# Legislation Details (With Text)

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| **File #:** | ORD. 2019-293 | **Version:** | 1 | **Name:** | |
| **Type:** | Ordinance | | | **Status:** | Withdrawn |
| **File created:** | 10/15/2019 | | | **In control:** | City Council |
| **On agenda:** | 11/14/2019 | | | **Final action:** | 11/13/2019 |
| **Title:** | To amend City Code §§ 28-837, concerning records of facilities, 28-857, concerning the authority required for the placement and use of poles, wires, and conduits, and 28-862, concerning joint use of existing poles or conduits and board of arbitrators, and to amend ch. 28, art. VII, by adding therein a new div. 3 (§§ 28-876-28-882) for the purpose of authorizing the Director of Public Utilities to issue permits for the installation of wireless facilities in the public right-of-way. | | | | |
| **Sponsors:** | Andreas Addison | | | | |
| **Indexes:** | | | | | |
| **Code sections:** | | | | | |
| **Attachments:** | 1. Ord. No. 2019-293 - Withdrawn 20191113 | | | | |

| Date | Ver. | Action By | Action | Result |
|---|---|---|---|---|
| 11/13/2019 | 1 | City Council | withdrawn | |
| 11/12/2019 | 1 | City Council | continued and referred back | |
| 10/24/2019 | 1 | Governmental Operations Standing Committee | recommended for continuance | |
| 10/14/2019 | 1 | City Council | introduced and referred | |

To amend City Code §§ 28-837, concerning records of facilities, 28-857, concerning the authority required for the placement and use of poles, wires, and conduits, and 28-862, concerning joint use of existing poles or conduits and board of arbitrators, and to amend ch. 28, art. VII, by adding therein a new div. 3 (§§ 28-876-28-882) for the purpose of authorizing the Director of Public Utilities to issue permits for the installation of wireless facilities in the public right-of-way.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That sections 28-837, 28-857, and 28-862 of the Code of the City of Richmond (2015) be and are hereby **amended** and reordained as follows:

**Sec. 28-837. Records of facilities.**

The Director shall keep on file suitable records showing electric wiring, poles, streetlights and other facilities owned, rented, maintained or used by the electric utility, including, but not limited to, showing of privately-owned facilities sited on the electric utility's poles and other facilities.

**Sec. 28-857. Authority required for work.**



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Persons, except City departments, and except as otherwise provided in Article VII, Division 3 of this chapter, desiring to install, construct, maintain, alter or use poles, wires, cables, conduits, manholes, transformers or any appurtenances using electricity in, over or under the streets of the City shall first obtain authority to do so from the [~~City Council~~] Director.

**Sec. 28-862. Joint use; board of arbitrators.**

(a) Persons whom the City Council or the Director has authorized to install, construct, maintain, alter or use poles, wires, cables, conduits, manholes, transformers or any appurtenances using electricity in, over or under the City streets should, before applying for a permit to erect poles or install conduits, first determine the advisability of using existing poles or conduits. Persons may apply to the owners of existing poles and conduits in the streets for permission to install their wires or cables on the existing poles or conduits, and the owners of the poles and conduits shall grant this permission.

(b) The terms and conditions of such joint use may be agreed upon by the parties in interest. If the parties cannot agree upon satisfactory terms and conditions, the Director may require the owner of the poles and conduits to permit the desired joint use upon terms to be fixed by a Board of Arbitration, selected as follows: one person to be appointed by each of the parties in interest and the third to be selected by those appointees. If either appointment is not made within 15 days after notice from the Director or the third arbitrator is not selected within 30 days, the Director shall select disinterested persons to complete the Board of Arbitration. The decision of the majority of the Board of Arbitrators shall be final and binding upon the owner of the poles or conduits and the party desiring joint use. The Director shall have the authority to require the owner of the poles or conduits to allow the applicant for joint use to enter upon and use the equipment under such conditions as the Director may prescribe as soon as the applicant shall have appointed an arbitrator, but the person so entering shall do so under a contract and bond that such person will abide by and conform to the terms and conditions determined upon by the arbitrators. All expenses incidental to arbitration shall be divided equally between the parties in interest.

(c) The Director shall also have authority to require the owner or applicant to furnish and afford such protection to the property of the other as the Director may deem proper or necessary in order to allow the wires of each party to perform the purposes or functions for which they were intended.

§ 2. That Chapter 28, Article VII of the Code of the City of Richmond (2015) be and is hereby amended and reordained by **adding therein a new** division numbered 3, consisting of sections numbered 28-876 through 28-882 as follows:

**DIVISION 3**

**USE OF CITY-OWNED UTILITY POLES FOR WIRELESS FACILITIES**

**Sec. 28-876. Definitions.**

For the purposes of this division, the terms and phrases, when used in this division, shall have the meaning ascribed to them in this section, except where the context clearly indicates that a different meaning is intended:

*Antenna* means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

*Permit* means a permit or renewal permit issued by the Director to a wireless infrastructure provider or wireless services provider in accordance with this division.

*Permittee* means any wireless infrastructure provider or wireless services provider that holds a permit issued in accordance with this division.

*Renewal permit* means a permit that is renewed in accordance with this division.

*Small cell facility* means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative


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volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, ground-based enclosures, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

*Wireless facility* means equipment at a fixed location that enables wireless services between user equipment and a communications network, including (i) equipment associated with wireless services, such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio transceivers, small cell facilities, antennas, coaxial, or fiber -optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

*Wireless infrastructure provider* means any person, including a person authorized to provide telecommunications service in the Commonwealth of Virginia, that builds or installs transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

*Wireless services* means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i); (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using wireless facilities.

*Wireless services provider* means a provider of wireless services.

*Wireless support structure* means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing structure or alternative structure designed to support or capable of supporting wireless facilities.

**Sec. 28-877. Permits authorizing the use of City-owned utility poles for wireless facilities; regulations.**



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Notwithstanding any provision of this chapter to the contrary, the Director is authorized to issue and renew permits, approved as to form by the City Attorney, to wireless infrastructure providers and wireless services providers for the attachment of wireless facilities to City-owned utility poles and for the use of such poles in accordance with this division, the Federal Telecommunications Act of 1996, as amended, the standards established by the Federal Communications Commission, and other applicable laws and regulations. The Director shall issue, enforce, and, from time to time, modify rules, regulations, or guidelines consistent with this division, the Federal Telecommunications Act of 1996, as amended, the standards established by the Federal Communications Commission, and other applicable laws and regulations to carry out the requirements of this division. Such rules, regulations, and guidelines, and any and all modifications thereto, shall be approved as to form by the City Attorney or the designee thereof prior to issuance.

**Sec. 28-878. Permit requirement.**

No person shall attach any wireless facility to any City-owned utility pole unless such person has obtained a permit in accordance with this division.

**Sec. 28-879. Application for a permit.**

(a) Any wireless infrastructure provider or wireless services provider may file an application on forms provided by the Director to obtain or renew a permit for the attachment of wireless facilities to City-owned utility poles in accordance with this division. Such applications shall be submitted to the Director or the designee thereof, subject to such written procedures as the Director may establish for such purpose. Each application to obtain or renew a permit shall be accompanied by a certificate of insurance demonstrating evidence of commercial general liability insurance coverage of at least $3,000,000.00 for each occurrence and at least $5,000,000 in the aggregate, listing the City as an additional insured, and indicating that the City will receive at least 30 days' notice of cancellation or material modification of the policy.

(b) The Director or the designee thereof shall consider the following information and materials, which the applicant shall provide with any application for a permit. The Director or the designee thereof may

deem as incomplete any application not containing all of the following information:

(1) The applicant's name and status as a wireless service provider or wireless infrastructure provider and a valid electronic mail address at which the applicant may be contacted.

(2) The name, address, and phone number of the authorized representative of the applicant.

(3) A general statement of the applicant's proposed use of City-owned utility poles.

(4) Certification by the applicant of the applicant's compliance with the Federal Telecommunications Act of 1996, as amended, all applicable standards established by the Federal Communications Commission, and with all other applicable federal, state, and local laws and regulations.

(5) Detailed plans clearly depicting the following, provided that the Director or the designee thereof may, in the Director's discretion and to the extent permitted by law, require any such plans to be sealed by a certified land surveyor or professional engineer:

a. Scaled drawing detailing the location of the City-owned utility pole on which the wireless facility will be attached. To the extent available to the applicant, all of the following information shall be included:

(1) The names of the streets in the vicinity;

(2) The precise location of the City-owned utility pole in the streets, including the distance to the adjacent street's right-of-way lines;

(3) Approximate lot lines of adjacent properties, along with the parcel numbers, addresses, and the property owners' names; and

(4) Nearby features, shown with labels, including, but not limited to, sidewalks, curbs, pavement, utility infrastructure, houses, buildings, and structures.

(5) A detailed plan with an overhead view of the proposed wireless facility, including the dimensions and specifications of the antenna, base station, and all other

associated wireless equipment.

(6) A detailed elevation with a profile view showing the proposed location of the wireless facility on the City-owned utility pole and a drawing and labels depicting the proposed wireless facility, including the base station and all other associated equipment as well as all existing facilities and attachments located on the City-owned utility pole. The applicant shall include dimensioning to indicate the heights and separations of the facilities on the City-owned utility pole upon completion of the proposed attachment.

(7) All other information as may be requested by the Director, to the extent permitted by law, to carry out the requirements of this division.

**Sec. 28-880. General terms of permits.**

Permits issued in accordance with this division shall contain, at a minimum, the following general terms and conditions:

(a) A requirement that the permittee shall comply with the requirements and limitations set forth in the permit as prescribed by the Director or the designee thereof in accordance with this division.

(b) A requirement that the permittee shall comply with this division, the applicable requirements of the Federal Telecommunications Act of 1996, as amended, the standards established by the Federal Communications Commission, and all other applicable federal, state, or local laws and regulations.

(c) A requirement that the permittee shall maintain the wireless facilities covered by a permit in a manner determined by the Director to preserve the public welfare and safety with respect to electric utility facilities within the city.

(d) A requirement that the permittee shall protect, at the permittee's expense, the City's electric utility infrastructure, and all other City-owned real property or City-owned personal property, from damage that may be caused by the permittee's wireless facilities or any installation or maintenance thereof.

(e) A requirement that the Director shall take such action, as appropriate and to the extent permitted



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by law, to establish, maintain, and operate City-owned wireless network technologies, demand-free access, and bandwidth to install wireless telecommunications networks, self-monitoring, analysis and reporting technology; radio transceivers; and other equipment on City-owned utility poles, in order to facilitate the City's use of such wireless facilities.

(f) A requirement that the permittee, upon the written request of the Director, shall submit to the Director all such information and documentation as the Director may deem necessary, to the extent permitted by law, to ensure the permittee's compliance with the permit and with this division.

(g) A requirement that the permittee, upon the written request of the Director, shall submit to the Director all information and documentation pertaining to the wireless facilities installed or operated by the permittee, or installed or operated on the permittee's behalf, including, but not limited to, all equipment providing service to the City pursuant to the permit and each permit issued in accordance with this division.

(h) A provision authorizing the Director, upon the written request of the permittee, to modify the permit by a writing approved as to form by the City Attorney.

(i) A provision authorizing the Director to modify the permit, by a writing approved as to form by the City Attorney, as the Director deems necessary to the extent required or permitted by law or for the preservation of the safety, health, and welfare of the citizens of the City.

(j) A requirement that any failure to comply with the permit requirements, the requirements of this division, or applicable federal, state, or local laws and regulations shall result in revocation of the permit, which revocation shall not be appealable.

(k) A requirement that the Director shall provide the permittee with written notification of any revocation of the permit.

(l) A requirement that the permittee shall remove all wireless facilities from the City-owned utility poles covered by the permit within 30 days after the date of any written notification from the Director of the revocation of the permit.



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(m) Any other terms or conditions that the Director deems appropriate to fulfill the requirements of this division or applicable federal, state, or local laws and regulations.

**Sec. 28-881. Issuance of permits.**

Permits issued in accordance with this division shall be subject to the following limitations:

(a) The Director may issue and renew one or more permits to the same permittee, provided that the permittee has filed an application in accordance with this division.

(b) The permittee shall file an application and obtain or renew a permit for each wireless facility such permittee proposes to attach to a City-owned utility pole. No permit may cover more than one wireless facility.

(c) The applicant shall demonstrate on the applicant's application that the applicant has met all of the applicable requirements of this division, the Federal Telecommunications Act of 1996, as amended, the standards established by the Federal Communications Commission, and all other applicable federal, state, or local laws and regulations.

(d) Each permit issued by the Director shall state the following:

(1) The name of the permittee and the name, address, and phone number of the authorized representative of the permittee.

(2) The description of the wireless facility covered by the permit.

(3) Specifications concerning the location of the City-owned utility pole to which a wireless facility is attached and plans depicting where on the City-owned pole the wireless facility is installed.

(4) Such limitations and information, to the extent permitted by law, that the Director deems necessary for the administration of the permit in accordance with this division and for the preservation of the safety, health, and welfare of the citizens of the City.

(e) The Director, upon the written request of the permittee, may modify a permit by a writing approved as to form by the City Attorney.



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(f) The Director may modify a permit, by a writing approved as to form by the City Attorney, as the Director deems necessary to the extent required or permitted by law or for the preservation of the safety, health, and welfare of the citizens of the City.

(g) Permits may be issued and renewed annually for a period of 12 months from the date of any such issuance, subject to the requirements of this division and the rules, regulations, and guidelines issued in accordance with this division and provided that an application has been filed for such issuance or renewal. In addition, a permit may be renewed annually pursuant to terms and conditions not set forth in a permittee's previously issued or renewed permit, provided that such terms and conditions are approved by the Director and are not inconsistent with the requirements of this division.

(h) Permits shall incorporate by reference the provisions of this division and the rules, regulations, and guidelines issued in accordance with this division.

**Sec. 28-882. Denial of permit; revocation.**

(a) The Director shall deny a permit to any wireless infrastructure provider or wireless services provider upon determining that any such wireless infrastructure provider or wireless services provider has not complied with any one of the requirements of this division, any one of the wireless infrastructure provider's or wireless services provider's existing or expired permits, or applicable federal, state, or local laws and regulations.

(b) The Director may revoke the permit of any permittee upon determining that the permittee has not complied with any one of the requirements of this division, any one of the permittee's existing permits, or applicable federal, state, or local laws and regulations. The Director shall provide the permittee with written notification of any revocation of the permittee's permit. The permittee shall remove from the City-owned utility poles all wireless facilities covered by a permit within 30 days after the date of any written notification from the Director of the revocation of such permit.

§ 3. This ordinance shall be in force and effect upon adoption.



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