

Ordinance Establishing Standards for Small Wireless Facilities in the Rights-of-Way in the City of Winston-Salem

Section I. Section 79 of the City Code of Winston-Salem is established as follows:

WHEREAS, the City of Winston-Salem ("City") desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that small wireless facilities are critical to delivering wireless access to advanced technology, broadband and 9-1-1 services to homes, businesses, schools within the City; and

WHEREAS, the City recognizes that small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way; and,

WHEREAS, the City intends to fully comply with state and federal law to the extent it preempts local municipal control.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Winston-Salem, the Municipal Code of the City of Winston-Salem shall be amended by adding the following Chapter 79 that will read as follows:

79 - Small Wireless Facilities

79-1 – Purpose and Scope

- (a) Purpose. The purpose of this Chapter is to establish policies and procedures for the placement of small wireless facilities in rights-of-way within the City's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole. This ordinance is not intended to prohibit or regulate small cell systems based on factors outside the City's authority as established by State or Federal Law.
- (b) Intent. In enacting this Chapter, the City is establishing uniform standards to address issues presented by small wireless facilities, including without limitation, to:
 - (1) prevent interference with the use of streets, sidewalks, alleys, parkways, public utilities, public views, certain city corridors, and other public ways and places;

- (2) prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (3) prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;
- (4) protect against environmental damage, including damage to trees;
- (5) preserve the character of the neighborhoods in which facilities are installed; and
- (6) facilitate rapid deployment of small cell facilities to provide the benefits of advanced wireless services.

(c) Conflicts with Other Chapters. This Chapter supersedes all Chapters or parts of Chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

79-2 - Definitions

- (a) “Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
- (b) “Applicable Codes” means any uniform code such as building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with the terms of this Chapter.
- (c) “Applicant” means any person who submits an application and is a wireless provider.
- (d) “Application” means a request submitted by an applicant (i) for a Permit to collocate small wireless facilities; or (ii) to approve the installation or modification of a utility pole or wireless support structure.
- (e) “[City]” refers to the City of Winston-Salem.
- (f) “City Owned Pole” means (i) a utility pole owned or operated by the City in the rights-of-way, including a utility pole that provides lighting or traffic control functions, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the City in the ROW that supports only Wireless Facilities.
- (g) “Code” means the City of Winston-Salem Municipal Code.

- (h) “Collocate” means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole. “Collocation” has a corresponding meaning.
- (i) “Day” means calendar day.
- (j) “Emergency” is a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the right-of-way to be unusable and result in loss of the services provided.
- (k) “Existing Structure” is a previously erected support structure or utility pole that is capable of supporting the installation of wireless facilities.
- (l) “Facility(ies)” means wireless telecommunication facilities.
- (m) “FCC” means the Federal Communications Commission of the United States.
- (n) “Fee” means a one-time charge.
- (o) “Law” means federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.
- (p) “Modification” means a change to an existing wireless facility that involves any of the following: collocation, expansion, alteration, enlargement, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. “Modification” does not include repair, replacement or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation.
- (q) “Monopole” means a structure composed of a pole or tower used to support antennas or related equipment. A monopole also includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole.
- (r) “Permit” means a written authorization required by the City to perform an action or initiate, continue, or complete a project.
- (s) “Pole” means a single shaft of wood, steel, concrete, or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of the Code.
- (t) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.

- (u) "Rate" means a recurring charge.
- (v) "Rights-of-Way" or "ROW" means the area on, below, or above a roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway, in the City.
- (w) "Small Wireless Facility" means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.
- (x) "Utility Pole" means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting. Such term shall not include structures supporting only Wireless Facilities.
- (y) "Wireless Facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term does not include the structure or improvements on, under, or within which the equipment is collocated.
- (z) "Wireless Infrastructure Provider" means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities or wireless support structures, but that is not a wireless services provider.
- (aa) "Wireless Provider" means a wireless infrastructure provider or a wireless services provider.
- (bb) "Wireless Services" means any services, whether at a fixed location or mobile, provided using wireless facilities.
- (cc) "Wireless Services Provider" means a person who provides wireless services.

(dd)“Wireless Support Structure” means a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or, other existing or proposed structure designed to support or capable of supporting wireless facilities. Such term shall not include a utility pole.

79- 3 – Permitted Use; Application and Fees

- (a) Permitted Use: Collocation of a small cell facility or a new or modified utility pole or wireless support structure for the collocation of a small cell facility that meet the height requirements of § 160A-400.55(c)(2) shall be classified as permitted uses and subject only to administrative review of Section 4 if they are collocated (i) in a City right of way within any zoning district or (ii) outside of rights of way on property other than single family residential zoned property.
- (b) Permit Required. No person shall place a small wireless facility in the rights-of-way, without first filing a small wireless facility application and obtaining a permit therefore, except as otherwise provided in this Chapter.
- (c) Permit Application. All small wireless facility applications for permits filed pursuant to this Chapter shall be on a form, paper or electronic, provided by the City. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each page of such materials accordingly.
- (d) Application Requirements. The small wireless facility permit application shall be made by the wireless provider or its duly authorized representative and shall contain the following:
 - (1) A sealed plan prepared by a Professional Engineer, Architect, Landscape Architect or other Professional authorized to practice land development in North Carolina.
 - (2) The applicant’s name, address, telephone number, and e-mail address; current contact information for responsible parties
 - (3) All applications shall be submitted to Engineering Records which shall be the sole source of communications from the City.
 - (4) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application.

- (5) A general description of the proposed work and the purposes and intent of the small wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.
- (6) A site plan, with sufficient detail to show the proposed location of items the applicant seeks to install in the right-of-way, including any manholes or poles, the size, type, and depth of any conduit or enclosure.
- (7) Provide certification that the system will not interfere with any existing public or private systems.
- (8) A small wireless facility shall comply with all applicable codes, approved plans, and conditions of approval.
- (9) A small wireless facility shall demonstrate that they have access to power at the facility.
- (10) An application must include an attestation that the small wireless facilities will be collocated on the utility pole, city utility pole or wireless support structure and that the small wireless facilities will be activated for use by a wireless services provider to provide service no later than one year from the permit issuance date, unless the City and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.
- (11) An applicant seeking to collocate small wireless facilities at multiple locations within the jurisdiction of a city shall be allowed at the applicant's discretion to file a consolidated application for no more than 25 separate facilities and receive a single permit for the collocation of all the small wireless facilities meeting the requirements of this section.
- (12) The applicant asserts, to the best of the applicant's knowledge, the truth of the information contained in the application.
- (13) Photo depictions of the proposed installation from the 4 cardinal directions.

(14) Any previously issued permits for the system.

- (e) Permit Conditions. A Permit for the collocation of the small wireless facility shall provide that the collocation must commence (begin field construction) within six months of approval and that the small wireless facility shall be activated no later than one year from the permit issuance date, unless the City and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site. In addition, the applicant shall be required to obtain all otherwise applicable work permits including, by way of example and not by way of limitation, permits for work that will involve excavation in the right-of-way, affect traffic patterns or obstruct vehicular traffic in the right-of-way. *(i) Right of City to inspect for compliance. (ii) Applicant shall comply with all laws and codes.*
- (f) Applicant. Applicant shall maintain compliance with all applicable laws and codes.
- (g) Routine Maintenance and Replacement. An application shall not be required for: (i) routine maintenance; and (ii) the replacement of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height.
- (h) Information Updates. Any amendment to information contained in a permit application shall be submitted in writing to the City within thirty (30) days after the change necessitating the amendment.
- (i) Fees. The fee for submitting an application shall be one hundred dollars (\$100.00) per facility for the first five small wireless facilities addressed in an application plus fifty dollars (\$50.00) for each additional small wireless facility addressed in the application.

79-4 – Administrative Review and Approval Process

This Section applies to applications for permits that meet the requirements specified in Subsection 3(A).

- (a) Review for completeness. A permit application subject to this Administrative Review section shall be deemed complete unless the City provides notice in writing to the applicant within 30 days of submission or within some other mutually agreed upon timeframe. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

- (b) Applications. Applications with more than 10 location sites shall require a preapplication conference with Engineering staff to discuss their potential application.
- (c) Time Limits for Review of Completed Applications. The permit applications subject to this Administrative Review section shall be processed on a nondiscriminatory basis and shall be deemed approved if the City fails to approve or deny the application within 45 days from the time the application is deemed complete or within some other mutually agreed upon timeframe.
- (d) Denial of Permit. The City may deny an application for a permit subject to this Administrative Review section on the basis that it does not meet the city's applicable codes; local code provisions or regulations that concern public safety. The city shall (i) document the basis for a denial, including the specific code provisions on which the denial was based, and (ii) send the documentation to the applicant on or before the day the city denies an application. The applicant may cure the deficiencies identified by the city and resubmit the application within 30 days of the denial without paying an additional application fee. The city shall approve or deny the revised application within 30 days. Any subsequent review shall be limited to the deficiencies cited in the prior denial.
- (e) Review of Eligible Facilities Requests. Notwithstanding any other provision of this Chapter, the City shall approve and may not deny applications for eligible facilities requests within sixty (60) days according to the procedures established under 47 CFR 1.40001(c).

79-5 – Small Wireless Facilities in the ROW; Maximum Height; Other Requirements

- (a) Maximum Size of Permitted Use. A wireless provider may collocate small wireless facilities along, across, upon, and under any city right-of-way. Subject to this section, a wireless provider may place, maintain, modify, operate and replace associated utility poles, city utility poles, conduit, cable, and related appurtenances and facilities along, across, upon, and under any city right-of-way. The placement, maintenance, modification, operation and replacement of utility poles and city utility poles associated with the collocation of small wireless facilities, along, across, upon, and under any city right-of-way shall be classified as permitted uses and subject only to administrative review or approval under Section 4 if the wireless provider meets the following requirements:
 - (1) Each new utility pole and each modified or replacement utility pole or city utility pole installed in the right-of-way shall not exceed 50 feet above ground level.

- (2) Each new small wireless facility in the right-of-way shall not extend more than 10 feet above the utility pole, city utility pole or wireless support structure on which it is collocated.
- (3) Nothing in this section shall be construed to prohibit a city from allowing utility poles, city utility poles, or wireless facilities that exceed the limits set forth herein.
- (4) *Relay towers and other towers taller than 50 feet shall be considered transmission towers for purposes of this ordinance and shall be treated under the tall cell sections of the UDO.*

(b) Other Requirements. Any wireless provider that seeks to construct or modify a utility pole, wireless support structure or wireless facility shall be subject to the following requirements:

- (1) Collocations of Small Wireless Facilities are preferred on existing poles where feasible.
- (2) Installations of Small Wireless Facilities are preferred at property lines and street corners where feasible.
- (3) Small Wireless Facilities shall be located such that they do not interfere with public health or safety facility, such as, but not limited to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility. New facilities shall not be installed directly over any water, sewer, or reuse main or service line.
- (4) New Wireless Support Structures erected for installations of Small Wireless Facilities shall have the same type of material as existing poles in the immediate area. Applicant may request a variance of this provision from the city.
- (5) Any tree disturbing activity necessary for the installation or collocation of Small Wireless Facilities shall comply with the City's tree ordinance.
- (6) Wireless Support Structures shall not be lighted or marked by artificial means, except when mounted on an existing light pole or where illumination is specifically required by the Federal Aviation Administration or other federal, state, or local regulations. Notwithstanding the preceding sentence, the mounting of Small Wireless Facilities on light poles is permitted.

- (7) A Wireless Provider shall repair, at its sole cost and expense, any damages including but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer or water systems and water & sewer lines that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the public right-of-way. The Wireless Provider shall restore such areas, structures and systems to substantially the same condition in which they existed prior to the installation or maintenance that necessitated the repairs. The provider shall maintain all system elements in a neat and clean manner.
- (8) Small Wireless Facilities shall not be permitted in historic districts and will only be allowed in historic overlay districts when they comply with the FCC's Nationwide Programmatic Agreement for the Collocation of Wireless Antennas Executed by the FCC, the National Conference of State Historic Preservation Officers, and the Advisory Council on Historic Preservation.
- (9) Small Wireless Facilities and their associated Wireless Facilities shall be camouflaged, disguised, hidden, and/or blended in with the surrounding environment to the maximum extent practicable.
- (10) No Wireless Facility may bear any signs or advertising devices other than certifications, warnings, or other information as required by federal or state law and/or regulation or by the City Code of Ordinances.
- (11) New wireless facilities on existing poles shall comply with otherwise applicable rules imposed by the pole owner including, when applicable, the National Electric Safety Code.

(c) Undergrounding Provisions. Applicant shall comply with nondiscriminatory undergrounding requirements that prohibit electric utilities, telecommunications or cable providers from installing structures in the rights-of-way, provided such requirements shall not prohibit the replacement of existing structures. Applicant may seek a special use permit to place above-ground structures in areas where the undergrounding requirements apply.

79-6 – Effect of Permit

- (a) Authority Granted: No Property Right or Other Interest Created. A permit from the City authorizes an applicant to undertake only certain activities in accordance with

this Chapter, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

- (b) Duration. Collocation of the small wireless facility shall commence within six (6) months of approval and shall be activated no later than 12 months from the permit issuance date, unless the city and the applicant agree to extend this period or a delay is caused by a lack of commercial power at the site.
- (c) Post Construction. The applicant must submit as-built drawings in an acceptable GIS format as determined by city staff as soon as reasonably practicable but no later than one hundred twenty (120) days after the completion of the installation and shall submit and maintain current contact information for the party responsible for the Wireless Facility on a form to be supplied by the city.

79- 7 – Removal, Relocation or Modification of Small Wireless Facility in the ROW

- (a) Notice. Within ninety (90) days following written notice from the City, wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the rights-of-way.
- (b) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider after cutting or removing a small wireless facility.
- (c) Abandonment of Facilities. The city may require a wireless services provider to remove an abandoned wireless facility within 180 days of abandonment. Should the wireless services provider fail to timely remove the abandoned wireless facility, the city may cause such wireless facility to be removed and may recover the actual cost of such removal from the wireless services provider. A wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates in any way that it is abandoning such facility or the date that is 180 days after the date that such wireless facility ceases to be used unless the wireless services provider gives the city reasonable evidence that it is diligently working to place such wireless facility back in service.

- (d) Liability. Applicant hereby assumes all risk for liability for damages that may occur to persons or property on account of the proposed work, or the presence or existence of facilities whether completed by applicant or applicant's agent or contractor completing, installing, or maintaining the work on applicant's behalf. Applicant shall procure and maintain liability insurance to protect the city from liability and damages on account of injuries to workers, as provided by law, and to protect the city from liability and damages occasioned by the proposed work. Applicant shall procure and maintain in continuous effect, during the pendency of the encroachment, "Certificates of Insurance" or other satisfactory evidence to show applicant carries insurance to levels and coverages specified by the City's Risk Management Office.
- (e) Indemnification. Applicant shall defend, indemnify, and hold harmless the City, its Council, boards, commissions, officials, officers, agents, volunteers, and employees from and against any and all loss, damages, liability, claims, suits, costs and expenses, including court costs and reasonable attorney's fees resulting from the alleged acts or omissions of permittee, Applicant's officers, agents, or employees in connection with the permitted work or presence of the permitted systems. This indemnity provision shall be applicable regardless of the merit or outcome of such claim or suit.

79-8 – Attachment to City-Owned Utility Poles in the ROW

- (a) Exclusivity. Any arrangement with any person for the right to collocate on city owned poles shall not be exclusive.
- (b) Collocation on City Owned Poles. Any wireless provider may collocate on city owned poles at just, reasonable, and nondiscriminatory rates, terms, and conditions. A request to collocate under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the city to be reimbursed by the wireless provider.
- (c) Rates, Terms, and Conditions. Following receipt of the first request from a wireless provider to collocate on a city utility pole, the City Manager or the City Manager's designee shall, within 60 days, establish the rates, terms, and conditions for the use of or attachment to the city utility poles that it owns or controls. Notwithstanding anything else in this section, the rate for collocation of small wireless facilities on city utility poles shall not exceed thirty-five (\$35) per city utility pole per year.
- (d) Make Ready Work. The city will provide a good faith estimate for any make-ready work necessary to enable the city owned pole to support the requested collocation, including pole replacement if necessary, and meet applicable codes or industry standards within 60 days after receipt of a complete application. Make-ready work

including any pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the applicant. Fees for make-ready work shall not include costs related to pre-existing or prior damage or noncompliance or any consultant fees or expenses.