

Ordinance

Version 2.6 released on 7/3/18

Approved By
City Council On
DEC 05 2018

24060

**CITY COUNCIL USE ONLY**

Date Received: _____
Committee Date: 11-28-18
1st Agenda Date: 11-28-18

Tracking #: 18-920-1
Committee: PW
Hearing Date: _____
2nd Agenda Date: 12-5-18

CITY CLERK USE ONLY

Date: 12-10-2018
Item #: 2.14.1

All department items requiring Council approval must be submitted through the Mayor's Office.

Primary Details

Dept. Tracking No.	Board Approval	Other Board Name	City Council Approval <input checked="" type="radio"/> Yes <input type="radio"/> No
Department Legal	Contact Name Mark Swiney/jm	Email mswiney@cityoftulsa.org	Phone 918-596-7748
Subject (Description) Amendment to Title 11 TRO Ch 15 "Small Wireless Communications Facilities"	Ordinance Type Amending Tulsa Revised Ordinances		
Section	Township	Range	Lot
Block	Address	BA / CT Number	
Amending Ord. No.	TRO Title No. 11	TRO Subtitle	Property/Non-Property
Council District	Zoning No.	PUD No.	Planning District

Budget

Funding Source(s)

APPROVED BY MAYOR
CITY OF TULSA

DEC 10 2018

TOTAL:

Approvals

Department:

Legal:

Board:

Mayor:

Other:

Date:

Date: 10.31.2018

Date: _____

Date: NOV 14 2018

Date: _____

Policy Statement**Background Information**

The latest development in wireless communication is "Small Wireless Communications Facilities". The deployment of these small facilities has been the subject of State legislation, Title 11 Oklahoma Statutes, Section 36-501 et seq. which becomes effective November 1, 2018. The attached ordinance allows the City of Tulsa to regulate such facilities, in compliance with State law.

Summation of the Requested Action

Request approval of the attached ordinance.

Emergency Clause?☒ Yes☐ No**Reason for Emergency Clause**

Communication companies are eager to install their facilities on City right-of-way and other City-owned property. State and Federal regulators are attempting to enter the field of what should be local regulation. As an emergency exists for the protection of the public safety and welfare, this ordinance contains an emergency provision, to become effective immediately upon its adoption approval and publication.

Processing Information for City Clerk's Office

Post Execution Processing

- ☐ Mail vendor copy (add'l signature copies attached)
- ☐ Must be filed with other governmental entity
- ☐ Add'l governmental entity approval(s) required

Additional Routing and Processing Details

(Published in the Tulsa World

December 16, 2018)
Ordinance No. 24060

AN ORDINANCE AMENDING TITLE 11 TULSA REVISED ORDINANCES (TRO), "PUBLIC WORKS DEPARTMENT", BY THE ADDITION OF A NEW CHAPTER, CHAPTER 15, ENTITLED "SMALL WIRELESS COMMUNICATIONS FACILITIES"; STATING PURPOSE; ADOPTING DEFINITIONS; ASSERTING THE CITY'S RIGHT TO REGULATE SMALL WIRELESS COMMUNICATIONS FACILITIES, SUBJECT TO STATE AND FEDERAL LAW; ESTABLISHING FEES; REQUIRING COMPLIANCE WITH THE RIGHT-OF-WAY OCCUPANCY ORDINANCES WHEN APPLICABLE; PROVIDING PERMITTING FOR SMALL WIRELESS COMMUNICATIONS FACILITIES MOUNTED ON CITY-OWNED POLES; ASSERTING CITY ZONING AUTHORITY, WHEN APPLICABLE; REQUIRING PLACEMENT OF FACILITIES UNDERGROUND WHEN NECESSARY; REFERRING USERS TO OKLAHOMA UNDERGROUND FACILITIES DAMAGE PREVENTION ACT; REQUIRING USERS TO REPAIR DAMAGE AND RESTORE CITY'S RIGHTS-OF-WAY; REQUIRING COMPLIANCE WITH HISTORIC DISTRICTING; DECLARING THE PERMIT APPLICATION REVIEW PROCESS AND TIME LIMITS; SETTING FORTH REASONS FOR DENIAL OF A PERMIT; ALLOWING RESCISSION AFTER APPROVAL; ALLOWING EMERGENCY ACTION; IMPOSING THE DUTY TO INDEMNIFY AND HOLD HARMLESS; REQUIRING INSURANCE; REQUIRING APPROPRIATE IDENTIFICATION ON POLES; PROVIDING PROCEDURES FOR ABANDONED FACILITIES; ALLOWING FOR CHANGE IN OWNERSHIP OF FACILITIES; PROVIDING FOR REFERENCES TO THE STATE ACT; PROVIDING SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT HERewith; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY OF TULSA:

Section 1. That Title 11, Tulsa Revised Ordinances, be and the same is hereby amended by adding a new chapter, Chapter 15, to read as follows:

"CHAPTER 15. – SMALL WIRELESS COMMUNICATIONS FACILITIES

Section 1500 – Purpose.

Section 1501 – Definitions; Equivalent Terms.

Section 1502 – State Law Governs; City of Tulsa Permitting Authority.

Section 1503 – Fees.

Section 1504 – City of Tulsa’s Right-of-Way Occupancy.

Section 1505 – Small Wireless Communications Facilities Mounted on City of Tulsa Poles.

Section 1506 – Small Wireless Communications Facilities Subject to City Zoning, When.

Section 1507 – Underground Placement.

Section 1508 – Underground Damage Prevention.

Section 1509 – Repair and Restore.

Section 1510 – Historic Districts.

Section 1511 – Processing of Permit; Time Limits.

Section 1512 – Denial of Permit; Reasons for Denial.

Section 1513 – Rescission after Approval.

Section 1514 – Emergency.

Section 1515 – Duty to Indemnify, Defend and Hold Harmless.

Section 1516 – Insurance.

Section 1517 – Identification on Pole or Other Structure.

Section 1518 – Abandoned Facilities.

Section 1519 – Change in Ownership.

Section 1520 – Reference Not Exclusive.

Section 1500. Purpose.

The purpose of this Chapter is to provide for the efficient, fair and safe placement and regulation of small wireless communications facilities within the City of Tulsa, in accordance with the Oklahoma Small Wireless Facilities Deployment Act, Title 11 Oklahoma Statutes, Sections 36-501 through 36-512, as amended from time to time (herein referred to as the “State Act”), and Final Rules of the Federal Communications Commission (“FCC”), adopted September 26, 2018.

Section 1501. Definitions; Equivalent Terms.

The City of Tulsa adopts the definitions as set forth in Section 36-502 of the State Act, with the following exceptions: the term “small wireless communications”, when used herein, shall have equivalent meaning to “small wireless” used in the State Act. The terms “locate”, “attach” and “install”, when used in this Chapter, shall have equivalent meaning to “collocate” used in the State Act.

Section 1502. State Law Governs; City of Tulsa Permitting Authority.

The City of Tulsa hereby adopts the State Act as governing small wireless communications facilities within the City of Tulsa. The City of Tulsa reserves the right to require providers of small wireless communications (that is, infrastructure providers and services providers) to obtain all applicable permits, including, but not limited to, zoning approval per Section 36-509, and building, right-of-way occupancy, and electrical permits, as authorized in subsections D. and E. of Section 36-504 and elsewhere in the State Act.

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Section 1503. Fees.

As provided in Section 36-506 of the State Act, the application and permit fees for attachment of small wireless communications facilities to an existing or replacement City-owned pole shall be Two Hundred Dollars (\$200.00) each for the first five small wireless communications facilities on the same application and One Hundred Dollars (\$100.00) for each additional small wireless communications facility on the same application. The application and permit fees for the installation, modification or replacement of a utility pole and the attachment of an associated small wireless communications facility thereto shall be Three Hundred Fifty Dollars (\$350.00) per pole for access to the right-of-way. The annual rate for occupancy of the right-of-way, including attachment of small wireless communications facilities to City-owned poles, shall be Twenty Dollars (\$20.00) per small wireless communications facility. There shall be no rate charged for the installation, placement, maintenance, operation or replacement of ml.

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Section 1504. City of Tulsa's Right-of-Way Occupancy.

Any construction, installation, maintenance and/or replacement of facilities, as defined in Title 11 TRO Chapter 12, in City of Tulsa rights-of-way, including any damage to infrastructure, or disruption of traffic, shall require a Right-of-Way Occupancy Permit pursuant to Title 11 TRO Chapter 12, and the payment of all associated fees. This includes, but is not limited to, above- and below-ground structures and the stringing, hanging or burying of wires, cables, fiber optic cables, wireless communications facilities and micro wireless communications facilities, in or above the City of Tulsa's rights-of-way. The said Right-of-Way Occupancy Permit shall be in addition to any other permit required by this Chapter or other law.

Section 1505. Small Wireless Communications Facilities Mounted on City of Tulsa Poles.

Every small wireless communications provider wishing to install its facilities on a City of Tulsa-owned pole or "Authority pole" as defined in paragraph 6 of Section 36-502 of the State act, shall apply for the appropriate permit from the City of Tulsa, pursuant to Section 36-505 of the State Act. Said provider shall at its own expense obtain, and tender to the City of Tulsa as part of its application, a certificate from a professional engineer, stating that the pole is ready to accept the increased loads caused by said facilities, or, in the alternative, that the pole can be made ready to accept such loads with modification or replacement, as determined by the engineer. The engineer shall also certify that the facilities will cause no interference with City of Tulsa traffic or systems. Said provider shall make ready the said pole and install said facilities at its own expense, and said engineer shall certify that the installation is acceptable. Any pole replacing a City of Tulsa-owned

pole shall become the property of the City of Tulsa. The engineer shall be licensed to practice in the State of Oklahoma. See subsection D. of Section 36-504 of the State Act.

Section 1506. Small Wireless Communications Facilities Subject to City Zoning, When.

As provided in Sections 36-503, 36-504 and 36-509 of the State Act, proposed small wireless communications facilities and utility poles shall be subject to City of Tulsa's zoning ordinance review and approval/disapproval if they do not comply with the height restrictions in subsection E. of Section 36-503, or if they are proposed to be located on private property, zoned exclusively for residential single-family or duplex use.

Section 1507. Underground Placement.

The City of Tulsa reserves the right to require small wireless communications providers to install their facilities underground, in accord with subsection H. of Section 36-503 of the State Act, and as further determined by Title 11 TRO Chapter 12, "Rights-of-Way Occupancy Management".

Section 1508. Underground Damage Prevention.

All small wireless communications providers shall register and comply with the Oklahoma Underground Facilities Damage Prevention Act, Title 63 Oklahoma Statutes, Section 142.1 et seq., as applicable.

Section 1509. Repair and Restore.

Pursuant to subsection K. of Section 36-503 of the State Act, small wireless communications providers shall repair all damage caused by their activities in the right-of-way, and shall restore the right-of-way to its previous state. If such a provider fails to make such repairs within a reasonable time, the City of Tulsa may perform said repairs and charge the provider the reasonable, documented cost of such repairs.

Section 1510. Historic Districts.

Placement of small wireless communications facilities, wireless support structures or utility poles in designated City of Tulsa historic districts shall comply with subsection I. of Section 36-503 of the State Act.

Section 1511. Processing of Permit; Time Limits.

As found in FCC Final Rule Part 1, Subpart U, Section 1.6003 (d), City staff shall review for completeness any permit application to deploy small wireless communications facilities, and shall notify the applicant on or before the tenth (10th) day after submission if the application is materially incomplete, and shall clearly and specifically identify the missing document or information, and the specific rule or regulation requiring such document or information. The ten-day limit (above) shall restart at zero on the date on which the applicant submits all the documents and information

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identified by City staff to render the application complete. As required by Section 36-504.D.7. of the State Act, an application shall be processed on a nondiscriminatory basis and deemed approved if the City fails to approve or deny the application within seventy-five (75) days of receipt of the application. Upon issuance of a City permit, a small wireless communications provider shall install its facilities and commence operation within one (1) year, as explained in subsection D. of Section 36-504, paragraphs 5 and 11.

Section 1512. Denial of Permit; Reasons for Denial.

As provided in Section 36-504 of the State Act, the City of Tulsa may deny a proposed installation/location of a small wireless communications facility or installation, modification or replacement of a utility pole that meets the height requirements in subsection E. of Section 36-503 of the State Act if the proposed installation/location:

- a) materially interferes with the safe operation of traffic control equipment or emergency management systems or devices;
- b) materially interferes with sight lines or clear zones for transportation or pedestrians;
- c) materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
- d) materially interferes with Federal Aviation Administration requirements or the operation of an airport or air traffic;
- e) fails to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by ordinance that concern the location of new utility poles. Such spacing requirements shall not prevent a wireless provider from serving any location;
- f) with respect to ground-mounted equipment, fails to comply with reasonable and nondiscriminatory requirements of general application adopted by ordinance that concern spacing of the ground-mounted equipment; interference with sight lines, clear zones or pedestrian access or movement; unhindered use of the right-of-way by other right-of-way occupants, including the authority; or design or concealment measures in a historic district;
- g) fails to comply with applicable codes, including without limitation the most recent version of the National Electrical Safety Code;
- h) causes the utility pole or wireless support structure to become structurally unsound, unless the applicant demonstrates that it will address the problem adequately, such as by modifying or replacing the structure; or
- i) materially interferes with the intended use of a City of Tulsa-owned pole.

The City of Tulsa shall process any denial, and the provider's cure of any deficiency, as stated in subsection D. 9 of Section 36-504 of the State Act. Deadlines shall be tolled as provided in subsection D. 6 and D. 7 of Section 36-504 of the State Act.

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Section 1513. Rescission after Approval.

The City of Tulsa reserves the right to rescind a duly issued permit, and/or order relocation of a small wireless communications facility or structure at the sole expense of the provider, for any of the reasons listed in Section 1512 (above) if discovered after the issuance of the permit, or if other unforeseen conditions occur which affect public safety or City of Tulsa operations. The City of Tulsa shall give reasonable notice to a provider, of any such rescission or order.

Section 1514. Emergency.

In an emergency, the City of Tulsa shall take action necessary to protect life, property, public safety and public services, and shall notify a wireless communications provider of such action at the earliest opportunity. "Emergency" as used herein shall mean a condition that poses a clear and immediate danger to life or health, or of a significant loss of property, or requires immediate repair or replacement in order to restore service to the public or a customer.

Section 1515. Duty to Indemnify, Defend and Hold Harmless.

As allowed by Section 36-512 of the State Act, the City of Tulsa shall require a small wireless communications provider to defend, indemnify and hold harmless the City of Tulsa and its officers, agents and employees against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses and attorney fees resulting from the installation, construction, repair, replacement, operation or maintenance of small wireless communications facilities, wireless support structures or utility poles to the extent caused by the provider, its contractors, subcontractors and their officers, employees or agents. The provider shall have no obligation to defend, indemnify or hold harmless the City of Tulsa, its officers, agents or employees against any liabilities or losses due to or caused by the sole negligence of the City of Tulsa or its employees or agents.

Section 1516. Insurance.

Providers shall obtain insurance coverage, and shall maintain same during the term of any permit authorized herein. Said insurance policy shall be issued by an insurer licensed to do business in the State of Oklahoma, and shall name the City of Tulsa as additional insured. The amount of such insurance coverage shall be as set forth in Titles 35 and 49 TRO.

Section 1517. Identification on Pole or Other Structure.

Every small wireless communications provider within the City of Tulsa shall identify itself on any pole or other structure used in its small wireless communications business, including said provider's full legal name and emergency contact information. Such identification shall be placed in a conspicuous place on the pole or other structure, in a permanent, all-weather medium and readily visible to the naked eye. Any small wireless communications provider who purchases or leases, or otherwise succeeds to ownership or control of, such a pole or other structure, shall keep said identification accurate and current.

Section 1518. Abandoned Facilities.

Pursuant to subsection L. of Section 36-503 of the State Act, any small wireless communications provider, owning a utility pole or wireless support structure located in the City of Tulsa, shall remove said utility pole or wireless support structure, and any associated equipment, upon abandonment or discontinuance of use, and shall notify the City of Tulsa of said discontinuance and removal. The City of Tulsa may notify the small wireless communications provider of suspected abandonment, and may demand such removal. If the small wireless communications provider neither removes the utility pole or wireless support structure, nor notifies the City of Tulsa that the utility pole or wireless support structure has not been abandoned, the City of Tulsa may remove the utility pole or wireless support structure, take ownership of the small wireless facility and assess the cost of removal to the provider.

Section 1519. Change in Ownership.

Any small wireless communications provider who sells or leases out any small wireless communications facility, utility pole or wireless support structure, and any person or entity who purchases, or otherwise succeeds to ownership or control of, such facility, pole or other structure, shall forthwith notify the City of Tulsa of said sale, purchase or other transaction.

Section 1520. Reference Not Exclusive.

In any section of this Chapter, a citation to one or more provisions of the State Act shall not be construed as to exclude any other applicable provisions of the State Act."

Section 2. SEVERABILITY CLAUSE. If any section, subsection, paragraph, subparagraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and to this end, the provisions of this Ordinance are hereby declared to be severable.

Section 3. REPEAL OF CONFLICTING ORDINANCES. That all ordinances or parts of ordinances in conflict herewith be and the same are now expressly repealed.

Section 4. EMERGENCY CLAUSE. That an emergency is now declared to exist for the preservation of the public peace, health and safety by reason whereof this ordinance shall take effect immediately from and after its adoption, approval and publication.

Adopted by the Council DEC 05 2018
Date



Chair of the Council

Adopted as an emergency measure: DEC 05 2018
Date

Phil Baski, Jr.
Chair of the Council

OFFICE OF THE MAYOR

Received by the Mayor: _____, at _____
Date Time

G. T. Bynum, Mayor

By _____
Secretary

APPROVED by the Mayor of the City of Tulsa, Oklahoma: DEC 10 2018
Date

at _____
Time

(Seal)
ATTEST:



[Signature]
Mayor

Melissa Cole
Deputy City Clerk

Carol C. Merkle OK-MDS
City Attorney