

# Memorandum



Winston-Salem

City Attorney's Office

P.O. Box 2511  
Winston-Salem, NC 27102  
CityLink 311 (336.727.8000)  
Fax 336.748.3816

**TO:** Public Works Committee  
**FROM:** Angela I. Carmon, City Attorney  
Marilena Jensen-Guthold, Assistant City Attorney  
**DATE:** May 9, 2017  
**RE:** City Code Text Amendment to Establish Encroachment Standards for Small Cell Wireless Facilities in the Rights-of-Way of the City of Winston-Salem by Adding Section 104 to Chapter 74, Article III of the City Code  
**CC:** Lee Garrity, City Manager  
Greg Turner, Assistant City Manager

The State has enacted a series of statutes intended to promote the “safe and efficient integration of facilities necessary for the provision of advanced mobile broadband and wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless service to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare”. Since then, applications by so-called small cell wireless communications service and infrastructure providers have proliferated across the State, and the City, itself, has recently been approached by two providers of wireless communications support structures with requests to locate their facilities in the public rights-of-way.

City staff provided Council some preliminary information on the subject at a prior meeting, and has since begun to prepare an ordinance, in conjunction with four other municipalities and industry representatives. The purpose of the ordinance is to establish a fair and predictable process for the deployment of small cell wireless facilities in the public rights-of-way, consistent with applicable federal and state law, which will encourage wireless infrastructure investment within the City, while permitting the City to regulate the introduction of small cell wireless technology in a manner which promotes the public health, safety, and welfare.

The final form of the ordinance is currently still being negotiated and there is a bill pending at the General Assembly, which may change the applicable state law, and could necessitate further revisions to the ordinance. In the interim, staff would like to make Council aware that the ordinance will shortly be forthcoming at a future Council meeting and to apprise Council of some of the key points the ordinance is expected to contain:

CityLink311

Call 311 or 336-727-8000  
citylink@cityofws.org

**City Council:** Mayor Allen Joines; Vivian H. Burke, Mayor Pro Tempore, Northeast Ward; Denise D. Adams, North Ward; Dan Besse, Southwest Ward; Robert C. Clark, West Ward; John C. Larson, South Ward; Jeff MacIntosh, Northwest Ward; Derwin L. Montgomery, East Ward; James Taylor, Jr., Southeast Ward; City Manager: Lee D. Garrity

- The ordinance will establish procedures, fees, and timelines for the review and approval of small cell wireless facility encroachment requests in the public rights-of-way.
- The ordinance will establish the types of information that must be submitted by an applicant for a small cell wireless facility encroachment, including information sufficient to determine whether the proposed encroachment meets applicable safety and other standards and which bodies of federal and state law apply.
- The ordinance will limit the height of small cell wireless facilities in the public rights-of-way.
- The ordinance will encourage the collocation of small cell wireless facilities on existing structures, where feasible.
- The ordinance will require that applicants employ the least visually intrusive designs, materials, and equipment.
- The ordinance will similarly require the camouflage/concealment of small cell wireless facilities, to the maximum extent possible.
- The ordinance will prohibit the siting of small cell wireless facilities in a manner which significantly impairs views from residential structures or over City corridors.
- The ordinance will prohibit the siting of small cell wireless facilities in historic and/or historic overlay districts.
- The ordinance will require strict compliance with the Federal Communications Commission's radio frequency emissions standards, and permit the City to monitor the applicant's compliance.
- The ordinance will limit to twenty-four (24) months the duration of a small cell wireless facility encroachment permit which has been issued, but not used.
- The ordinance will provide that the City may require the removal or relocation of a small cell wireless facility, in an emergency.
- The ordinance will establish a mechanism for the removal by the applicant or the City of abandoned small cell wireless facilities.
- The ordinance will assign liability to the applicant for damages that occur pursuant to the encroachment.
- The ordinance will require the applicant to secure and maintain liability insurance and name the City an additional insured, thereunder.
- The ordinance will require the applicant to indemnify and defend the City against damages pertaining to the encroachment and/or the City's issuance of an encroachment permit to the applicant.