

**OFFICE OF THE CITY COUNCIL**

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4TH FLOOR, CITY HALL

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**JOINT LUZ AND TEU WORKSHOP MEETING MINUTES**

**SMALL CELL WIRELESS REGULATION**

**City Council Chamber, 1st floor, City Hall**

**June 21, 2018**

**11:00 a.m.**

**Location:** City Council Chamber, City Hall – St. James Building, 117 West Duval Street

**In attendance:** Council Members Lori Boyer (Chair), Matt Schellenberg, Joyce Morgan, Aaron Bowman, Jim Love, John Crescimbeni, Doyle Carter, Tommy Hazouri (arr. 11:12)

**Excused:** Council Members Al Ferraro, Aaron Bowman

**Also**: Paige Johnston and Jason Teal – Office of General Counsel; Trista Carraher – Council Auditor’s Office; Staci Lopez and Crystal Shemwell – Legislative Services Division

**Meeting Convened**: 11:00 a.m.

Council Member Lori Boyer called the meeting to order and the attendees introduced themselves for the record. Staff distributed a compilation of comments received on the draft legislation from wireless providers, tower companies and the JEA. Ms. Boyer said that she had asked Jason Teal of the General Counsel’s Office to review those comments, make whatever grammatical/non-substantive changes were requested to the draft and list other proposed changes that required policy decisions.

Mr. Teal conducted a review of the various proposed changes, grouped into categories and identified by the companies making the proposal. Chairwoman Boyer asked Mr. Teal to focus on the items needing committee discussion and decisions.

* Comcast requested clarification language in the ordinance distinguishing wireline providers (who attach small devices to existing utility wires) from wireless providers.
* Clarification was requested about who would be the initiator of requests to install wireless equipment on JEA poles – JEA or the wireless carrier. JEA proposed that an application first be filed with them, reviewed and approved, and then forwarded to the City for its review.
* Several providers questioned the City’s authority to restrict the size of small wireless facility equipment that can be pole-mounted versus placed on the ground; they contend that the Florida Statute authorizes 28 cu.ft. of cumulative equipment and does not give local governments the right to determine placement. Mr. Teal countered that the statute also does not prohibit local governments from doing so, so there is a grey area about local control in this regard. He said that objective design guidelines are clearly permitted, so he is comfortable recommending that size and placement be regulated under that authority on aesthetic and safety grounds. Chairwoman Boyer reviewed the current size and placement language in the draft ordinance. Council Members Schellenberg and Bowman advocated for 10 cu. ft. mounted on the pole rather than the 4 cu. ft. in the draft to make the playing field level for all potential providers and encourage rapid implementation of 5G service. Council Member Crescimbeni advocated for the 4 cu. ft. limit for equipment on the poles and the use of underground cabinets for the rest of the equipment, noting that new utilities (electric, telephone, cable television) are all being placed underground in Jacksonville seemingly without problems. By show of hands a majority of the committee voted to instruct Mr. Teal to draft an amendment to the bill to provide for 10 cu. ft. of equipment mounted on the pole. Alicia Grant, President of Scenic Jacksonville, advocated for undergrounding of all utilities and said that the more and larger equipment that is pole-mounted will be a visual blight on the community. She advocated for keeping the 4 cu. ft. limit currently in the ordinance. She said that more and more utilities are being placed underground across Florida.
* There is an inconsistency between the ordinance and the design standards about whether these facilities are allowed on pre-existing privately owned utility poles in the public right-of-way. Ms. Boyer asked staff to research whether/where there are private utility poles in the public right-of-way and of what sort to inform a discussion of this issue at a future meeting.
* The 2018 Florida Legislature amended the small wireless communication facilities law to restrict local governments’ ability to charge fees and taxes on communications providers, specifically prohibiting the charging of a security fee. Mr. Teal said that the term is not defined, however, but seems to be a basic entrance charge levied to permit any use of a public right-of-way. The City’s proposed $25,000 security fee per pole would instead be for the purpose of paying to remove facilities/equipment abandoned by an owner and left in the public right-of-way. He recommended changing the name for clarity to a “surety fee” to distinguish it as an indemnity fee rather than an entry fee and recommended removing the option for a cash deposit with the City and retaining the letter of credit or performance bond options for meeting that fee requirement to comply with the state’s prohibition on requiring providers to make payments to the local government. Council Member Schellenberg adamantly opposed an unreasonable fee that will drive providers away from serving Jacksonville. Council Member Crescimbeni said that letters of credit are inherently unreliable because they can be revoked. Council Member Morgan suggested a blanket citywide surety fee for each carrier rather than individual pole fees.
* The criteria for the City approving installation of new poles because existing poles are “not reasonably feasible” for co-location to provide the service are vague and need clarification about criteria to be considered (safety, aesthetics, financial, technological). In response to a question from Chairwoman Boyer about whether the committees wanted to back off from the initial draft’s expressed preference for co-location on existing poles, the consensus of the group was to minimize the number of new poles by continuing to emphasize co-location. Council Member Crescimbeni said the City is ill-equipped to make a feasibility determination for wireless facility locations and recommended that a distance limitation between poles might be a better option. Ms. Boyer said that she will work with Mr. Teal on more clear and defensible standards for the next meeting.
* Underground v. above ground facilities: Ms. Boyer said that the earlier decision to allow up to 10 cu. ft. of equipment to be pole-mounted, in addition to the provisions allowing equipment within an architectural base of new poles, should eliminate the need for underground facilities.

Chapter 656 (Zoning Code) changes: Planning and Development Director Bill Killingsworth discussed regulation of facilities on private property versus public rights-of-way. He said that he received comments and proposals from one company requesting: 1) reduced separation requirements (existing or proposed) for towers; 2) reduced co-location requirements; 3) shortened review periods for applications; 4) reduced setback requirements; 5) weakened data submission requirements; 6) adding authorization to locate antennas on single-family residences; 7) requirement for the City (rather than the applicant) to pay the fee for contractual consultant expertise in application review process. Mr. Killingsworth said that there were several proposals for less substantive changes that might be acceptable (i.e. batching applications), but by and large he felt the proposals defeated the intent that he understood the committee charged him with crafting language to implement the beginning of this process. He said that he would meet with Jason Teal to discuss acceptable changes and craft a new draft of the ordinance for the next meeting. Ms. Boyer asked Mr. Killingsworth to provide a “white paper” with the next draft of the ordinance explaining the rationale for the proposed changes.

Ms. Boyer said that she envisions that 2017-863 as currently substituted (on June 12th) will be up for consideration in committees the week of July 15th, with Mr. Teal’s proposed amendments to that version. If approved in committee it could be before City Council on July 23rd. The zoning amendments will be in a separate bill that will be drafted over the Council summer break to be introduced on July 23rd for consideration in August. All proposed changes should be directed to Mr. Teal or Mr. Killingsworth for drafting.

Public comment

None

**Meeting adjourned:** 12:10 p.m.

The written minutes of this meeting are only an overview of what was discussed. The following items have been submitted for the public record. Please contact Legislative Services for these items.

Minutes: Jeff Clements, Council Research

06.21.18 Posted 5:30 p.m.

Tapes: Joint LUZ and TEU Special Committee Meeting – LSD

06.21.18

Handouts: Joint LUZ and TEU Special Committee Meeting

06.21.18