

City Council Study Session
July 20, 2021
5:30 p.m.
Municipal Building, Executive Conference Room

Minutes

1. DISCUSSION REGARDING PROPOSED AMENDMENTS TO SMALL CELL FACILITIES

Ms. Muckala – I'm filling in on this issue, but I have gotten as up-to-speed as I can, so I think I'll be able to answer most questions. As you're likely aware, we're here to discuss some amendments to our small cell ordinance that was passed a couple of years back. A lot of you may recall that it was passed just after Senate Bill 1388, which was implemented in State law November 1, 2018. Here is some background that a lot of you probably have seen fairly recently, so I'll just try to skip over it. A lot of that I already said but, obviously, this is federally regulated, in addition to State law. The FCC has a great interest in making sure that these small cell facilities, which enable 5G technology, that they get out there – that this gets proliferated. So we know there's strong federal support, strong State support. Cities were dealt in, as far as Senate Bill 1388, and we've been acting under those guidelines. Just for those of you who haven't seen them, here are some examples of small cell facilities – what they look like. I noticed all these examples are on light poles, but that's obviously not the only option. Here the last one is a good example of how they've tried to blend it into the decorative light pole a little bit. That's addressed in our ordinance. The thing about small cell technology is that they have a smaller range, obviously – 1500 feet is my understanding of the industry standard. So that's less flexible than the humongous towers, but they're better able to blend into the surroundings, so the idea is to get 5G in those dense areas, which is improving what's already there. It's not establishing new.

Here's a rundown of federal law. As I've said, there is a strong preference to make this happen, but the cities were given some leeway here to see how it's implemented, particularly in public rights-of-way. But, of course, we're all learning this area together. Obviously, there's going to be some impressions that cities are slowing down this process. We're reviewing, we're asking questions, and so we have to find a way to do that efficiently and effectively and to get the questions answered that are most important to the city, as well as its' residents. So here's what we can do. Obviously, we can regulate generally this placement, construction and modification, charge fair and reasonable compensation, and manage our public rights-of-way. All of that is already addressed in our current ordinance. Here's what we can't do. We just can't say no. OG&E, for instance, they can't say no if they need to locate on their poles – if they need to allow collocation, then they have to do it. So we have to accommodate that as well. We can't require too much documentation and, in particular, we can't act outside the boundaries of what we're allowed to look into, what we're allowed to ask about and do. The idea behind those restrictions being we just can't unduly say go away, we don't want you here. We can't do that. So our ordinance is already sensitive to that fact. Obviously, discrimination between providers – that's a no-brainer.

Here's a rundown of Senate Bill 1388 and, again, this is going to be repetitive to some or maybe most of you. It applies to both collocation and deployment of new poles or wireless support structures. Here is generally the parameters for permitting. There's a shot clock – I can run down this more particularly and how it was implemented into our own ordinance. Generally, once the application is complete, we're on a timeline to get things done. Obviously, moving through this process quickly is in everyone's interests. We want to know what plans are coming into Norman. We want to be able to address them swiftly and efficiently, and they want to get their technology in place. We can require permit in the case that we're already asking others to do it. That's going to be another common thing you hear. If we're asking it of others, we can ask it of them, as long as it's reasonable. Once approved, they must complete within a year, and then they're allowed to stay there for ten. Again, this is evaluation of permit applications and we can ask for reasonable information that demonstrates compliance with the act which, as you know, is incorporated into our ordinance in specific places. We cannot tell them, hey, you have to put it here. That's obvious. We can't say we'll give you this for that. And, obviously, we have to follow safety codes, and we have the ability to deny under certain circumstances. Aesthetics are obviously a big issue. A lot of this is already addressed in the State law. As you can see, it cannot be more than 10' taller than those around, or 50' above. They must be fitting the antenna within 6 cubic feet, the entire facility within 28. They must try to conceal. We can adopt reasonable and non-discriminatory spacing, so that's another way that we can control the aesthetics. As long as they're not interfering with other technology that's been placed, they can be located on the same pole, and that's a lot of what we'll be talking about tonight – collocation.

Here's what we're allowed as far as permit fees. Again, if we ask it of others, we can ask it of them; it must be reasonable. Collocation has a fee of \$200 for the first five, \$100 for each additional. With collocation and pole placement or installation, that's \$350 per pole – a cap of \$350 per pole. Then, of course, there's occupancy fee – if they're going to place it on City-owned poles, which would be \$20 per pole, and then \$20 per facility beyond that.

So we're here to discuss amendments to our ordinance, which was originally passed as Ordinance O-1819-18. Here is the information you've been given previously on our ordinance. The red is obviously what we're changing. As you can see, it's only one aspect, and that aspect is an important one. We're asking for information on the front end. As you know, and as I've laid out here, there's a lot of aesthetic concerns, there is location, spacing details. When we receive an application, our Public Works Department is looking very closely at this information, and we've found over and over they were asking the same questions. Why wasn't this considered? Is there a reason this one won't work? We were seeing situations with lots of poles already located, and we have the authority and the power to ask these questions and to vet these, but in a way it's also the duty to ask these questions so that we know the answers to the questions. So that's what we kept finding ourselves doing. So putting in a requirement for the affidavit saying we've already had these discussions and here's the reasons why we couldn't make it work – it simply shortens the process. You'll see in the shot clock – it's up here – it's coming up, I promise – I keep talking about it. We can say your application is not complete and

then we're pretty much at a standstill at that point. Once we've said we need this information, hey can you answer this, we really can't go anywhere. It's once the application is complete that things get moving. So until then, we're really at kind of an impasse. This is to avoid that; it's to speed things up. And, honestly, it gives them notice of the questions we now know we're going to be asking over and over.

This is all the same as before, and it's a repeat of a lot of what I just said from the State law. Here is some of the items in our ordinance already, with the red showing where we've tweaked it a bit. Again, aesthetics and just in general placement. We've already discussed the tree canopy, adjacent properties. We've looked at a lot of different ordinances and we saw consistently that other municipalities were obviously addressing sidewalks and walkways – matters of public egress. So it made sense; we've suggested that. And then we have suggested, again, a reasonable and non-discriminatory spacing requirement of a 500' radius, as long as it's on the same side of the street.

Councilmember Studley – Maybe I'm mistaken, but I thought that we reduced the number of feet. I thought that that's what we had talked about in the meeting before this whenever we were talking about the small cell facilities. Am I wrong in that? That we reduced the number of feet.

Mr. Sturtz – It looks like the decision here is actually to say if another small cell facility – and take out that restriction. So there's just a lot of different options and ways to go. I wasn't really involved directly in this decision-making, but that's the difference here. Instead of saying within any pole, it's 500' within a radius within another small cell facility.

__ -- Right. When they were here and did the presentation with us, they had wanted to do like – was it like 70 or 80, and then they reduced it. They sent us a new email where they reduced the number down to like 25.

Ms. Muckala -- Application numbers.

__ -- Yes. They weren't going to put as many in Norman as they originally had thought, but we had also talked in that meeting about reducing the number of feet between because it was just – once we started looking at things, we realized it was a little ...

__ -- I think the concern was not adding any more pole than were absolutely necessary.

Ms. Muckala – Did your packet materials include a copy of the redlined ordinance changes?

__ -- No.

Ms. Muckala – Okay. I think we can send those out, and that will address a little bit of this. But as Mr. Sturtz was saying, the language was changed from simply addressing a pole within a 500' radius, to a wireless support structure. Over this learning curve, we've realized there are other places where these can be placed and we didn't want to be

ruling out other options for placing them. So that's one change to the language here regarding spacing, but the 500' radius was already within there. The language that was added was a change to pole and then the change to located on the same side of the street. And, again, I apologize that the simple red-lines weren't sent; we can get those to you easily. And, in fact, that's what I thought I probably needed to go back to this slide for, because we are requiring an affidavit saying we've already discussed these things, but I noticed that there wasn't bullets here for the actual items that are being discussed. There are four topics that we find ourselves that we keep coming back to, and a lot of these are addressed in the State law. They're just within that pocket of authority we've been given to vet these things. So the first is a reason why they may not be able to collocate is when it exceeds the structural capacity of existing support structures already there. The second is when it might interfere with other existing telecommunications equipment in the area. And in the cases where this is happening, again, we're saying get us an engineer or someone who can explain it to us why this is the case. The third is when the facilities in place cannot accommodate a small cell facility at the height necessary for it to be effective. Then the fourth is where you have a situation where they simply couldn't come to terms with a third-party provider regarding commonly reasonable lease terms – essentially how much is going to be charged for that location – is it going to be feasible in terms of everything. We're using the words reasonable here, and those are always in the legal world going to be subject to interpretation, but, of course, again, we have federal guidance, we have state guidance – all of that plays into a determination of what reasonable really is going to end up being. So we do have parameters here. But those are the four you should know about.

Again, that's a repeat. We just discussed that. So the 78 number, Councilmember Studley, that's just applications received to date. Whether or not any applicants may have decided to consolidate or reduce, that could have happened. That's just literally the number that's been submitted through March of this year. Four of them were approved but, again, a lot of them went back as incomplete applications based on the fact that we just didn't have the feedback we needed in order to apply our ordinance. So this is designed to help us get off high center on some of this.

So we have some examples – some pictorials of just the best illustrations here. Again, some of you may have seen them. We'll try not to be repetitive. This is a location on Main Street where you can see street lights and utility poles were designated. In this particular case, within a 500' buffer, you can see 19 existing street lights, 8 existing utility poles, and 3 of them are easily right next to them. That obviously is going to make us ask why can't we find a solution here? So those are the kinds of questions you'll see on that one. This one is an example of a potential impact on a residential area. Again, there is a very high number of existing street lights in this area, two of which actually are already located in front of the particular residence in which this proposed structure is set. Here's a picture of the front. You can see the taller light pole on the left, the decorative one in center, and I'm thinking – I guess they want to place the other one about there. Another residential example, not as many in this case, but as you can see the language I just referenced, within 500' on the same side of the road we have two of those right here. So we're automatically asking the questions.

These amendments are not just pulled out of thin air, obviously. We looked at as many comparable situations as we could, obviously within the state because they're going off of the same state law – the exact same law. The Oklahoma Municipal League had some guidance that we gleaned, and then we really did take quite a bit from Bixby's ordinance, but also Little Rock, Owasso, Broken Arrow were looked at closely as well.

I did want to let you know the proposed schedule for moving this forward. I think the plan was August 12 for Planning Commission, and September 14 first reading, September 28 second. Again, if we can get it there. That's just the timeline that we thought might be able to work. So with that, I would invite any questions.

Councilmember Peacock – Just out of curiosity, I'm looking at this map here and I don't see anything submitted for south of Lindsey, west Classen. Is there any reason for that?

Mr. Sturtz – They really chose all the locations. We had no input in that. They came to us with those that they felt that they wanted to employ this new technology, and they actually came to us totally. So we didn't have any say or comment; we just received their applications, went out and checked the locations to meet our ordinances, and then submitted back to them whether it was a compliant application or not.

Councilmember Tortorello – Are there applications coming in for outside – like to Ward 5 and Ward 6 out that way?

Mr. Sturtz – Not at this time. What you see on that map is what has been submitted, and these were all submitted back in 2019. We've had maybe one or two since that timeframe. They've pretty much stopped their applications to try to resolve this item.

Councilmember Holman – Can you go back to the first residential picture, of the house, actually? So in committee, our concern was that this particular home has actually three poles already in the front yard. There's one that says no parking on this side of the street. So the three poles in their front easement there, this would propose to add a fourth pole to that property. So I felt that we were okay with eliminating the 500' radius thing, but we wanted to also make sure that somebody wasn't going to end up with four utility poles in their front yard either, especially since there's so many close by that it seems like they could get onto. Would that be resolved with this? Would we still be protecting the homeowner here by getting rid of the 500', which again, I'm fine with getting rid of the 500' but ...

Ms. Muckala – I'm sorry if I misspoke. I don't mean to imply that the 500' is going away. The 500' is still very much in there. What the new language would read, and I'll just read it verbatim – “No small cell facility shall be approved for placement on a new pole if the new pole is proposed to be located within a 500 foot radius from any other wireless support structure located on the same side of the street (or along the same side of closest street if located outside of the right-of-way).” And I think this is language that we drew directly from Bixby's ordinance, so we know that it's being used; we're not creating a

new standard here. Yes, that's exactly the type of thing that it should address. We have two light poles right there on the very same side of the street.

Councilmember Holman – So this would help protect that homeowner potentially from having a fourth pole in their yard, but also allow AT&T to accomplish what they're trying to do with the coverage.

Ms. Muckala – Or any applicant. Exactly. And that way they'll know the questions that we're going to be asking before essentially we get here and slow them down.

Councilmember Holman – That was the main concern that I recall from the committee.

Councilmember Studley – So they did send in some of the applications, and then according to Jason, he sent an email to me where they reduced the number to 27, and Brenda sent that out to everyone on June 16th. So because we were the last city to make a decision on this, and every other city in Oklahoma already has theirs done – they're complete in Oklahoma. So our 78 that they had submitted were denied; only four were approved, so now they've come back and reduced that even further to 27. So I don't know if you guys want to look at that later on, but it has the 27 blue dots in there. Did you get a copy of that by chance?

Ms. Muckala – Not me, no, but I can find it.

Councilmember Hall – I just wanted to make sure I really understood what you just said, because we've used this example now in two different settings. I think the language you just said was that 500' within another pole that had small cell technology on it. So would that actually help in this instance?

Mr. Sturtz – I don't think that would preclude them from being able to put one in this yard.

Councilmember Hall – So they could do another one, because it's not within 500' of another pole with the technology on it?

Mr. Sturtz – Another small cell facility.

Councilmember Hall – Yeah. That's the problem.

Ms. Muckala – So the language that's been proposed, though, is within a 500' radius of other wireless support structure, not necessarily the facility. That was replacing the word "pole", essentially, to make sure that we weren't limiting this buffer to only certain types of structures. If they have other options for collocation, that's what we want. So this spacing requirement is specific to the placement of a new pole, as opposed to a collocation, which is what we want to encourage.

Mayor Clark – Any other questions? Alright. I think we're ready to move it forward. Thank you, Ms. Muckala.