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Small Cells/Big Changes: What Cities Need to Know About Telecommunications

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Advanced Wireless Infrastructure Deployment Act

Wireless industry priority to obtain access to public rights-of-way and government-owned poles to collocate “small wireless facilities”

Establishes process for “wireless providers” – which includes both service providers and infrastructure companies (that install and manage such facilities) – to place “small wireless facilities” in municipality or county public rights-of-way.

Specifically excludes Florida Department of Transportation rights-of-way.

The Act became effective July 1, 2017, and is codified in Section 337.401(7), Florida Statutes.

Local Governments Favor Advances in Technology and Wireless Broadband Services, But Are Opposed to Preemption that Restricts Appropriate and Reasonable Regulations.

Similar Legislation In Other States

- ▶ Similar legislation was enacted in **Arizona, Colorado, Delaware, Indiana, Iowa, Kansas, Minnesota, North Carolina, Ohio, Texas and Virginia**. Bills failed in several states.
- ▶ Court challenge in **Texas** by local governments on grounds that the legislation is unconstitutional. Statute amounts to a 'give-away' to private, for-profit industry of public property.

The Act provides:

Preempts local authority. Except as provided in the Statute, a city or county cannot:

- ▶ Prohibit, Regulate, or Charge for the collocation of **small wireless facilities** in the public rights-of-way.
- ▶ **4 Types of Installations** that May Occur in the ROW:
 - Collocate a small wireless facility on an existing utility pole/structure
 - Install a new utility pole for collocation of a small wireless facility
 - Install micro wireless facilities on existing aerial cable, and
 - Install a ground mounted small wireless facility for equipment

A Utility Pole includes a pole used for communications or electric distribution, lighting, traffic control, or signage.

What is a “Small Wireless Facility”?

The Act defines small wireless facility as:

- ▶ Deployments with **enclosed or exposed antennas no more than 6 cubic feet in volume**; and
- ▶ All other associated wireless **equipment that is no more than 28 cubic feet in volume**

Time Frames to Process Applications

- ▶ A local government has **14 days to determine if an application is complete**, and, if not, to provide notice to the applicant of the *specifically identified* missing information.
- ▶ A complete application must be approved or denied within **60 days** or it is "**deemed granted**."
- ▶ The parties may mutually agree to extend the 60-day application review process.

May Deny An Application If the Small Wireless Facility:

- ▶ Materially interferes with the safe operation of traffic control equipment;
- ▶ Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
- ▶ Materially interferes with the ADA or similar federal or state standards concerning pedestrian access or movement;
- ▶ Materially fails to comply with the 2010 edition of the FL DOT Utility Accommodation Manual; or
- ▶ **Fails to comply with applicable codes.**

What are Applicable Codes?

- ▶ Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes solely to address threats of destruction of property or injury to persons.
- ▶ **Local codes or ordinances adopted to implement this Act. This proposed Ordinance constitutes an applicable code.**
- ▶ **Objective design standards adopted by ordinance.**

Objective Design Standards

- ▶ May require new or replacement poles be of similar design, material, and color as existing poles;
- ▶ May require ground-mounted equipment to meet reasonable spacing requirements;
- ▶ May require a small wireless facility to meet reasonable location context, color, **stealth, and concealment requirements.**

NOTE: May waive such standards if not reasonably compatible to a particular location or impose an excessive expense. Any waiver request must be granted or denied within 45 days of receipt.

Ordinances Can Also Include

- ▶ Requirements for registration, insurance, security fund, indemnification, warranties, abandoned facilities & performance bond for construction;
- ▶ Industry Attempt to Prohibit Security Funds by Amending Tax Statute
- ▶ Application requirements & procedures;
 - ▶ Pre-application meeting; engineering plans; no permit fees
- ▶ **Construction requirements**, excavation and restoration. Installs are **difficult**; Wireless facilities need fiber connection, generally installed below ground.

Collocation on Government Poles

- ▶ Terms for collocation on City-owned utility poles.
 - ▶ Reservation of space for public safety.
 - ▶ Fee: \$150 per pole per year
 - ▶ Cannot compromise the utility pole's finish, functionality or structural integrity.
 - ▶ Make ready work or replacement is at communication provider's cost.
 - ▶ Maintain discretion to remove poles.

Location & Objective Design Requirements

- ▶ Location context regulations. May restrict facilities:
 - ▶ Where they would interfere with traffic, pedestrians or other ROW users.
 - ▶ Where would interfere with drainage or other utilities.
 - ▶ If within HOA, must comply with HOA restrictions.
 - ▶ Where all utilities must be and are installed underground.
 - ▶ Where would interfere with capital improvement projects,
 - ▶ Where would negatively impact historic properties.
- Design Standards: Poles, Collocated 6 cu. ft. & Ground Mounted 28 cu. ft. Facilities
 - Consider pole design, finish (color), material, design of top/base
 - Collocated – where attached, finish, design issues
 - Ground-Based Facility – Blend In or Stand Out As Public Art, Design, Finish, Material, Spacing, Landscaping &/or Wrap



Sample of Small Cell Solutions in Urban Landscape (Before and After)



Shrouds

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Antenna Shrouds

Used at the top of pole to conceal mounting brackets and coax wires.
Create a smooth transition from pole to antenna.
Can be painted to match pole, antenna or both.



New Metal Stealth Pole



Existing JEA Streetlight Pole



New Concrete Pole







Pole Mounted vs. Ground Cabinets

Pole Mounted Cabinets (Shrouds)

Mounted at a minimum of 10' above ground level.
Used on concrete and metal pole applications.
48" tall and will conceal and house all radios and equipment.
Secure and out of reach from vandalism and graffiti.
Do not require additional excavation during installation.
No additional structure added to right of way.



Ground Cabinets

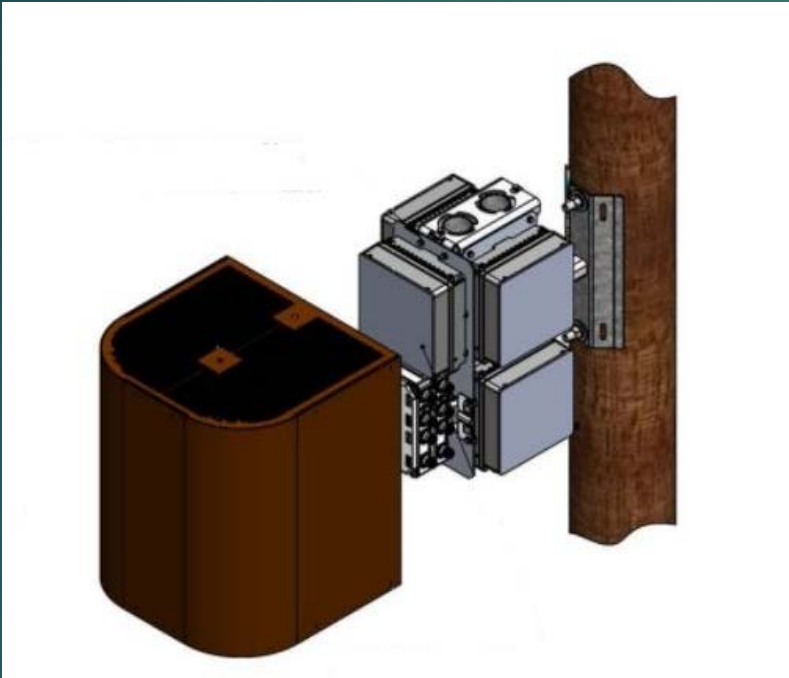
Placed within 10' of pole depending on existing obstructions (sidewalks, driveways, utilities).
Conceal and house all radios and equipment, allow for power meter to be mounted.
Secures equipment but vulnerable to vandalism and graffiti.
Requires additional digging for installation and path to pole for power and fiber transport lines. Height is between 36" to 48" tall.





Radio Shrouds

Used on wood pole applications at mid-pole location (15' above ground).
Enables concealment of radios, power units and wire connections.
Galvanized brown finish to match pole color (other colors available).



- ❑ **Standard Wooden Utility Pole**
50' or 32' top of antenna depending on desired coverage area.
Placed by AT&T Mobility or Co-located on existing Electric poles.



Standard Concrete Utility Pole
50' or 32' top of antenna depending on desired coverage area.

Placed by AT&T Mobility or Co-located on existing electric poles.

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❑ Standard Metal Utility Pole - Stealth Design (New Pole Placement)

50' or 32' top of antenna depending on desired coverage area. Placed by AT&T Mobility, used in downtown area where no existing poles are present. Painted to match color of surrounding lighting structures.

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- ❑ Alternate Stealth Examples (Streetlight Co-location)
47' or 37' top of antenna depending on desired coverage area.
Co-located on existing JEA poles.



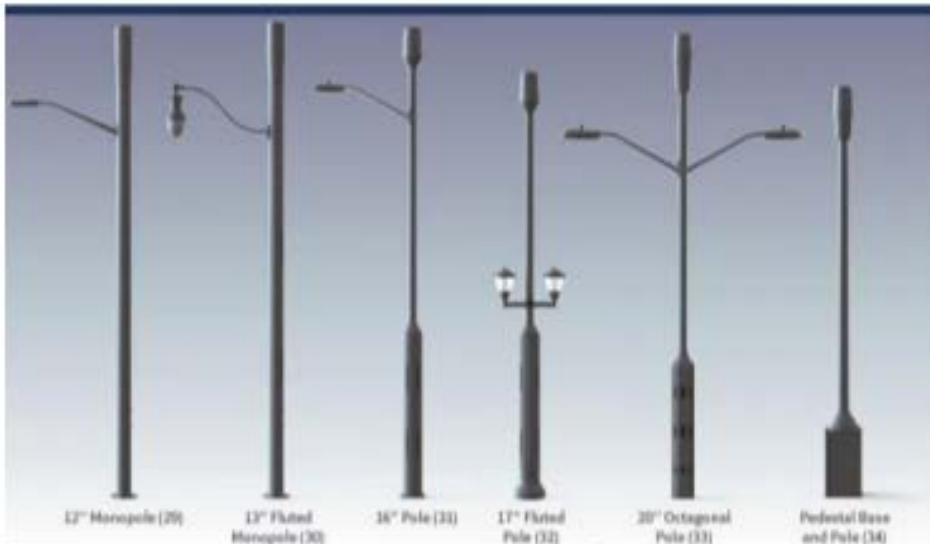
Decorative Installation Examples

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Decorative Installation Examples

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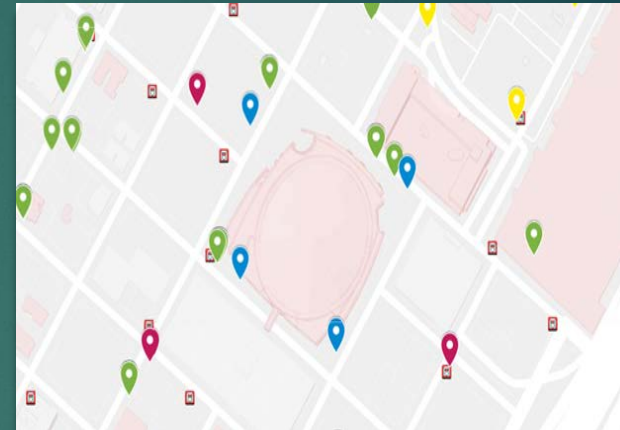
Examples: Installations and Locations



Photo Sim
Submitted With
Application



Picture of Installed



Locations Within
Urban Downtown
Area

Excavation Issues Are Common



May 12, 2018, contractor for a wireless carrier installing fiber via directional bore struck a water main, which caused a flood and the road collapsed, creating a sink hole which blocked the entrance to a neighborhood in Cooper City. (Sun Sentinel picture)

Federal Policy Preemption Caveat – FCC

- ▶ **FCC Broadband Deployment Advisory Committee (BDAC).**
 - ▶ Model Local Government Code – Would Not Be Appropriate In FL As Not Consistent With Statute
 - ▶ Model State Code – Developed With No Local Input. Not Adopted by Full BDAC. May continue working on a model state code.
- ▶ **FCC Wireless Notice of Proposed Rulemaking.** – May Issue Regulations For State and Local Regulation of Small Cell Facilities By Fall 2018.
 - Could preempt State and Local Law -- impose limits on undergrounding & local design aesthetics
 - ▶ May reject carve outs in Florida and Other States' Statutes -- FDOT ROW, Coastal Communities, Muni-Utilities, Retirement Communities, and HOAs.
- ▶ **Aug. 3, Moratoria Order** : State & Local Moratoria are a violation of §253 of Communications Act; FCC Bureaus will consider on a case-by-case, expedited basis if a particular moratorium violates federal law and is preempted. States & local governments may potentially have to defend moratoria at the FCC.
- ▶ **RF Concerns:** Federal law preempts regulation of radio frequency emission standards to the FCC. Standards were adopted in 1996, long before this technology was deployed in ROW 10-15 feet from homes, parks, schools, etc. FCC opened proceeding in 2013 to update standards, but no action. NLC and other federal groups pushing for updating standards. Residents will raise health concerns when ordinances are being heard and facilities being deployed. FLC is considering a Resolution at this Conference for the FCC to move forward with updating the standards.

Federal Policy Preemption – Congress

S. 3157: Filed By Senators Thune (R-SD) (Chair of Senate Commerce Committee) and Schatz (D-HI). Came up with fun name: "Streamlining: The Rapid Evolution and Modernization of Leading-edge Infrastructure Necessary To Enhance (STREAMLINE) Small Cell Deployment Act.

- **Substantially Different From FL Statute:**
 - ▶ **Governments Covered:** FL Statute Covers "Counties and Municipalities" – Would not apply to CDD's, Muni-Electric Utility Poles, FDOT ROW, Certain Coastal Communities, Certain Retirement Communities i.e. The Villages. S.3157 applies to all states or local governments or instrumentalities thereof.
 - ▶ **Facilities Applicable:** FL Statute applies to poles, 6 cu. ft. and 28 cu. ft. small cell facilities. S. 3157 applies only to a "small personal wireless service facility in which each antenna is no more than 3 cu. ft. in volume. Could have different regulations apply to applications for different facilities.
 - ▶ **Registration:** S. 3157 does not address registration so unclear if "shot clock" would start notwithstanding not having an effective registration.
 - ▶ **Fees:** S. 3157 provides for permit fees based on actual and direct costs to process applications, but no fees for use of city-owned poles. FL Statute – no permit fees, but \$150 fee per pole. May preempt FL law to allow charging permit fees.
 - ▶ **Carve Outs:** FL Statute allows local governments to preserve historic properties and restrictions under HOA covenants. S. 3157 contains no carve outs: can only regulate for objective and reasonable engineering standards, safety or aesthetic requirements.
- Very Difficult for City Staff to process various Applications if S. 3157 passes and determine what standards to apply.
- Lots of **litigation**.
- FLC Exec. Director Mike Sittig wrote to Senator Nelson, who is the ranking member of the Commerce Committee, opposing S. 3157.