

1 Introduced by the Council President:
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4 **ORDINANCE 2019-757**

5 AN ORDINANCE CONCERNING THE WAIVER OF CERTAIN
6 REQUIREMENTS OF CHAPTER 711 (CITY RIGHTS-OF-
7 WAY), PART 4 (COMMUNICATIONS FACILITIES IN
8 CITY RIGHTS-OF-WAYS), SUBPART C (GENERAL
9 PERMIT CONDITIONS FOR COLLOCATION OF SMALL
10 WIRELESS FACILITIES AND SMALL WIRELESS SOLE
11 PURPOSE NEW UTILITY POLES), LOCATED AT VARIOUS
12 LOCATIONS IN DOWNTOWN JACKSONVILLE AS
13 DESCRIBED HEREIN, (1) TO INCREASE THE VOLUME
14 OF POLE-MOUNTED SMALL CELL WIRELESS EQUIPMENT
15 FROM 10 CUBIC FEET TO 21 CUBIC FEET, (2) TO
16 INCREASE THE DEPTH OF THE POLE-MOUNTED SMALL
17 CELL WIRELESS EQUIPMENT FROM 20 INCHES IN
18 PROFILE TO 22 INCHES IN PROFILE, (3) TO
19 INCREASE THE WIDTH OF THE POLE-MOUNTED SMALL
20 CELL WIRELESS EQUIPMENT FROM 2 TIMES THE
21 DIAMETER OF THE PROPOSED POLE TO A MAXIMUM OF
22 29 INCHES IN WIDTH, (4) TO INCREASE THE NEW
23 POLE DIAMETER LIMITATION FROM 1.5 TIMES THE
24 WIDTH AT THE BASE OF THE LARGEST EXISTING POLE
25 WITHIN 500- FEET OF THE PROPOSED POLE TO THE
26 LARGER OF EITHER (A) 1.5 TIMES THE WIDTH AT
27 THE BASE OF THE LARGEST EXISTING POLE WITHIN
28 500- FEET OF THE PROPOSED POLE OR (B) 10 INCHES
29 IN DIAMETER, (5) TO ELIMINATE THE REQUIREMENT
30 THAT A NEW POLE MUST BE PLACED GREATER THAN 2
31 FEET FROM AN ADJACENT SIDEWALK SO LONG AS THE

1 NEW POLE IS LOCATED IN LINE WITH ADJACENT,
2 EXISTING POLES, (6) TO ELIMINATE THE
3 REQUIREMENT THAT NEW POLES MUST BE PLACED
4 EQUIDISTANT BETWEEN EXISTING POLES SO LONG AS
5 THE NEW POLE IS LOCATED WITHIN 20 FEET OF THE
6 EQUIDISTANT POINT, AND (7) TO ELIMINATE THE
7 PROHIBITION AGAINST LOCATING NEW POLES IN LINE
8 WITH THE FRONT/PRINCIPAL FAÇADE OF A BUSINESS
9 UNLESS THERE ARE ALREADY PARKING OR LOADING
10 SPACES PRESENT SO LONG AS THE NEW POLE IS NOT
11 LOCATED WITHIN 10 FEET OF AN EXISTING DRIVEWAY
12 OR WITHIN 3 FEET TO EITHER SIDE OF AN EXISTING
13 BUILDING DOORWAY; PROVIDING A DISCLAIMER THAT
14 THE WAIVER GRANTED HEREIN SHALL NOT BE
15 CONSTRUED AS AN EXEMPTION FROM ANY OTHER
16 APPLICABLE LAWS; PROVIDING AN EFFECTIVE DATE.

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18 **WHEREAS**, an application for waivers of chapter 711 (City
19 Rights-of-Way), Part 4 (Communications Facilities in City Rights-
20 of-Ways), Subpart C (General Permit Conditions for Collocation of
21 Small Wireless Facilities and Small Wireless Sole Purpose New
22 Utility Poles), **Application On File** with the City Council
23 Legislative Services Division, was filed by Verizon Wireless for
24 proposed small cell wireless facilities at seven locations in
25 downtown Jacksonville as described in **Exhibit A** which is **On File**
26 with the City Council Legislative Services Division.

27 **WHEREAS**, the application requests the Council grant the
28 following waivers for each of these seven locations:

29 (1) to increase the volume of pole-mounted small cell wireless
30 equipment from 10 cubic feet to 21 cubic feet,

31 (2) to increase the depth of the pole-mounted small cell

1 wireless equipment from 20 inches in profile to 22 inches in
2 profile,

3 (3) to increase the width of the pole-mounted small cell
4 wireless equipment from 2 times the diameter of the proposed pole
5 to a maximum of 29 inches in width,

6 (4) to increase the new pole diameter limitation from 1.5
7 times the width at the base of the largest existing pole within
8 500-feet of the proposed pole to the larger of either (a) 1.5 times
9 the width at the base of the largest existing pole within 500-feet
10 of the proposed pole or (b) 10 inches in diameter,

11 (5) to eliminate the requirement that a new pole must be
12 placed greater than 2 feet from an adjacent sidewalk so long as the
13 new pole is located in-line with adjacent, existing poles,

14 (6) to eliminate the requirement that new poles must be placed
15 equidistant between existing poles so long as the new pole is
16 located within 20 feet of the equidistant point, and

17 (7) to eliminate the prohibition against locating new poles in
18 line with the front/principal façade of a business unless there are
19 already parking or loading spaces present so long as the new pole
20 is not located within 10 feet of an existing driveway or within 3
21 feet to either side of an existing building doorway; and

22 **WHEREAS,** the Downtown Investment Authority staff has
23 considered the application and all attachments thereto and has
24 rendered an advisory recommendation; and

25 **WHEREAS,** the Land Use and Zoning Committee, after due notice
26 held a public hearing and having duly considered both the
27 testimonial and documentary evidence presented at the public
28 hearing, has made its recommendation to the Council; and

29 **WHEREAS,** taking into consideration the above recommendations
30 and all other evidence entered into the record and testimony taken
31 at the public hearings, the Council makes its determination based

1 on whether: (i) the effect of the waiver is compatible with the
2 existing contiguous uses and consistent with the general character
3 of the area considering population, density, scale, and orientation
4 of the structures in the area; (ii) the result will detract from
5 the specific intent of the objective design standards by promoting
6 the continued existence of nonconforming Small Wireless Facilities
7 that exist in the vicinity; (iii) the effect of the proposed waiver
8 will diminish property values in, or negatively alter the aesthetic
9 character of the area surrounding the site, and whether the request
10 will substantially interfere with or injure the rights of others
11 whose property would be affected by the same; (iv) the waiver will
12 have a detrimental effect on vehicular or pedestrian traffic or
13 parking conditions, or result in the creation of objectionable or
14 excessive light, glare, shadows, or other effects, taking into
15 account existing uses in the vicinity; (v) the proposed waiver will
16 be detrimental to the public health, safety or welfare, and will
17 result in additional public expense, creation of nuisances, or
18 cause conflict with any other applicable law; (vi) the City's
19 Right-of-Way where the Small Wireless Facility or Small Wireless
20 Sole Purpose New Utility Pole is proposed exhibits specific
21 physical limitations or characteristics which are unique to the
22 site and which would make imposition of the strict letter of the
23 standard unduly burdensome; (vii) the request is based exclusively
24 upon a desire to reduce the costs associated with compliance and is
25 the minimum necessary to Collocate the Small Wireless Facility or
26 place the Small Wireless Sole Purpose New Utility Pole; (viii) the
27 request is the result of a violation that has existed for a
28 considerable length of time without receiving a citation, or the
29 violation that exists is a result of construction that occurred
30 prior to the applicant's acquisition of the property, and not as a
31 direct result of the actions of the current owner; (ix) the request

1 accomplishes a compelling public interest, such as, for example,
2 furthering the preservation of natural resources by saving a tree
3 or trees; (x) strict compliance with the regulation will create a
4 substantial financial burden when considering cost of compliance;
5 and (xi) the request will ensure that all citizens of Jacksonville
6 and Duval County have abundant access to broadband capability; now,
7 therefore

8 **BE IT ORDAINED** by the Council of the City of Jacksonville:

9 **Section 1. Adoption of Findings and Conclusions.** The
10 Council has reviewed the record of proceedings and the Staff Report
11 of the Downtown Investment Authority staff and held a public
12 hearing concerning application for waivers of small cell wireless
13 facility requirements in applications 9748, 9748.001, 9748.002,
14 9748.003, 9748.004, 9748.005, and 9748.006. Based upon the
15 competent, substantial evidence contained in the record, the
16 Council hereby determines that the requested waiver of small cell
17 wireless facility meets/does not meet the criteria for granting a
18 waiver contained in Chapter 656, *Ordinance Code*. Therefore,
19 Applications 9748, 9748.001, 9748.002, 9748.003, 9748.004,
20 9748.005, and 9748.006 are hereby _____.

21 **Section 2. Owner and Description.** The locations of the
22 proposed small cell wireless facilities is within the rights-of-way
23 owned by the City and is graphically depicted in **Exhibit A,**
24 **(Subject Property Map and Table),** all **On File** with the City Council
25 Legislative Services Division. The agent is Jeremy D. Sharit,
26 13051 Telecom Parkway East, Suite 100, Temple Terrace, Florida
27 33837; (813) 615-1422.

28 **Section 3. Distribution by Legislative Services.**
29 Legislative Services is hereby directed to mail a copy of this
30 legislation, as enacted, to the applicant and any other parties to
31 this matter who testified before the Land Use and Zoning Committee

1 or otherwise filed a qualifying written statement as defined in
2 Section 656.140(c), *Ordinance Code*.

3 **Section 4. Disclaimer.** The waivers granted herein shall
4 **not** be construed as an exemption from any other applicable local,
5 state, or federal laws, regulations, requirements, permits or
6 approvals. All other applicable local, state or federal permits or
7 approvals shall be obtained before commencement of the development
8 or use, and issuance of these waivers is based upon
9 acknowledgement, representation and confirmation made by the
10 applicant(s), owner(s), developer(s) and/or any authorized agent(s)
11 or designee(s) that the subject business, development and/or use
12 will be operated in strict compliance with all laws. Issuance of
13 these waivers does **not** approve, promote or condone any practice or
14 act that is prohibited or restricted by any federal, state or local
15 laws.

16 **Section 5. Effective Date.** The enactment of this
17 Ordinance shall be deemed to constitute a quasi-judicial action of
18 the City Council and shall become effective upon signature by the
19 Council President and Council Secretary. Failure to exercise the
20 waivers, if herein granted, by the commencement of the use or
21 action herein approved within one year of the effective date of
22 this legislation shall render these waivers invalid and all rights
23 arising therefrom shall terminate.

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25 Form Approved:

26
27 /s/ Shannon K. Eller

28 Office of General Counsel

29 Legislation Prepared By: Jason R. Teal

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