




City of Rochester

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MEMORANDUM

Date: May 27, 2019

To: Blaine Wing, City Manager

From: Jeffrey S. Kragt 

Subject: Ordinance Amendment adding new Article for Small Cell Wireless Infrastructure Regulations, Section 50-251 et seq.

Copies: Nik Banda, Shannon Filarecki, Lee Ann O'Connor, Kaitlin Milligan

Issue: Consideration of a new Ordinance to implement small cell wireless infrastructure to the extent permitted by law.

Analysis: As City Council is well aware, new laws have been enacted that nearly strip away all of the municipalities' rights to regulate and control the installation of the new small cell wireless devices within the City's right-of-way. Over the past years, there have been municipal groups and advocates that have protested and taken legal action to give the municipalities back their rights to control within their own rights-of-way. Unfortunately, such efforts have not concluded in municipalities' favor. The result is that small cell wireless providers and wireless infrastructure providers have nearly unbridled access to municipal rights-of-way, including the attachment of equipment to municipal poles and the ability to install new poles. At the same time, the laws have severely undercut what municipalities are able to charge these providers for the access to the rights-of-way and municipally owned poles. While I expect legal actions to oppose these laws will continue into the future, I believe it's time to implement regulations to the extent possible within the City Code.

Municipal advocacy groups have put together a model ordinance that municipalities are encouraged to consider. The ordinance provides certain controls and regulations to the extent permitted by the FCC and other laws. For example, Municipalities have some regulatory authority over such things as the aesthetics of the new equipment. However, in order to apply the regulations to the providers, the municipalities must have these provisions in their ordinances. Otherwise, the providers will take the position that any attempts to regulate are not enforceable.

The enclosed Ordinance is based off of the model ordinance as I have adapted for the City of Rochester's use. I believe that it is a good and comprehensive set of regulations that are

fashioned as close as possible to the laws, while at the same time offering as much regulation as permitted.

For those who may be interested in reviewing the Small Wireless Communications Facilities Deployment Act itself, I have enclosed the Act, 2018 PA 356 MCL 460.1301. This Act became effective March 12, 2019. The City has already received an application from a provider, so this set of Ordinances is timely and a needed step in the process.

Requested Action: To consider the proposed Ordinance and, if City Council wishes to proceed, the requested action is to move the Ordinance for first reading and introduction.

Attachment: Proposed Ordinance adding Section 50-251 et seq.
Small Wireless Communications Facilities Deployment Act