



Legislation Text

File #: O-1819-18, **Version:** 1

CONSIDERATION OF ORDINANCE O-1819-18 UPON SECOND AND FINAL READING: AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING SECTION 22:431.2 OF THE CITY OF NORMAN CODE OF ORDINANCES CHANGING THE SECTION TITLE TO COMMUNICATION FACILITIES, ADDING DEFINITIONS AND UPDATING RELATED TERMINOLOGY, CLARIFYING LANGUAGE APPLICABLE TO COMMERCIAL COMMUNICATION TOWERS AND TELEVISION AND RADIO TRANSMISSION TOWERS, AND ADDING REGULATIONS RELATED TO SMALL CELL WIRELESS FACILITIES; AND PROVIDING FOR THE SEVERABILITY THEREOF.

BACKGROUND: Over the last year, cell phone providers and infrastructure providers have approached cities around Oklahoma about attaching a new technology called “small cells” on street lights, electric poles, and structures to enhance the cellular network and provide faster download speeds. Small cells are critical to the implementation of a new fifth generation (5G) cellular network. The Oklahoma Municipal League formed a working group of municipal attorneys and municipal electric utility providers to work on legislation with cell service providers at the request of AT&T. The efforts of the working group culminated in Senate Bill 1388, which was signed by Governor Fallin on April 26, 2018.

The Federal Communications Commission (“FCC”) issued a Declaratory Ruling on September 26, 2018 in the matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment. This ruling included adoption of Final Rules for Streamlining State and Local Review of Wireless Facility Siting Applications. Staff has studied this new ruling and the pending federal legislation and compared each to the recently adopted Oklahoma Small Wireless Facilities Deployment Act. Staff has studied both the new State law and the recent FCC ruling and has drafted an ordinance addressing small cell facilities that complies with both State and federal law.

DISCUSSION: None of the City’s current approaches to right of way management adequately address small cell wireless facilities in compliance with State or Federal law. Ordinance O-1819-18 would amend Section 431.2 of the City’s Zoning Ordinance. Currently this section of the Zoning Ordinance addresses Communication Towers. Under the proposed ordinance, Section 6 would be added to address small cell wireless facilities.

Small cell facilities constructed in accordance with the new regulations will be allowed in any zoning category as a permitted use. An applicant desiring to have a small cell facility placed in the right-of-way would submit a Siting Application to the City and provide a map of all proposed small cell locations (up to 25 can be included in one application), as well as construction and engineering drawings for each location that are sufficient to demonstrate compliance with all applicable codes, including codes adopted by the City of Norman and any FAA regulations that may impact pole height near the Westheimer Airport. If the applicant proposes to add a small cell facility to an existing pole (collocation), the applicant must provide an engineering analysis that demonstrates conformance with applicable codes, as well as stamped construction drawings that together will demonstrate the pole can accommodate the additional facility.

In regard to application fees, the FCC provides that fees must be a reasonable approximation of the City’s objectively reasonable costs to review the application. In the case of collocation, the State law says that the fees charged by a City cannot exceed \$200 each for the first five small cell wireless facilities on the same application, and \$100 for each additional facility on the same application. State law says that application fees for new, modified or replacement poles cannot exceed \$350 per pole on the same application. The proposed ordinance complies with the state law limits - \$200 for the first five facilities and \$100 for each one thereafter on the same application, and \$350 per each pole replacement or modification.

When a siting application is received, the City has 20 days to notify the applicant in writing whether the application is complete. If it is incomplete, the City must specifically identify the missing information. Once a complete application is received, the City has 60 days to issue a written decision for a collocation siting application, and 75 days to issue a written decision for an application to install, modify or replace a utility pole. If a siting application is denied, the applicant can either cure the deficiencies in the application within 30 days of the denial or file an appeal with the Board of

Adjustment consistent with appeals from other zoning ordinance determinations.

The height of the small cell facilities and associated poles are limited in the ordinance in accordance with State law. Each new or modified pole in the right-of-way cannot exceed the greater of 10 feet above the tallest pole within 500 feet in the same right-of-way, or 50 feet from ground level. Each new small wireless facility installed on an existing pole cannot exceed 10 feet above the existing pole. Additionally, small cell facilities are required to blend in with the poles and surrounding area to the maximum extent possible. In the case of decorative poles, the small cell facility components should be contained within the pole as much as possible. Both state and federal law recognize the right of a city to enact reasonable spacing requirements to avoid a proliferation of poles. In the proposed ordinance, poles cannot be placed within a 500 foot radius of each other.

If the City needs access to the right-of-way and needs the facilities to be relocated or modified, the proposed ordinance requires the wireless provider to make such modifications or relocate within 60 days of receiving written notice. In the case of an emergency, the City can move or cut any small wireless facility if necessary. Any damage to the right-of-way caused by the wireless provider shall be repaired within 2 weeks of written notice issued by the City. If the provider does not make such repairs, the City can make them and charge the provider for it.

This ordinance puts in place a local regulatory framework to guide Staff's processing of siting applications allowed under State law.

RECOMMENDATION: Staff recommends approval of Ordinance O-1819-18. Planning Commission reviewed this ordinance at their meeting of November 8, 2018 and recommended adoption by a vote of 6-0.