

Legislation Text

File #: 2018-1778, **Version:** 1

Presentation and consideration of an update to the City's Right-of-way Code

Issue/Request

Presentation and consideration of an update to the City's Right-of-way Code in Chapter 26

Key Issues:

- City has primary responsibility for the use including safe conditions of the right-of-way, but State continues to reduce authority and increase duties
- Enacted and pending legislation has or will increase duties, remove authority and open up the right-of-way to uses not previously required
- Updating the Code will place the City in a position to retain as much authority as allowed under State and federal law and provide some protection for City property and abutting landowners

Background:

From the beginning of statehood, cities have "owned" the rights-of-way (ROW) and had the nondelegable duty to maintain the ROW in a safe condition for their intended use. ROW is an easement in most instances. Occasionally cities own the ROW in fee title. When property is dedicated as ROW, the Cities (and counties) hold the ROW in trust for the public for limited purposes.

Appropriate and lawful uses of the ROW include pedestrian and vehicular traffic and utility use. Until 2000, a utility was required to seek a City's consent to use its streets. This was accomplished in a variety of ways but generally through a franchise which was a contract to use the ROW for a limited purposes and usually included rental payments called "franchise fees". In most cities the citizens voted on granting franchises. Beginning in 2000, the State began requiring consent of cities and attempting to control the terms of use including the ability to recover any fees for the ROW use by a for profit company. The ability to obtain franchises and charge for the use of the ROW has already been curtailed in many regards. The last major update of the Code was in 2009. Legislation is again pending in the current session of the General Assembly with the stated purpose of accelerating the deployment of small wireless facilities on the ROW, easements and City owned land. Updating the current City Code with this pending legislation in mind will, to the greatest extent possible, preserve the City's authority. The PowerPoint presentation provides more detail on the areas the proposed update would touch upon.

Presenter: Nancy K Yendes, Chief Counsel, Infrastructure and Planning

Recommendation: Staff recommends moving the proposed update to the City's Right-of-way Code forward for consideration and adoption.