



Legislation Text

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WIRELESS TELECOMMUNICATION FACILITIES - AUTHORIZATION TO PARTICIPATE FEDERAL RULE MAKING (B)

The City Commission: 1) Join the Florida Local Government Coalition to file a response to the FCC regarding the FCC's Public Notice; and 2) Amend the existing retention letter with Gray Robinson, PA to allow Gary Resnick to represent the City in the FCC proceeding as a member of the coalition, for an amount not to exceed \$2,500.00

In June 2016, the City's Public Works department received two right-of-way use permit applications to place two wooden poles with antenna of approximately 75" in height, in the City's rights-of-way (ROW). The applications were made by a company named Mobilitie which provides infrastructure for wireless telecommunication providers. The applications were incomplete and Mobilitie's permits were denied because they were incomplete and also because the applications did not meet current city ordinances. In December 2017, Mobilitie again filed an application for a right-of-way use permit. That application was also turned down for being incomplete. Pictures and plans of the proposed placement of the Mobilitie poles are included in the back up to give the Commission a better understanding of the City's need to regulate placement of utility poles. Without regulation on location of, size of and placement of such poles, the City would not be able to prevent multiple pole placements in its rights-of-way.

At the same time that Mobilitie approached the Public Works department for a right-of-way use permit, several other wireless telecommunication providers approached GRU seeking to collocate on existing GRU poles. City staff, in reviewing the applications and requests, realized that the City's codes needed to be updated to address the new infrastructure needs caused by increased capacity needs of wireless telecommunications users.

The City Attorney's Office retained Gray-Robinson, P.A., outside legal counsel to assist the City in these issues. City staff consisting of representatives from GRUCom, GRU Electric, Planning Department, Building Department, Public Works Department and City Attorney's office met with Gary Resnick of Gray-Robinson, P.A. Mr. Resnick recommended that the City adopt a moratorium on the permitting of wireless telecommunication facilities within the public rights-of-way, while the City makes policy decisions on how best to accommodate wireless telecommunication facilities in Gainesville. City staff and Mr. Resnick are currently working to prepare recommendations to address locations of small cell and DAS communication infrastructure, as well as suggested revisions to the city code to address changes in federal law.

While Gainesville and other Florida cities are attempting to address the new infrastructure placements proposed by wireless telecommunication facilities, the wireless telecommunication industry has sought federal and state intervention in the siting of infrastructure in public rights-of-way. Mobilitie filed a Petition with the Federal Communication Commission (FCC) to obtain a declaration of Mobilitie's rights to access the rights-of-way under federal law. A copy of the petition filed by Mobilitie is included in the back-up. The FCC turned this petition into a larger, rulemaking proceeding, to review generally wireless facilities access to ROW, with a focus on small cells and DAS. A copy of the FCC Public Notice is also included in the back-up. From the comments in the Public Notice, the FCC may be considering preempting local governments' land use codes that

conflict with FCC regulations and/or adopting unrealistic procedural requirements for local governments to process such applications.

Simultaneously, the wireless telecommunication industry in Florida has drafted a proposed Senate bill which would require municipal utilities to allow collocation of wireless communication facilities on municipally owned utility poles and allow access for wireless facilities in public rights-of-way. The proposed bill as currently written would not adequately remunerate the municipal utility for the costs associated with collocation and may allow the placement of new poles in ROW to accommodate wireless facilities. A copy of the bill is included in the back-up. The bill is mentioned here to give the City Commission a sense of the attempts to pre-empt local regulation of pole locations and wireless facilities within the City's rights-of-way. The Florida League of Cities is forming a work group to provide advice with respect to the language of the proposed legislation and revisions that may be made. The Florida Municipal Electric Authority (FMEA) is also reviewing the bill with its members.

Even if the above-mentioned Senate Bill is not adopted, Florida's regulation of telecommunication is unique from other states. The Florida state legislature has limited local government's ability to regulate placement of utility poles, small cells, and DAS through our codes. Florida local governments cannot enter into agreements or establish fees for the use of our rights-of-way for communications facilities. Our only substantive ability to regulate placement of such facilities is through our land use codes and regulations. If the FCC issues rules either pre-empting land use regulations or establishing a model for siting small cells and DAS, Florida local governments will be disadvantaged from local governments in other states.

Several local governments in Florida, as well as the Florida League of Cities and Florida Association of Counties have agreed to participate in a coalition to have Gary Resnick (our outside legal counsel for Gainesville's code revisions) to prepare and to submit comments representing the unique interest of Florida local governments. Mr. Resnick intends to explain the authority Florida local governments have to regulate such access to the rights-of-way and provide examples from the various cities to demonstrate each city's efforts to provide wireless telecommunication services to its citizens while protecting the ability to regulate within the City. Each of the cities would be charged a legal fee not to exceed \$2,500.00 for Mr. Resnick's efforts on behalf of the cities at the FCC.