



CITY COUNCIL AGENDA ITEM

TO: Mayor & City Council

DATE: October 3, 2014

FROM: John McDonough, City Manager

AGENDA ITEM: Regulation of Small Cell Technology in the Public Right-of-Way

MEETING DATE: For Submission onto the October 7, 2014, City Council Work Session Agenda

BACKGROUND INFORMATION: (Attach additional pages if necessary)

See attached:

Memorandum
Ordinance

CITY MANAGER APPROVAL: _____

PLACED ON AGENDA FOR: **10/7/2014**

CITY ATTORNEY APPROVAL REQUIRED: () YES () NO

CITY ATTORNEY APPROVAL: _____

TO: Mayor and Council
FROM: Wendell K. Willard, City Attorney
Cecil G. McLendon, Jr., Assistant City Attorney
DATE: September 19, 2014 for the October 7, 2014 Work Session
ITEM: Regulation of Small Cell Technology in the Public Right-of-Way.

Background:

In November of 2013, the City adopted an Ordinance which required that any installation of small cell technology in the City's right-of-way be co-located on existing, legally placed, infrastructure. Since that time, the City has communicated with service providers and determined that it would be appropriate to consider a variance process which would potentially allow the placement of stand-alone Small Cell Technology Wireless Structures within the City's right-of-way upon a demonstration of appropriateness by the applicant.

Discussion:

The proposed ordinance (a copy of which is attached hereto) creates a process by which an applicant could apply to locate a stand-alone structure in the City right-of-way for Small Cell Technology upon a showing that they had pursued all co-location opportunities and had been denied.

In determining whether to allow the installation, the City Manager, or his designee, would consider several factors in order to determine whether the proposed installation was appropriate and, either allow or deny the installation.

Recommendation:

The staff recommends the adoption of the ordinance.

Financial Impact:

No financial impact is anticipated.

*City
Attorney*

**AN ORDINANCE TO ADOPT REGULATIONS OF SMALL CELL TECHNOLOGY IN
THE PUBLIC RIGHT OF WAY**

WHEREAS, the Mayor and City Council of the City of Sandy Springs are charged with the protection of the public health, safety, and welfare of the citizens of Sandy Springs, Georgia (“City”); and

WHEREAS, the installation, expansion, maintenance, and aesthetics of wireless support structures for Small Cell Technologies (as hereinafter defined) in City rights-of-way can have significant impacts upon: (1) other uses within the right-of-way; (2) safety of the traveling public, (3) property values of adjacent parcels; (4) the historic and aesthetic character of the City; and (5) the public health, safety, and welfare of citizens utilizing the roads and nearby properties; and

WHEREAS, the City seeks to ensure the safe and efficient integration of facilities necessary for the provision of broadband and other advanced wireless communication services throughout the City; and

WHEREAS, the City seeks to ensure the ready availability of reliable wireless communication services to the public to support personal communications, economic development, and the general welfare; and

WHEREAS, the City seeks to encourage where feasible the modification or collocation of Small Cell Technologies on existing support structures over the construction of new wireless support structures; and

WHEREAS, the Federal Telecommunications Act allows local governments to provide for reasonable regulations over the location, expansion, height, and maintenance of telecommunications facilities so long as service is not prohibited; and

WHEREAS, the City has created certain requirements for applicants to obtain a wireless support structure use permit for wireless support structures within the City rights-of-way in support of Small Cell Technologies, which ensure adequate wireless coverage while preserving the health, safety, and welfare of the citizens of the City, as well as preserving the aesthetic and historic nature of certain areas in the City; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Sandy Springs, Georgia, as follows:

Section 1: Article 1, Sections 50-5 – 50-23 are hereby revised as follows:

Article I, Sections 50-5 – 50-23 (“Reserved”) shall be deleted in its entirety, and a new Article I, Sections 50-7 – 50-23 shall be inserted, leaving said sections “Reserved.”

Section 2: A new Article I, Section 50-5 shall be inserted to read as follows:

“Sec. 50-5 Definitions

As used in this chapter, the term:

- (1) "Accessory Equipment" means any equipment serving or being used in conjunction with Small Cell Technology or a Small Cell Technology Wireless Support Structure and includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets, and storage sheds, shelters, or similar structures.
- (2) "Antenna" means communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communication services.
- (3) "Application" means a formal request submitted to the City to construct a Small Cell Technology Wireless Support Structure. An application shall be deemed complete when all documents, information, and fees specifically enumerated in the City's regulations, ordinances, and forms pertaining to the location, construction, or operation of wireless facilities are submitted by the applicant to the City.
- (4) "Collocation" means the placement or installation of new Small Cell Wireless Technology on the property of a utility, or other franchisee, legally existing in the public right of way. Such term includes the placement of accessory equipment within an existing equipment compound.
- (5) "Equipment Compound" means an area surrounding or adjacent to the base of a wireless support structure within which accessory equipment is located.
- (6) "Small Cell Technology" means: (1) individual small cell wireless antennas; or (2) networks of spatially separated small cell wireless antenna nodes connected to a common source via transport medium that provides wireless service within a geographic area or structure commonly referred to as Distributed Antenna Systems."
- (9) "Small Cell Technology Wireless Support Structure" means a freestanding structure, designed to support or capable of supporting Small Cell Technology wireless facilities.
- (10) "Stealth Technology" means a method of concealing or reducing the visual impact of Small Cell Technology and/or Small Cell Technology Wireless Support Structures by use of incorporating features or design elements of the installation which either totally or partially conceals the structure; achieves the result of having the structure blend into the surrounding environment; or otherwise minimizes the visual impact of the structure.

Section 3: A new Article I, Section 50-6 shall be inserted to read as follows:

"Sec. 50-6 Placement of Small Cell Technology in the Right of Way: The following Standards shall apply for the placement of Small Cell Technology in the public right of way, or on a public road, city easement or any other City property.

- (a) Any Small Cell Technology in a City right-of-way shall be co-located on the property of a utility, or other franchisee, legally existing in the public right-of-way unless the applicant can demonstrate that no co-location opportunities exist in the area of need. If the applicant demonstrates that no co-location opportunities exist; the applicant may apply for a variance to allow for a Small Cell Wireless Support Structure within the area of the public right-of-way.

(b) In determining whether to issue a variance allowing the installation of a Small Cell Technology Wireless Support Structure within the right-of-way, the City Manager, or his or her designee, shall consider the following factors and make a determination if it is appropriate:

1. Demonstrated need for the Small Cell Technologies within the geographic area requested in order to deliver adequate service;
2. Proof that all co-location sites in the area of need are/were pursued and have been denied; or that there does not exist the ability to co-locate using existing structures. The Applicant must demonstrate all actions taken to achieve co-location.
3. The character of the area in which the Small Cell Technology Wireless Support Structure is requested, including evidence of surrounding properties and uses;
4. Stealth Technology, if any, proposed to be utilized by the Applicant, or proof that Stealth Technology is either: (a) unnecessary; or (b) cannot be used.
5. Proof that the proposed Small Cell Technology Wireless Support Structure is the minimal physical installation which will achieve the Applicant's goals.
6. The safety and aesthetic impact of any proposed Small Cell Technology Wireless Support Structure, related accessory equipment, and/or Equipment Compound.

(c) Within 90 calendar days of the date an application is filed with the City, unless another date is specified in a written agreement between the local governing authority and the applicant, the local governing authority shall:

1. Make its final decision to approve or disapprove the application; and
2. Advise the applicant in writing of its final decision.

(d) Within 30 calendar days of the date an application is filed with the City, the City shall notify the applicant in writing of any information required to complete the application. To the extent additional information is required to complete the application, the time required by the applicant to provide such information shall not be counted toward the 90 calendar day review period set forth in this subsection.

(e) Any appeal of a decision rendered pursuant to the Code Section shall be made by Writ of Certiorari to the Superior Court of Fulton County, Georgia.

Section 3: This Ordinance shall become effective immediately upon its adoption by the City Council, and incorporated into the Code of the City of Sandy Springs, Georgia.. This Ordinance hereby repeals any and all conflicting ordinances and amendments.

ORDAINED this the ____ day of _____, 2014.

Approved:

Russell K. Paul, Mayor

Attest:

Michael Casey, City Clerk

(Seal)

Approved as to Form:

Wendell Willard, City Attorney