



Small Cell Wireless Facilities Ordinance and Aesthetic Guidelines

To: Davidson Board of Commissioners
From: Cindy Reid, Town Attorney
Date: December 11, 2018
Re: Small Cell Wireless Facilities Ordinance and Aesthetic Guidelines

1. OVERVIEW

The General Assembly passed House Bill 310, “An Act to Reform Collocation of Small Wireless Communications Infrastructure to Aid Deployment of New Technologies” in June 2017, and it became effective in July 2017. The legislation significantly limits municipal authority regarding the siting of small cell installations and opens up the public right of way for installation of these facilities. Although the legislation is restrictive, the Town may still adopt and enforce reasonable design guidelines, spacing and safety requirements, additional protections for rights of way in the historic district, and requirements that the providers collocate on existing poles rather than install new poles.

In addition to the NC legislation, the Federal Communication Commission’s (FCC) 5G Small Cell Declaratory Ruling and Third Report and Order (“Order”) was published in the Federal Register on Monday, October 15, 2018, and will become effective on January 14, 2019. The Order imposes nationwide restrictions on local government authority to regulate small cell wireless deployment and requires adoption of aesthetic guidelines prior to January 13, 2019.

Because most of the small cell facilities will now be located in town or NCDOT ROW, a new Article (also referred to as ordinance) should be added to Chapter 66 the Municipal Code followed by amendments to Planning Ordinance. The new regulations will permit small cell facilities to be located in the public right of way but will require that small cell antenna be “stealth” or and that associated equipment boxes blend in with the natural surroundings to lessen their visual impact. The amendments will include height limits that are the most restrictive permitted by the legislation. Installation of new poles will be prohibited in areas where other utilities are required to be underground. Utility poles may only be modified or replaced to accommodate the small cell facilities. A new utility pole will require a variance due to the Town’s undergrounding requirement for new utilities.

2. RELATED TOWN GOALS

The goal is to comply with state statutes and FCC orders.

3. OPTIONS/PROS & CONS

No options. If the Town does not adopt an ordinance incorporating HB 310, the General statutes control and supersede local ordinances that contradict state statute.

4. FYI or RECOMMENDED ACTION

Recommended action is adoption of the new ordinance on January 8, 2019.

5. NEXT STEPS

December 11, 2018 - explanation of ordinance

December 11 - December 31, 2018- Wireless FAQ on town website

January 8, 2019- Board of Commissioners vote to approve new ordinance