Title XI Amendments - Small Cell Facilities

Approved: November 2, 2022

What are the State and Federal Limitations?

The City's authority to regulate small cell wireless technology, including pole installation in public rights-of-way, is constrained by federal FCC regulations and by state law, namely the Oklahoma Small Wireless Facilities Deployment Act, enacted by the Oklahoma legislature in 2018, which provides,

"Subject to the provisions of this section and approval of an application…, a wireless provider shall have the right, as a permitted use not subject to zoning review or approval, to collocate small wireless facilities and install, maintain, modify, operate and replace utility poles along, across, upon and under the right-of-way."

Federal and State laws do not allow Cities to:

- Consider potential impact on property values
- Consider health concerns
- Have regulations that materially prohibit small cell service
- Discriminate against small cell facilities relative to other facilities and right-of-way occupants
- State and federal law also require the city to approve or deny small cell permit applications within a specific timeframe (per state law and the City's ordinance, 75 days), essentially placing a "shot-clock" on the time in which cities must process applications If an application is neither approved nor denied within 75 days, the application is deemed to be approved.

What is the City's current practice?

Right-of-way permits are issued consistent with regulations in Title 11. The city currently collaborates with telecommunication companies to collocate these facilities on existing light poles or other poles when possible. The City's current ordinance requires facilities to be installed underground in areas where existing facilities are underground, unless given an exception, but does not describe the exception process.

Summary of the Changes:

- Increased notice, communication, and resources for Tulsa residents. Concerned residents have frequently contacted the city when work legally begins in the right-of-way. These amendments require notice of the project be displayed prior to pole installation in neighborhoods (non-arterial right-of-way). This will allow residents to know project scope, the contact information for the permit holder, the service provider, and anticipated start date.

- Enhanced location and design standards. Depending on the proposed location (e.g., some standards only apply to non-arterial ROW and/or where underground utilities are located), poles and their associated equipment and antennas will be subject to additional design standards such as placement in relationship to a single-family home, material, color, diameter maximums, and considerations for the surrounding environment.

- Compliance with Federal and State Law. Applicants will still need to option to apply for an exception if they believe they cannot provide the service under the new regulations. The proposed amendments provide for that process and require specific documentation in an exception application. An appeal process is also established in the amendments.

What specific changes are included in the proposed ordinances?

Chapter 12 Amendments: *These are the substantive location and concealment requirements that add Utility Pole Location Standards for new and/or replacement utility poles.*

The new requirements impact items such as:

- Requiring collocation of facilities if possible

- Pole Design including:

    - Visual consistency with other poles in the immediate vicinity

    - Material and color approved by the city and material that is similar or better quality and durability to existing poles in the area

    - Blend with the surrounding environment to the greatest extent possible

- Diameter maximums (18 inches), (applies to non-arterial ROW installation)
- Pole location: If within the permitted right-of-way, be located on side lot lines and not in front of a single-family residence

- Regulates pole equipment and antennas by including shrouding and diameter requirements (applies to non-arterial ROW installation where utilities are underground)
- Requires "stealth technology" --> least visually and physically intrusive design, equipment and installation that are not impractical and blend to the greatest extent possible
- Notice to the Public Requirement (non-arterial installations)
  - An applicant shall post a sign 20 days prior to the anticipated commencement of the installation. The signs shall say:
    - Type of facilities and utility to be provided
    - Height
    - Name of entity performing installation
    - Name of service provider
    - Date of installation
    - Contact information – website or email address
- Chapter 12 also authorizes the Director of Streets and Stormwater to adopt design guidelines consistent with these items to be approved by the City Council

Chapter 16 Amendments: *Defines the circumstances under which an applicant can request a waiver of the requirement that small cell facilities be located underground, in locations where existing facilities are installed underground. The city cannot materially prohibit these types of facilities, so this waiver process is provided for.*

If seeking a waiver, the applicant must provide:

- A report from a professional engineer evidencing that the installation of small wireless communication facilities at the specified location is necessary to provide wireless communications service in that area,
- Show that underground installation would be unsafe, impractical or technically infeasible,
- Collocation is not possible, and
- Submit a design or plan in compliance with the location and concealment standards

The applicant would have the right to appeal to the City Council if a request for a waiver of the undergrounding requirement is denied.