

Staff Memorandum – Wireless Communications Initiative: Master Plan and Ordinance

Continuation Public Hearing – 05/23/2018



Overview: On [April 18, 2018](#)¹, the Council opened the Public Hearing, received comments from the public, and recessed the public hearing until tonight, May 23, 2018. The intent of the proposed Wireless Communications Initiative (WCI) Master Plan and corresponding Ordinance is to provide a guiding plan and up-to-date regulations pertaining to the Town’s wireless communications facilities.

Additional Details: The Town Manager approved the Wireless Communications Initiative in spring of 2017 in response to forthcoming wireless technology changes, new inquiries from the wireless industry, Federal and State regulatory changes and community concerns. The proposed Master Plan and Ordinance for wireless communications facilities will position the Town to benefit from coming changes as well as guard against unwanted impacts. This has been a public process carried out in conjunction with CityScape consultants.



Recommendations:

Staff Recommendation:

That the Council:

- Close the public hearing;
- Adopt the Resolution of Consistency with the Comprehensive Plan;
- Adopt the Wireless Communications Master Plan proposal; and
- Enact the Wireless Communications Land Use Management Ordinance Text Amendment proposal.

UPDATE

Council members made some inquiries at the April 18 Public Hearing that staff responded to at the meeting. We have attached those questions and responses (Attachment 11).

Additionally, there was a statement by Trey Rabon, AT&T Executive Director of Government Relations, who said that he was representing a consortium of wireless industry organizations, including AT&T, American Tower, Verizon, Sprint, and T-Mobile.

Mr. Rabon said that he thought the Ordinance presented at the April 18 Public Hearing could better reflect the goals of the Master Plan. One point Mr. Rabon made was that the more similar Ordinances are across jurisdictions the more efficient deployment is for the wireless industry. He said that the different wireless infrastructure types should be more distinct from each other, particularly the large macro towers and small wireless networks. Katy Jobe of Smith Moore Leatherwood made similar points in an April 13 letter sent to Town staff (Attachment 12), to which Town staff responded on April 25, 2018 (Attachment 13). Mr. Rabon also said that he hoped staff would work directly with the wireless industry representatives to accommodate their concerns.

¹ <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=3477527&GUID=1CE864C0-CA5B-4AE8-A5B4-956306E42F37>

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Town staff organized a meeting on April 26 with a group of about 16 wireless industry representatives to obtain clarification about their principal concerns. The outcome of the conversation was to find a middle ground and integrate many of the industry's concerns into the revised Ordinance. The needs of the industry are important for the efficient deployment of infrastructure to provide Chapel Hill with the technology it needs. However, the Town must balance the industry's recommendations with advisory board recommendations, and public feedback, and community goals.

Key Issues: A summary of key industry requests and staff responses follows:

Industry Request: Better differentiate the wireless facility types in the Ordinance use matrix to help clarify small wireless facilities.

Staff Response: We agree. Table 3.7-1, Use Matrix, has been updated in the revised Ordinance for improved clarity (Attachment 7).

Industry Request: Add a definition for *Wireless Communication Services*.

Staff Response: We have added this definition to the revised wireless Ordinance, Section 5.20.3, Definitions (Attachment 7).

Industry Request: That the Town rewrite the Ordinance so that small wireless communication facilities (WCF) have their own separate Ordinance. The industry's perspective is that the efficient deployment of the two WCF types requires them to be treated separately.

Staff Response: We think that all facility types need to be in one Ordinance that both 1) addresses the nuance between WCF types and 2) overlapping State and Federal regulations. In the revised Ordinance, staff have better differentiated small wireless facilities from other types of facilities, in Ordinance section 5.20.9, *Administrative Approvals – Wireless Communication Facilities*. We think this provides clarification for the industry over the prior version of the Ordinance (Attachment 7).

Industry Request: That the Town eliminate the preference for siting ancillary small wireless facility equipment in underground vaults.

Staff Response: We agree with this request. We think that the potential benefit of siting small wireless equipment in underground vaults is eclipsed by the disruption in public rights-of-way and possible damage to existing underground utilities. We revised Ordinance subsection 5.20.9(d)(2)(vii) to reflect this change.

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Industry Request: Increase the maximum small wireless utility pole height from 35 feet to 50 feet in public rights-of-way, as allowed by [North Carolina Article 19 Part 3E of Chapter 160A-400.50-57](#)², to improve the effectiveness of small wireless facilities.

Staff Response: We agree that initial tower heights in public rights-of-way should be increased from 35 to 40 feet. The Federal Spectrum Act³, which is not entirely in agreement with recent North Carolina wireless regulations, allows for subsequent expansion of such facilities up to 50 feet. We have revised Ordinance subsections 5.20.9(d)(1)(vi), 5.20.9(e)(1)(ii)(e) and 5.20.9(e)(1)(iii)(b) to reflect this change (Attachment 7).

Industry Request: Increase the maximum concealed small wireless utility pole height from 40 feet to 50 feet outside of public rights-of-way, in single-family zoning districts, to improve the effectiveness of small wireless facilities.

Staff Response: We agree that concealed small wireless facility utility pole heights, outside public rights-of-way, in single-family zoning districts, should be increased, but to 40 rather than 50 feet. The 40-foot height would correspond to facility heights allowed in surrounding rights-of-way. Furthermore, an applicant could request a modification to regulations for additional height, if warranted, as these facilities would require Special Use Permits. We have revised Ordinance subsection 5.20.10(a)(1)(v) to reflect this change (Attachment 7).

Industry Request: Reduce the minimum distance separating small wireless facilities in public rights-of-way from 250 to 165 feet to improve the effectiveness of small wireless facilities.

Staff Response: We agree to reduce the minimum distance between small wireless facilities from 250 to 165 feet. Staff do not want to inhibit the effectiveness of small wireless facility deployment. We have revised Ordinance subsections 5.20.9(d)(1)(viii), 5.20.9(d)(2)(ix), and 5.20.9(e)(1)(v) to reflect this change (Attachment 7).

Fiscal Impact/Resources: The Town entered into a contract with CityScape consultants, Inc. for \$35,500 for services pertaining to development of a wireless communications Master Plan and Ordinance. There are possible income opportunities from wireless lease agreements on Town property. We anticipate a need to dedicate additional staff time to the review and approval of wireless communications facility applications.

² https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_160A/GS_160A-400.50.pdf

³ More specifically known as The Middle Class Tax Relief and Job Creation Act of 2012 ([P.L. 112-96](#), signed February 22, 2012) contains provisions in Title VI that expedite the availability of spectrum for commercial mobile broadband.

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Text Amendment Findings of Fact: All information submitted at the public hearing will be included in the record of the hearing. Based on the comments and documentation submitted, the Council will consider whether it can make one or more of three required findings (A-C listed below) for enactment of the Land Use Management Ordinance Text Amendment. In order to establish and maintain sound, stable, and desirable development within the planning jurisdiction of the Town, the intent is that the Land Use Management Ordinance shall not be amended except:

- A. To correct a manifest error in the chapter; or
- B. Because of changed or changing conditions in a particular area or in the jurisdiction generally; or
- C. To achieve the purposes of the Comprehensive Plan.

Following is a staff response to the three required considerations:

- A. To correct a manifest error in the appendix

Staff Comment: We believe the information in the record to date can be summarized as follows:

Argument in Support: The Town’s Land Use Management Ordinance needs to be congruent with Federal and State law.

Argument in Opposition: To date no arguments in opposition have been submitted.

- B. Because of changed or changing conditions in a particular area or in the jurisdiction generally

Staff Comment: We believe the information in the record to date can be summarized as follows:

Argument in Support: We think that changing conditions due to increasing demands for wireless communications capacity, new technology in the wireless communications industry, and changes to Federal and State laws related to wireless communications warrant the need for a WCI Master Plan and Ordinance.

Argument in Opposition: To date no arguments in opposition have been submitted.

- C. To achieve the purposes of the Comprehensive Plan

Staff Comment: We believe the information in the record to date can be summarized as follows:

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Argument in Support: Relevant goals and objectives in the Chapel Hill 2020 Comprehensive Plan include, but are not limited to:

- A welcoming and friendly community that provides all people with access to opportunities (A Place for Everyone, Goal PFE.4);
- A community of high civic engagement and participation (A Place for Everyone, Goal PFE.5);
- Foster success of local businesses (Community Prosperity and Engagement, Goal CPE.2);
- Promote a safe, vibrant, and connected (physical and person) community (Community Prosperity and Engagement, Goal CPE.3);
- Create a comprehensive transportation system that provides everybody safe and reasonable access to all the community offers (Getting Around, Goal GA.5);
- A community that welcomes and supports change and creativity (Good Places, New Spaces, Goal GPNS.6);
- Take full advantage of ideas and resources to create a thriving economy and incorporate and utilize the intellectual capital that the University and Town create (Town and Gown Collaboration, Goal TGC.1);
- Improve and expand access to the arts, culture, and intellectual pursuits for both the University and the Town (Town and Gown Collaboration, Goal TGC.2); and
- Promote access for all residents to health-care centers, public services, and active lifestyle opportunities (Town and Gown Collaboration, Goal TGC.6).




Argument in Opposition: To date no arguments in opposition have been submitted.

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Summary of Advisory Board/Commission Recommendations:

Advisory Board/Commission	Recommendation	Notes/Edits
Planning Commission (3-6-2018 & 3-20-2018)		<ul style="list-style-type: none"> • Endorses CDC recommendation about auxiliary equipment • Require CDC review WCF design options • Require time limit on temporary WCFs • Require WCF congruence with 2020 Comprehensive Plan and Future Land Use Plan • Require measurement of radio frequency (RF) signal strength by providers. • Require hierarchy adjustment of WCFs
Community Design Commission (2-27-2018 & 3-15-2018)		<ul style="list-style-type: none"> • Require underground vaults for equipment • Concerned that Master Plan encourages use of Town property for tower construction in Town open space • Require that wireless lease funds be dedicated to libraries and public facilities • Require Town to inventory utility poles • Require buildings to reserve WCF space • Require SUPs for dual-purpose towers, such as clock towers
Key: ✓: Approval recommended ✕: Denial recommended  : Comments		