



City of Jonesboro

Municipal Center
300 S. Church Street
Jonesboro, AR 72401

Meeting Minutes Public Works Council Committee

Tuesday, July 30, 2019

4:30 PM

Municipal Center

SPECIAL CALLED MEETING

1. Call To Order

2. Roll Call by City Clerk Donna Jackson

Mayor Harold Perrin was in attendance.

Present 5 - Gene Vance; John Street; Charles Coleman; LJ Bryant and Ann Williams

Absent 2 - Mitch Johnson and Chris Moore

3. New Business

ORDINANCES TO BE INTRODUCED

[ORD-19:044](#)

AN ORDINANCE ADOPTING BY REFERENCE THE SMALL WIRELESS FACILITY REGULATION OF THE CITY OF JONESBORO FOR ADDITION TO THE JONESBORO CODE OF ORDINANCES

Attachments: [FINAL VERSION Small Wireless Communication Facility Regulation.docx](#)

Chairman John Street said, we need to forward that to full council and expedite it so that we can have it in place by September 1st when this becomes law. Councilmember Gene Vance said, I think that is our next step. I have a couple of questions. The sixth whereas, have we done the public notices and everything that is called for? City Clerk Donna Jackson said, yes. Councilmember Vance said, then I think you ought to read the whole ordinance, the other ordinance. Chairman Street said, that is fifty something pages and it is technical. I would refer to our City Attorney, Carol Duncan. Ms. Duncan said, we have Jason Carter here who drafted that ordinance so we will let him read 55 pages. Mr. Carter said, I will be glad to start reading. Councilmember Vance said, I was kidding.

Mayor Harold Perrin said, I did ask Mr. Carter, if you all will remember, we were going to draft an ordinance like this. Some cities went ahead and done that, but then after the legislative session took off, many changes were done on that. Some of those cities are going to have to redo their ordinance. Thank goodness we had Jason working with us on this ordinance and he was in the session daily working with all of the vendors, Verizon, AT&T, all of those because all of that has to be cleared or at least agreed upon with them. I asked Jason to come up tonight to just give you a few minutes of what we are talking about. I know that it has been a while on small cells.

Mr. Jason Carter, General Counsel of the Arkansas Municipal Power Association, said,

just to give you some background, I don't know how familiar you are with small cells and the technology that is around it. But, there is an expectation right now that small cell technology is the solution for connectivity in America. That is a common thought that is in the beltway. Whether it is right or wrong, that is the thought process that exists today. There is a race towards 5G, a new layer of connectivity for our citizens and America is in that race with China right now. So, we are trying to see who is going to get there first because that is who is going to write the protocols, that is who is going to say how this works, that is who is going to deal with the moral and ethical issues first of this very connected society that we have. And, I think it is going to be important. There is a big federal push right now to try to get small cells deployed. I don't like the tactic of their push. I don't like it at all because the tactic that came out of the FCC was to steamroll local government. So, two administrative orders were adopted by the FCC last year, one in August, one in September that made moratoriums on small cells absolutely prohibited first. The second order, which is a good two hundred pages long, I will let you read that one out loud if you want to, but it has numerous, numerous restrictions on the authority of local government to try to restrict the deployment of small cells. It says they have the right to be in the right-of-way. It limits your ability to charge fees. It imposes shock clocks about how fast they have to be processed. And, it not only says they have the right to be in the right-of-way, but they have the right to be on your stuff in the right-of-way, primarily poles. That is what we talk about primarily is poles, but it could be other things as well.

The city does have the ability to have reasonable aesthetics standards and protect your communities. And, that is one of the things that we are trying to do. I know this is a very robust document. It is long. But, what we have tried to do is protect ourselves, not just for our aesthetic interest, but also our infrastructure to make sure that somebody is not just installing things willy-nilly on public property in the right-of-way that is going to be dangerous or is going to restrict the ability to use the right-of-way fairly. We want it to work well. I appreciate the Mayor and I appreciate Carol for reaching out. The staff has been great to come around the table and I mean for hours on more than one occasion to go "how does this work? How does a piece of paper get brought in and then it evolves into actually a small cell device being installed, being installed as it was supposed to be installed right or remedies happen if it is not, you know, and then we make sure it is going to be operational because the end result is not only to make sure that the city's infrastructure is protected, but it is to make sure that the citizens are served, that these things work, that they are out there and they are happening. A primary concern dealing with small wireless facilities is the fact that we are not just dealing with AT&T and Verizon. The way that the law was adopted from FCC, it could be me in a pickup truck, deciding that I want to be in the wireless business. Right, so, if you don't have a good structure within which to regulate these things, you may wake up one day and you have got crazy stuff hanging on your poles and you are trying to figure out now what are we going to do about it. I think we have tried to plug as many holes as we could find about processes to see how we need to manage this to make sure that we get good installations; the installations work; they serve the community well; it is consistent with our aesthetics standards; and, if there is a problem, then we know how we are going to handle it. That has been the ultimate goal. So, if anyone has any specific questions about that, I would be glad to talk to you about it, to talk you through it because with fifty something pages here, it is probably in here somewhere.

Mayor Perrin, said, as you know, the city is not over control or anything of CWL with all of the poles that we are talking about and stuff, so we have had CWL in with us jointly on this venture. So, CWL has been at the table for every meeting, I am assuming,

every meeting that we have had. Ms. Duncan said, all of the hours of all of the meetings. Mayor Perrin said, right, that was just the direction again with Mr. Rice and I know that our councilmember, John Street, is on the CWL board. So, he knows all about it too. I just want them to know that. And, the fact that we are trying to beat the deadline before September 1st, basically, so that we will have, this city will have an ordinance in place that will take care of, hopefully justify, what all you just said about the aesthetics, how they put them up, where they put them up, what is the revenue, and etc. Am I correct on that? Mr. Carter said, you are. Ms. Duncan said, and if they don't work, they take them down where we can bill them if we have to take them down and things like that. Mr. Carter said, where City, Water & Light owns a lot of infrastructure, it preserves the aesthetic authority of the council. I think that is very important. It is great even though you are not in a direct control relationship. You are sisters in this thing and you are both working together for the community. I think that is going to be very important.

Chairman Street said, in the aesthetics of that and I am sure you have seen this and they probably aren't like that much in some places, but in researching that, I have seen some of those cells, some of that equipment is the size of a subzero refrigerator sitting on a city street. And, you talk about aesthetics, those things were ugly. It looks like a bus stop. It looks like a big steel box. If we don't have something in place, they could be up and down Jonesboro streets. Mr. Carter said, part of the objective with the regulation that we have is to identify the areas really that we are trying to protect. And, residences or residential areas, whether it is zoned to use for residential purposes is a very important area to protect. You are going to have commercial corridors that are very important to protect. If you have got outlying industrial areas, they are not as big of a deal, you know, the aesthetics for those. But, where you have got heightened aesthetic interest, you want to be able to control what the appearance of it is. The regulation is structured to where if this city council approves an aesthetic design, they can readily be adopted and put in and then they know what is expected of them and they go. If they haven't adopted to the extent that you haven't adopted a specific design or they want to do something different or that is not their technology or it doesn't work just right, there is a process to review it. They have to use the same type of poles that are out there. All of the equipment, all of the antennas have to match in color. They have to be fully concealed. We don't have exposed antennas. Any extensions from poles, like an antenna that goes above the pole should appear to be an extension of the pole. So, there is a lot of ways that we try to keep these looking better. So, if it is in an area where you have street lights, it ought to look like the street lights in general, have that kind of appearance to them. Ms. Duncan said, they still might not be pretty, but they will be prettier than if we had no regulation. Chairman Street said, right.

Mr. Carter said, the one point that I would ask for your consideration of is this is all brand new stuff. It is all brand new and everyone is sprinting forward right now. Again, I think in the race to beat the Chinese, we are going to have to be willing to learn as we go along to some extent and to improve the process as we go to some extent. And, then, as we do, we will be better served. Any permit that is issued is only good for ten years. The permit gets awarded. They can have that device in place for ten years. Whatever updated rules come about, when that ten years expire, they are going to have to live by the updated rules. So, I think that is a good thing as well. Chairman Street asked, did they give you any indication of when this was going to start? When they will start implementing these? Mr. Carter said, with my communication with AT&T, is that they are chomping at the bit for Jonesboro. You have got a great market here. There is a lot of economic activity, a lot of growth in Jonesboro. They think there is going to be a lot of people who want this kind of enhanced service, you know, wireless

service. And, they are chomping at the bit to try and get in here.

Ms. Duncan said, Jason, can we speak a little bit to the maps of the areas that you want to protect. I don't know if we got those in this yet Derrel, but we are working on maps like for downtown and other areas where we may want to preserve the look even more so besides residential. We need to get this in place and then we can add those maps once we get those areas designated to make sure those are in place as well. But, we needed to get this going before September 1st. Mr. Carter said, we have tried to think about it in as much detail as we can to the extent that we have even said, put it within 10 feet of the lot line. Don't put one of these things right in front of someone's occupied building or their home. I mean, don't do that. Stay to the side of the lot line. Put those kind of rules in place. Might there be details that we would want to add later, sure. We may learn as we go. We have checked fifty something pages of boxes for what that is worth.

Councilmember Gene Vance said, I want to make a motion that we forward this to full council and ask the council to consider having two readings at our meeting next week. Councilmember Ann Williams seconded the motion. Chairman Street said, I have a motion and a second to forward this to full council with a request that we have at least two readings on this. Is there any further discussion or do we have any questions on this? Councilmember Vance said, I do have a question. You mentioned the subzero freezer or refrigerator, is there anything in here about safety and sight lines? Mr. Carter said, yes sir. There is. Throughout the document, we require a setback of 18 inches off of the street. A 25 ft. sight triangle around intersections. So, if you take an intersection, you draw 25 feet back from each corner of the intersection, you draw a triangle. Nothing goes in there. That is a safety precaution. And then the setback from the street you are able to see pedestrians. Councilmember Vance asked, is your sight line 18 inches or 18 feet off the edge of the street? Mr. Carter said, so off the edge, so linearly, it is 18 inches off of the street. Our communication with that was how are we normally installing utility poles. The NESC actually lets them go 6 inches off of the street. Which we all kind of sit around the room and go is that what we want. Do we want to say that? I mean 18 inches seems like a little further back to have a little more separation off of the street. Councilmember Vance said, that would be pole mounted. What about ground mounted? Mr. Carter said, the ground mounted equipment, the antenna won't be ground mounted. The antenna is going to have to be in the air, but the equipment can be ground mounted. It can be subterranean depending upon the area where you are being served. They have to be no closer than two feet to the pole nor further than five feet from the pole to be able to maintain the area. Councilmember Vance said, that could interfere with the sight line. Mr. Carter said, it could. I guess in theory, you could have a pole that is just outside of that sight triangle and the ground mounted equipment encroaches up to five feet, at a maximum of five feet.

Councilmember LJ Bryant said, Mayor, just a quick question. Given that there will be so much so quick, do you think all of the existing staff can handle this or do you envision that you will have to bring anybody else in to help with the flood of permits and such? Ms. Duncan said, that is a good question. Mayor Perrin said, well, that is a good question and again, like he said, we are going to learn as we go. But, I think the first step is getting this done before September. And, then, if, in fact, there is a rush or whatever for those to come in here, then we will just have to, I will just have to come back to you all if we need additional staff or whatever. I do want to say thanks to Carol, the City Attorney, and everybody that has been in those meetings. Those are long meetings and to go through all of that stuff, I am telling you, takes a lot. We will get the maps done. If there is any additional staff that is needed, then I will come back to you all and explain that and where it needs to be. Councilmember Bryant said, thanks.

Mayor Perrin said, that would be in Planning, I am sure that the permits are going to start coming through the planner first. Ms. Duncan said, right. Mayor Perrin said, and that could even tie back into the City Collector again to be paid. So, those things like that. We will follow through with that and I can give you all a report. That is not a problem. Even on the revenue side, once it gets going, then I think I would like to give you all a report on the revenue side so you can see what it is at and also give you the locations. So, as we put those installed, it is nothing to go click it by phone, have those locations, and give you all a good report on that.

Chairman Street asked, Mayor did you say you are going to have Mr. Carter here for the Council meeting on Tuesday as well? Mayor Perrin said, thanks to Mr. Carter. I called him this morning at 11 and said if we get technical on this thing, I am going to run. He said, why don't I just get in the car and come up here. So, he just drove up here today for this. My hats off. Thank you so much. I know you work with Jake Rice and represent them on this. So, we do appreciate it. Chairman Street said, I am sure some of the council will have questions on this for him or questions that he can explain to some of the general public. We appreciate you being here and we appreciate you coming back on Tuesday. Mr. Carter said, absolutely. Councilmember Vance said, I have got one more question. I think he answered it a while ago, but if this is in place before September 1st, we can amend it in the future? Mr. Carter said, yes sir and thank you for bringing that up because the big question is what is the big deal about September 1st? We get those questions. The big deal is how the state law shook out. If your ordinance is adopted before September 1st and then you get into a conflict over this requirement or that requirement and you think one thing and AT&T or Verizon or T-Mobile or whoever, they think another thing and you are quibbling over an issue, it is just contained to that one issue if you are in before September 1st. If it is after September 1st, any part of your regulation that is overturned would render your whole regulation to be thrown out. We talk about severability, right, to be able to sever one part out of the ordinance and go well there is a problem with this piece, but the rest of it is just fine. That is really the push to get in before September 1st because we want that severability. We really do. It is not to say that we can't amend it, we can't fix it, I would encourage this to be a living document. Let staff work it. It is a brand new process. As we learn, I am sure we will come back to you with bigger and better ideas. Chairman Street said, thank you.

Harold Carter, 902 Tony, asked, what are the consequences? Have I missed something here? What are the consequences if you don't adopt this ordinance? Ms. Duncan asked, if you don't adopt one at all? Mr. Carter said, yeah. This is new. It has been quite detailed in trying to master this. Pardon me if it doesn't seem like all of the city officials don't know totally what is going on here. I'm not. But, I haven't studied it that close. But, I know what it is. What are the consequences if we don't do anything? Ms. Duncan said, well, I think they are going to come. I mean Jason can answer in more detail but they are going to come one way or another. Mr. Carter asked, who is going to be enforcing their coming and saying you have to or we are taking. Ms. Duncan said, the federal government has put that on us. Mr. Carter asked, what part of the federal government? Ms. Duncan said, Jason will come up and talk to you about it Mr. Carter.

Mr. Jason Carter said, that is a great question about why. Why do we have to do this? Mr. Harold Carter asked, why do we have to do it so immediately? I mean why is it critical? Ms. Duncan said, we have worked on it for a year. Mr. Harold Carter said, I get the impression ok, the federal government is fine, but I get the impression amongst private industries that there are some big boys out there that want to push this through right now. And, they think that is important to them. If that is true and I believe it is,

then they are doing it to make money, a lot of money. Why the hurry? Ms. Duncan said, sure. Sure they are. But, we have been working on this for a year. It is not like today is the first day that any of us and it is not the first time it has come to council. We had a previous ordinance that was introduced back at the end of last year that we tabled at the end of last year because a representative of AT&T stood up on the third reading and had a bunch of questions and so we ended up tabling that. So, it is not a new idea. The city has been working on this for over a year. But, I will let Jason speak as to what happens if we don't do anything.

Mr. Jason Carter said, the right to install these small wireless facilities in the rights-of-way and on public property in the rights-of-way comes from the FCC. So, it was an order that was issued by the Federal Communications Commission. Two orders. One in August and one in September of last year. Cities have fought that and the Arkansas Municipal League has fought that and it is being litigated right now, but it is the law. Within that framework that those orders were issued, that is where the state law developed during the last legislative session. So, do you have to adopt an ordinance? No, you don't. You don't have to adopt an ordinance at all. But, if you don't adopt some sort of ordinance, then there is no way to stop anybody who wants to, not just AT&T and Verizon, anybody who wants to, to come into your town and to attach things on your pole as large as a subzero refrigerator, to put them around in your town. If you don't adopt an ordinance, you are not going to have control over what they are going to look like or be able to evaluate their engineering designs and how they are going to work. Is it going to damage your infrastructure? Is it going to be a risk to the public? If you put the framework in place, you can control those things. And, I think that is what it is about.

Mr. Harold Carter said, well, I mean the city and the state, obviously, I don't want each question answered separately, but what do our legislators have to say about this. It doesn't sound like they have much more leeway than the city council. What if they said no? Mr. Jason Carter said, well, they were asked and they didn't. Mr. Harold Carter said, that sounds good to me. I like it. Mr. Jason Carter said, if you look at Act 999 of the last legislative session, that is Arkansas' small cell framework. And, that was a set of statutes that was worked on for months. Some of it models other states. I was a part of those negotiations. We tried to get as much authority for cities as we could in it. But, at the end of the day, the votes are cast and the act was adopted as it was. So, those are the rules that we play by.

Mr. Harold Carter said, the safety aspects of this of flooding a whole city with radio frequency at whatever levels, I am not sure. Who is going to enforce that? I mean who is going to enforce the safety standards? There are standards on that and I am not sure that the standard that you quoted is the only one. There are always competing standards out there. Is this a safe standard? Who says it is and even if we are stuck with some standard like this for small wireless, who is going to be going around with mirrors and inspecting this saying, "that is too high. It is too high here. It is too high there. It's ok here." I mean, who is going to do that? Mr. Jason Carter said, so those are great questions. Mr. Harold Carter said, I know they are great questions because I know the consequences of having cities flooded with radio frequency and then some day finding out, oh, by the way, they are going to double that next year because they found out it doesn't work good this way and they can't make as much money as they want and they want the money bad and they are big and they have got leverage on the government. I know quite a bit about this, not all of the technical details, no, but the details that it takes to get what bigger bureaucratic companies want. Mr. Jason Carter said, the RF emissions are obviously a safety concern. It is a concern that the cities have. The closer you get to one of those antennas, the less safe it is. That is why

there are safety protocols built into the fifty pages that we have. One of the things that we have to be aware of is the type of equipment that is being installed. The safety restrictions that are associated with that. They have to provide a safety briefing for our employees who are going to work around the vicinity of those. There is going to be a power cutoff where we know that we can disconnect the power to that device whenever we are working at a distance that would not be safe for our employees. We need a solid cutoff that also cuts off the backup power. Mr. Harold Carter asked, are there going to be caution signs on all of these big boxes for the public. I might decide to go in front of my house and lean against a telephone pole or a power pole. Ok. I think I could figure out that is not a good idea independent of signs. But, let's face it, there is a lot of people in town here that couldn't figure that out. Mr. Jason Carter said, well the antenna is the point of emissions. That is going to be at an elevated point. It is a point of safety unless you climb the pole. I would encourage you to not do that. Mr. Harold Carter said, I am not going to do that. You can rest assured of that. But, you know, obviously, your people are climbing the poles, yes, but other people are only going to be standing on the ground if they have got any judgement. But, is it going to be safe there and who is going to check the levels there? That is where most people are going to be exposed to that.

Councilmember Vance said, Mr. Carter, I might help just simplify one thing that you asked as to why the rush. If we don't have this in place by September 1st, you can't come to the city, you can't come to the Mayor and say there is too much RF being discharged from that unit. And nobody around here will. You will have to go to the FCC and try to get relief. If we get this in place, at least the city will have some say so in the placing, what they look like, whether or not they work and if they don't come to the standards, then we will be your first line of defense. So, this is really for you, in your defense, putting it simply. Mr. Harold Carter said, well, I am more concerned about the safety from the radio frequency. But let's face it, a lot of these things sound to me like you are not even going to be able to sustain the Americans with Disabilities Act on these sidewalks. Who are you working for Mr. Carter? Mr. Jason Carter said, I represent cities. I represent cities as they try to navigate the process of making small cell regulations. Mr. Harold Carter said, who is to say that these things can be so big? How would you enforce it if someone came in a wheelchair or represented them and say this would be interfering if I wanted to go down that route. Ms. Duncan said, we are not going to let them put them right in the middle of our sidewalks, that's what these regulations are about is controlling where they place them. That is why we need this ordinance. Mr. Harold Carter said, well good, hopefully, that solves that. But, I am not sure with the US government and the FCC and the whole bunch of them taking so much focus and interest on this that if they decide to change it and say as I have already said, oh, the power will be double tomorrow, but it won't hurt you either. Ms. Duncan said, well, Mr. Carter, we deal with that every day. Mr. Harold Carter said, I know you do, but I am not aware of all of the stuff that you deal with. I am aware of this. Ms. Duncan said, I am not talking about "we" as a city council, I am talking about "we" as citizens of America. They tell us the milk is safe one day and then not safe the next day. The lettuce is safe one day and then it is not safe the next day. We are at the mercy of our federal government to a great degree in many things. But, in this, they have given us the ability to put some guidelines in and that is what we are trying to do with this ordinance. Mr. Harold Carter said, I am just trying to find out if the guidelines are going to give you much ability to do anything or how bad it would be if you didn't get them. Ms. Duncan said, yes, they are going to give us the ability to do something. Chairman Street said, it is going to be much better to have it than not have it. I can guarantee you. Ms. Duncan said, right. Chairman Street said, we are not going to solve the federal government crisis. Mr. Harold Carter said, it is better to not be shot at with a high powered rifle. Ms. Duncan said, but the shot has already been fired by the FCC.

The shot has already been fired. So, we either put something in place to try to block us from being hit as hard as we can be hit or we don't. The shot has already be fired. We can't unfire it. Chairman Street said, Mr. Carter, the cities have opposed this. Everybody has opposed this back over the last year and a half. The City of Jonesboro is not going to outdo Congress and the Senate so you need to talk to Senator Boozman and your reps there if you are concerned about that. Mr. Harold Carter said, well, I am not going to say what I think about that. Chairman Street said, well, that is about the only recourse you have. We are doing what we can do. Mr. Harold Carter said, I think you can read my mind and know what I have got to say, but what good would that do and why. Chairman Street said, we are going to have to wrap this up. Do you have any other questions? Mr. Harold Carter said, well, that is enough I think. But, I oppose this and I don't care about the "but we have to anyway." If the city council doesn't have any more power in this country, any more than this, well then, it doesn't have much power. Chairman Street said, we don't have much power. Ms. Duncan said, not in this one.

A motion was made by Councilperson Gene Vance, seconded by Councilperson Ann Williams, that this matter be Recommended to Council . The motion PASSED with the following vote.

Aye: 4 - Gene Vance;Charles Coleman;LJ Bryant and Ann Williams

Absent: 2 - Mitch Johnson and Chris Moore

4. Adjournment

A motion was made by Councilperson LJ Bryant, seconded by Councilperson Ann Williams, that this meeting be Adjourned . The motion PASSED with the following vote.

Aye: 4 - Gene Vance;Charles Coleman;LJ Bryant and Ann Williams

Absent: 2 - Mitch Johnson and Chris Moore