

**OFFICE OF THE CITY COUNCIL**

**RESEARCH DIVISION**

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4TH FLOOR, CITY HALL

JACKSONVILLE, FLORIDA 32202

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**JOINT LUZ AND TEU SPECIAL COMMITTEE ON 2017-863**

**MEETING MINUTES**

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

**September 11, 2018**

**9:30 a.m.**

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

**In attendance:** Council Members Matt Schellenberg (Chair), Danny Becton, Anna Lopez Brosche, Al Ferraro, John Crescimbeni, Terrance Freeman, Jim Love, Randy White, Reginald Gaffney (arr. 9:50)

**Excused:** Council Member Scott Wilson

**Also**: Council President Aaron Bowman, Council Member Lori Boyer (arr. 10:12); Jason Teal and Shannon Eller – Office of General Counsel; Heather Reber – Council Auditor’s Office; Staci Lopez – Legislative Services Division; Jeff Clements – Council Research Division; Leeann Krieg – Mayor’s Office

**Meeting Convened**: 9:30 a.m.

Council Member Matt Schellenberg called the meeting to order and the attendees introduced themselves for the record. In response to a question from Council Member Crescimbeni, Council President Bowman indicated that he intended for this bill to be taken up a the council meeting tonight with the committees’ recommendation.

Heather Duncan of AT&T introduced Tracy Hatch (legal counsel) and Kevin Harrison (area manager for real estate and construction).

In response to a question from Council Member Crescimbeni, attorney Jason Teal of the General Counsel’s Office said that no provider has yet applied to make small cell wireless installations in Winter Park under their new regulatory ordinance. The Winter Park representative indicated that AT&T has indicated some interest in operating in Winter Park within the aesthetic restrictions, but has not yet made any application. Winter Park also claims an exemption from the state law requirements because the city owns the electric utility there, and municipally-owned electric utilities are exempt under state law from the requirement that small cell wireless infrastructure must be allowed in rights-of-ways.

In response to a question from Council Member Crescimbeni, Kevin Harrison of AT&T described the differences in equipment for two different power levels of small cell wireless installations (pico and micro), depending on the needs of the particular area, which entail different equipment cabinet sizes. Different radio sizes for different coverage areas require different sizes of equipment. He said the macro service (tall towers) will continue to exist and provide service to large areas after small cell wireless service is installed to continue carrying much of the traffic load.

Adam Oliver of Verizon Wireless said that his company has installations in Pinellas County and the City of Orlando where the company’s permits allow up to 28 cubic feet of equipment cabinets pursuant to state law. He did not provide copies of photos requested orally by Mr. Crescimbeni at the last meeting but offered to do so pursuant to a written request.

Public comment:

Tracy Hatch of AT&T said that a variance option is completely discretionary on the part of the permitting agency and does not answer the needs of the company to propagate its network as it needs to. He said that the proposed size limits don’t work technically with their equipment, which will need to be reconfigured from what it installs everywhere else in the state. The state statute specifically allows 28 cubic feet so there should be no question that it is permissible and can’t be altered by local government using a home rule argument.

Mr. Crescimbeni said that previous testimony by Jason Teal contradicted Mr. Hatch’s interpretation of the state statute and asked for him to comment when the Public Comment period is complete.

Alicia Grant representing Scenic Jacksonville and City Beautiful Jax said that she has talked to experts in this field and learned that other companies have developed smaller technology that fits the proposed smaller size limits. She objected to large capacity cabinets mounted on poles and felt that if one carrier can implement the smaller size equipment, the others should be able to do so as well. She said that the Federal Communication Commission requires that any new pole location must receive the approval of the 5 Indian nations in order to protect Indian burial grounds. She urged the City to obtain expert advice on this issue.

Lad Hawkins said that deployment of new technology has always been a planning issue and urged the City not to rush into permitting technology that would have a blighting impact on the City. He serves on the Greater Arlington/Beaches CPAC and reported that the CPAC had a lengthy discussion on this issue at its meeting this week and many citizens expressed concern about the potential negative appearance of pole-mounted equipment.

Tracey Arpen said that the City has one chance to get this issue right and urged the City to be a leader and do its best to protect the public interest rather than simply agree to whatever the rest of Florida allows the wireless providers to have. Jacksonville has a history of being aggressive and a leader in the area of beautification via offsite sign regulation and cellphone tower camouflaging, and he hoped the same attitude would apply to the regulation of these facilities. He felt that what was a very good ordinance as the beginning of the process has been watered down throughout the process and is now no better than mediocre.

Jason Teal said that state law requires the City to allow small cell wireless equipment in its right-of-way, but does not mandate that it has to be allowed on a pole. He contends the City has the right to impose reasonable aesthetic standards and could require that some of the 28 cubic feet of space referenced by the state be located on the ground or underground, and not on the pole. In response to a question from Mr. Crescimbeni, Mr. Teal indicated that he was unaware of the Indian nations point being raised by Ms. Grant and would investigate it before tonight’s Council meeting.

Paul Harden representing Unity Mobility said that whatever the cubic feet limitation, the proposed 12-inch maximum depth profile for pole mounted equipment is too small for his company’s equipment and requested that it be amended to 20 inches.

Council President Bowman said that the time has come for a decision by the committees and Council since the standards were originally expected to be completed last December. Council Member Love agreed with allowing the 20-inch depth requested by Mr. Harden and urged the committees to decide on a standard and pass the bill.

**Motion** (Love): TEU Committee recommends amendment of the bill to change the maximum depth dimension to 20 inches from 12 inches on existing poles and 15 inches on new poles

Attorney Shannon Eller of the General Counsel’s Office described the amendments to the substitute previously approved by the TEU and LUZ Committees.

Council Member Crescimbeni said he believed TEU had previously recommended a limit of 7 cubic feet of cabinet space mounted on a pole; Ms. Eller said the amendment was drafted at 6.7 cubic feet but TEU can change it now if it desires. The committee recommended 7 cubic feet.

**Motion** (Crescimbeni): TEU Committee recommends amendment of the bill as previously amended by the TEU and LUZ Committees and including the request from Mr. Harden to increase the maximum depth of a pole-mounted cabinet to 20 inches, to incorporate the following:

1. Removes imprisonment option from enforcement remedies

2. Changes the time limit from 90 days to 30 days for the Director to approve or deny an original application after an applicant has rejected an alternative pole location proposed by the City

3. On p. 60, line 17 strike “and” after criterion (ix) in the list of criteria to be considered regarding proposed waivers of requirements or design standards

4. On p. 60, at the end of line 20 strike a period (.) and insert “; and”

5. Adds an additional criterion to the list of factors to be considered when evaluating waiver requests: “(xi) Ensuring that all citizens of Jacksonville and Duval County have abundant access to broadband capability.”

6. Reduces size limit on pole-mounted equipment from 10 cu. ft. to 7.0 cu. ft.

7. Changes from 60 days to 30 days the time in which the City would have to provide a good faith estimate for any make-ready work necessary to enable a pole to support a requested co-location

8. Replace “line” with “and/or distribution lines” regarding collocation on existing poles in City Right-of-Way, Eligible poles

9. Regarding replacement poles, adds “for a streetlight, with an overhead power feed, the height of the streetlight pole may be increased up to five (5) feet if reasonably necessary to accommodate the top-mounted antenna and any related equipment”;

10. Regarding hollow replacement poles, adds “this requirement for concrete poles applies to concrete streetlight poles and not to concrete transmission and distribution line poles if such requirement is not reasonably practical.”

11. In Sec. 711.432 (Objective Design Standards) increases the maximum depth of pole-mounted equipment to 20 inches.

The Crescimbeni motion was **approved 6-0**

**Motion:** TEU recommends approval of 2017-863 as amended – **approved 6-0**

**Motion** (Becton): LUZ Committee recommends amendment of the bill as previously amended by the TEU and LUZ Committees and including the request from Mr. Harden to increase the maximum depth of a pole-mounted cabinet to 20 inches, to incorporate the following:

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10. Regarding hollow replacement poles, adds “this requirement for concrete poles applies to concrete streetlight poles and not to concrete transmission and distribution line poles if such requirement is not reasonably practical.”

11. In Sec. 711.432 (Objective Design Standards) increases the maximum depth of pole-mounted equipment to 20 inches.

Chairman Schellenberg said that he would be voting against the bill because it caters to the needs of one particular service provider who lobbied the Council for changes. Council Members Boyer and Crescimbeni disputed the contention that the bill is being modified for a particular provider; Ms. Boyer noted that several of the providers could incorporate their equipment within the 6.7 (now 7) cubic feet installation, although it may not be everything they would prefer.

Kevin Hatch said that AT&T could operate within the 7 cubic foot limitation, but it may require more antenna installations to cover the same area. Council Member Crescimbeni read a series of dimensions from a document he received from AT&T and questioned Mr. Hatch about whether they represent an existing installation in Florida; Mr. Hatch was unfamiliar with the city being referenced. Mr. Crescimbeni said that the document and a hand-written note were confusing and the numbers don’t appear to add up. Mr. Hatch said that AT&T would have to work with its equipment providers to produce a shroud that fits the City’s proposed size requirements.

Council Member Boyer pointed out that state rights-of-way are not regulated under the state law in question and the state can approve installations of larger size than the committees are contemplating at its discretion. The City’s control will be over local roads that typically are in neighborhoods; Jacksonville has a large number of state roads, including most major thoroughfares.

The Becton amendment was **approved 5-**1 (Schellenberg opposed)

**Motion** (Becton): LUZ recommends approval of 2017-863 as amended by LUZ –

**Motion** (Gaffney): amend the bill to provide for a 10 cubic foot size limitation – **dies for lack of a second.**

The Becton motion was **approved 5-1 (Schellenberg opposed).**

Council President Bowman stated that his intention was to have the bill acted on by the City Council tonight.

**Meeting adjourned:** 10:40 a.m.

Minutes: Jeff Clements, Council Research Division

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 9.12.18 Posted 6:00 p.m.

Tape: Joint LUZ and TEU Special Committee Meeting – LSD

 9.11.18