



## CITY OF NORMAN, OK STAFF REPORT

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**MEETING DATE:** 11/09/2021

**REQUESTER:** Heather Poole, Assistant City Attorney

**PRESENTER:** Heather Poole, Assistant City Attorney

**ITEM TITLE:** CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF SUBSTITUTE ORDINANCE O-2122-7: AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA AMENDING SECTION 22-431.2 (COMMUNICATION FACILITIES) OF ARTICLE XII OF CHAPTER 22 (ZONING ORDINANCE); TO ESTABLISH AND FURTHER DEFINE ADDITIONAL STANDARDS FOR SMALL CELL APPLICATIONS; AND PROVIDING FOR THE SEVERABILITY THEREOF.

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### **BACKGROUND:**

“Small cells” is a new technology that is installed 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. Norman’s small cell ordinance took Oklahoma’s Small Wireless Facilities Deployment Act and the FCC ruling into account to have an ordinance that addressed small cell facilities and complied with both State and federal law.

Norman received 75 applications from AT&T and requested information on several. After meeting with AT&T and OG&E representatives in June 2021 staff drafted the first version of amendments to Norman’s small cell ordinance to meet City, resident and small cell vendors’ concerns. After another discussion with AT&T and reviewing information sent to Council, the Substitution Ordinance attached was drafted to meet both cell vendor and potential concerns of residents.

## **DISCUSSION:**

Currently under the city's ordinance 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 City requires \$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. 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 current ordinance, poles cannot be placed within a 500-foot radius of another existing pole. 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 doesn't make such repairs, the City can make them and charge the provider for it.

Staff initially proposed changes that included restricting small cell towers within 500 feet of other small cell towers/structures (rather than "utility poles"), allowing the vendor to provide an affidavit that sets out exceptions to the restriction on new small cell support structures within 500 feet of another, and an additional requirement that new facilities and poles cannot block or encroach sidewalks or walkways. The changes were made based on other cities' ordinances and

practices. A sample of City ordinances that address the distance requirement are attached along with Bixby's exceptions to the preference of a vendor collocating on another pole.

After recent Council discussion and discussion with AT&T, Staff is proposing changes that better balance the City's desire to prevent pole proliferation with the industry's desire to create some flexibility within the ordinance to address a wider variety of situations. This discussion has resulted in the attachment labeled "Substitution Ordinance". The Substitution Ordinance, if adopted, would move spacing requirements to a new section (c)(7) in the ordinance. New wireless support structures (poles) would not be allowed within 500 feet of an existing or approved utility pole unless the applicant provides written documentation that a) the proposed facility cannot be accommodated on an existing pole within a 500 foot radius due to structural issues and those structural issues cannot be addressed at a reasonable cost; b) the proposed facility would cause interference with existing telecommunication equipment if placed on an existing pole within the 500 foot radius and the interference cannot be prevented at a reasonable cost; c) the proposed facility cannot be accommodated on a pole within a 500 foot radius due to height constraints, d) the proposed facility cannot be accommodated on a pole within a 500 foot radius because the applicant is unable to secure a lease with commonly reasonable terms with the pole owner; or e) for other good cause shown as determined by City staff. After conversations with AT&T, they indicated that the 500-foot radius restriction would be acceptable to them provided Section 7(e) was included in the ordinance. This will allow for flexibility in those situations where a 500-foot radius restriction is not workable. Other changes as originally proposed remain in the Substitution Ordinance.

#### **RECOMMENDATION:**

City Staff recommends that the attachment labeled "Substitute Ordinance, Ordinance O-2122-7" be adopted.