



To: Members of Dublin City Council
From: Dana L. McDaniel, City Manager
Date: June 21, 2018
Initiated Jennifer D. Readler, Law Director
By: Thaddeus M. Boggs Assistant Law Director
Vincent A. Papsidero, FAICP, Planning Director
Claudia D. Husak, AICP, Senior Planner/Manager, Current Planning
Re: Amended Ordinance No. 41-18 - Amendments to Chapter 99 of the Dublin Codified Ordinances Addressing Small Cell Facilities and Wireless Support Structures within the Right-of-Way Including Design Guidelines

Summary

At the June 11, 2018 Council meeting, staff presented a summary of Ord No. 41-18 at the first reading. A number of questions were raised by Council and the following summarizes staff responses, including amendments to the ordinance and the design guidelines. In addition, staff received written comments from AT+T, which is resulting in a minor clarification in the ordinance.

Council Questions

- 1. Require evergreen plant material in screening ground-mounted equipment boxes.** This is the intent of the design guidelines and clarification has been included in the design guidelines.
- 2. Can the City limit the number of small cell tower permits that may be issued?** No, state law does not allow municipalities the ability to limit the number of small cell tower right-of-way permits issued, under any circumstances.
- 3. Can the carriers place whatever they want on a tower?** No, the guidelines are very clear in terms of the type, design and quantity of equipment that can be attached to a supporting structure, consistent with state law.
- 4. Does the proposal include requirements for removal, including notice to the City?** Yes, there is a permit type that must be submitted in order to regulate the removal of an installation. Proposed Section 99.26(N), as presented at the first reading, requires that the owner submit a request for consent to remove the small cell facility or wireless support structure when it intends to discontinue use of the facility or structure. Staff will also be adding an acknowledgement on the permit application form by which

the owner/owner's rep acknowledges notifying the City when an installation is no longer functional and removing the installation per code.

As an additional response to this question from Council's first reading, the version presented for second reading includes Section 99.26(N)(3) stating that the City reserves its right to inspect and request information, which the operator shall provide, concerning the continued use of the operator's small cell facilities or wireless support structures. This language is broad enough that the City may choose to make an annual inquiry, or a spot-check to ensure that the right-of-way is not becoming cluttered with decommissioned small cell infrastructure. This provides a backstop to the operator's responsibility to notify the City when it intends to discontinue use.

Can the City manage the number of small cell towers in a given block or location based on the cumulative radio frequency levels? Federal law precludes localities from including radio frequencies as a factor when regulating all wireless communications facilities [47 U.S.C. §332(c)(iv)]. The FCC regulates RF exposure limits. These regulations for transmitters (which includes wireless telecommunications antennas) can be found at 47 C.F.R. §1.1310.

5. **What happens to a cell tower installation on a city pole when that pole is removed?** Under ORC 4939.08, the carrier is responsible for the cost of removing or relocating a small cell tower installation if required due to a health, safety or public welfare requirement.
6. **How can we ensure that these facilities are well-maintained after their installation?** Proposed Section 99.26(J), as presented at the first reading, requires that small cell facilities and wireless support structures be maintained in good condition, order, and repair so that they do not menace or endanger the health, safety, or welfare of any person or property.

To address specifically this question from Council's first reading, the version presented for second reading includes specific provisions giving examples of poor condition (peeling paint, rust, etc.); states that they are subject to property maintenance requirements; and states the process for notice of violation, appeal right, remedy period, and abatement by the City, if necessary, at the operator's cost.

7. **Shouldn't the color of equipment and new poles should be determined at the time of permitting?** Color requirements are dictated by existing City standards by district or location of the City in order to ensure consistency among right-of-way infrastructure. The design guidelines can be easily amended in the future if a new standard is established in a given district or location. And during pre-application meetings with staff, the design guidelines, including color, will be addressed with applicants.

- 8. Does the City have the ability to regulate the issuance of permits based upon economic need?** No, state law and Federal standards preclude the City from taking an economic and market justification by an applicant into account when issuing a right-of-way permit.
- 9. Can the guidelines be amended to remove certain residential side streets as preferred locations in the Historic District?** For the Historic District, the preference is to collocate on existing wood power poles located on Blacksmith and Mill Lanes. The guidelines have been amended to discourage installation on existing wood power poles at other locations, but state law does not allow the City to prohibit such installations.
- 10. Are the guidelines enforceable?** Yes, the guidelines are enforceable as they are referenced in Chapter 99 as a means of reviewing and approving permits.

In addition to these edits to address specific questions, a small number of edits have been made since first reading to correct typographical errors and improve clarity.

AT+T Letter

On June 8, 2018, an attorney representing AT&T sent a letter to the City's telecommunications counsel at Ice Miller concerning proposed Section 99.26(H), which would govern remediation of interference between a wireless carrier's signal from small cell facilities and local public safety radio services. In this letter, AT&T's representative stressed that AT&T "will work cooperatively to address any interference problems" if they arise, but suggested that the originally proposed language conflicted with FCC regulations.

The FCC regulates the steps that carriers must take to abate unacceptable interference with public safety radio signals, which have an assigned band of wavelengths under FCC regulations. The FCC defines "unacceptable interference." A carrier must respond to notification of interference within 24 hours; the carrier must then complete an interference analysis and initiate corrective action within 48 hours of the initial notification. The procedures have several mitigation options to correct interference issues. However, discontinuing the use of the carrier's facility is an option only after a showing of clear and imminent danger certified by local officials and FCC officials.

The AT&T letter suggested alternative language to resolve the potential conflict they perceived between the original language and the revised Section 99.26(H) presented for second reading. All carriers must comply with the FCC's interference abatement protocols.

Recommendation

Staff recommends adoption of Amended Ordinance 41-18 authorizing the amendments to Chapter 99 and the accompanying design guidelines at the second reading/public hearing on June 25, 2018.