code Chapter 711 – City Rights-of-Way. The changes include the following:

- Revises the definition of “Applicable Codes” to delete references to “objective design standards adopted pursuant to Subparts D and E of this Part” (which include colocation of small wireless facilities and reasonable location context, color, stealth, and concealment requirements) and replace with codes “enacted solely to address threats of destruction of property or injury to persons, and includes the National Electric Safety Code and the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual.”
- Revises the definition of “Limited Work” to refine the term “limited maintenance” to mean “the performance of service restoration work on existing facilities, or repair work, including, but not limited to, emergency repairs of existing facilities or extensions of such facilities for providing Communication Services to customers.”
- Changes the registration renewal period for communication facilities in City rights-of-way from every 2 years to every 5 years.
- Removes “The issuance of a notice of withdraw from the Surety Fund” from the list of final determinations by the Director or City Council that are subject to appeal.
- Adds a requirement that any administrative review by the Director or City Council of a final determination must be completed and a written decision issued within 45 days after a written request for review is made.
- Changes the requirement of a “Performance Bond for Construction and Maintenance” to a “Construction Bond for Right-of-Way Restoration”; adds a provision that “The City shall accept a letter of credit or similar financial instrument issued by any financial institution that is authorized to do business within the United States, provided that a claim against the financial instrument may be made by electronic means, including by facsimile.”
- Changes language regarding the Surety Fund to limit its use to ensuring compliance with duties and obligations “relating to indemnification and abandonment”.
- Amends Permit Conditions language as follows: “(g) *No interference with use of City Rights-of-Way.* All Communications Facilities shall be placed, maintained or Collocated so as not to ~~unreasonably~~ interfere with the use of the City's Rights-of-Way by the public ~~and with the rights and convenience of property owners who adjoin any of the City's Rights of Way.~~”
- Regarding colocation on existing poles or placement of new poles, removes the Intent language stating that it is the City’s intent to minimize the negative aesthetic impact and potential conflicts with other mobility and utility uses caused by a proliferation of new poles and to maximize location context, color, stealth and concealment requirements in the placement of a Small Wireless Facility within the City's Rights-of-Way by

first requiring co-location on existing structures unless it can be proved to the Director's satisfaction that co-location is not feasible.

- Adds new language regarding undergrounding of new Small Wireless Facilities to provide that new facilities shall be placed underground in areas where the City has required all public utility lines in the City Right-of-Way to be placed underground, if: 1) City, at least 90 days prior to the submission of an Application, has required all public utility lines to be placed underground; 2) structures that City allows to remain above ground are reasonably available to Communications Service Providers for the Collocation of Small Wireless Facilities and may be replaced by a Communications Service Provider to accommodate the Collocation of Small Wireless Facilities; and 3) a Communications Service Provider may install a new Utility Pole in the designated area in the City Right-of-Way that otherwise complies with this subsection and it is not reasonably able to provide Wireless Services by Collocating on a remaining Utility Pole or other structure in the City Right-of-Way.
- Adds a provision allowing Small Wireless Facilities installed before City adopts requirements that public utility lines be placed underground to remain in place subject to any applicable pole attachment agreement with the pole owner and allow the Communications Service Provider to replace the associated pole within 50 feet of the prior location in accordance with Subpart E.
- Removes the City's ability to deny a permit because a proposed installation fails to comply with "applicable objective design standards" or because the installation is not proposed to be co-located on an existing structure when the applicant has not demonstrated that such structure is not available or is insufficient for the placement of the proposed installation.
- Provides that applications for waivers of any City requirement shall be decided by the Tower Review Committee rather than an appropriate committee of City Council.
- Regarding Objective Design Standards, deletes the requirements that: 1) an antenna and its connection to the pole must be completely shrouded, in line with the pole and must smoothly transition around pole top; 2) the diameter of a replacement pole cannot be greater than 1.5 times the diameter of the existing pole; 3) pole-mounted equipment must be mounted flush with the pole, provided the depth of any such equipment shall not exceed 20 inches and width shall not exceed 2.5 times the diameter of pole; 4) all Wireless Equipment in excess of 10 cubic feet shall be located underground or in an architectural pedestal base not exceeding 36 inches high and a square shape not exceeding 18 inches wide by 18 inches in depth, and having architectural molding on all flat surfaces.
- Increases the volume of equipment that may be pole-mounted from 10 to 28 cubic feet, and excludes electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures from the maximum volume calculation.
- Deletes the requirement that applications for new poles must be reviewed for the potential to co-locate equipment on existing City, JEA or privately owned poles or structures and deletes the requirement that permits for new poles can only be granted when the Director determines that no existing Utility Pole is reasonably feasible to Collocate the Small Wireless Facilities.
- Deletes the following regulations on new pole installations: 1) the prohibition against the installation of new poles with a diameter at base of greater than 1.5 times diameter of the largest existing pole within 500 feet in a corridor, unless an architectural, ground-mounted pedestal is used at the pole base to internally accommodate Wireless Equipment; 2) the prohibition against locating a pole within two feet of an existing sidewalk or multi-use trail, or where City has plans for a new sidewalk or multi-use trail; 3) the requirement that new poles must be located equidistant between existing poles unless doing so results in an impermissible distance limitation, subject to specific location criteria such as minimum distance of 10 feet from a driveway, 30 feet from a fire hydrant, maximum distance of 10 feet from a side property line on a residential corner lot, cannot impair view from primary residential structure, cannot interfere with the view of a commercial business sign, cannot be placed in line with front/principal façade of business unless there are already parking or loading spaces present.

Background Information: In 2017 the Florida Legislature passed a law prohibiting local governments from banning or unreasonably restricting the ability of telecommunications companies to install transmission facilities and infrastructure, but allowing local governments the ability to require permits for use of public rights-of-way and to regulate "objective design standards" (such as size, configuration, color, and shielding of equipment) in

ways that still permitted the telecommunication service to be provided. From April through September of 2018 the LUZ and TEU Committees held a series of 8 joint meetings during which they engaged in extensive fact-finding and negotiations with representatives of various telecommunications providers and tower leasing companies over the creation of a new Part 4 to Chapter 711 of the Ordinance Code to implement the permitting and objective design standards, which were adopted via Ordinance 2018-463-E.

This bill was drafted by attorneys for Verizon Communications to change numerous provisions of the current code that are problematic for their technology model, which differs from one provider to another based on the manufacturer of their equipment.

Policy Impact Area: Wireless telecommunication equipment installation regulation

Fiscal Impact: Undetermined

Analyst: Clements