

City of Fayetteville Staff Review Form

2017-0532

Legistar File ID

10/3/2017

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Susan Norton

9/18/2017

MAYORS ADMIN (015)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

The Administration recommends approval of the attached ordinance for the implementation process for small cell communications facilities within the City of Fayetteville.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Current Budget \$ -

Funds Obligated \$ -

Current Balance \$ -

Does item have a cost? NA

Item Cost

Budget Adjustment Attached? NA

Budget Adjustment

Remaining Budget \$ -

V20140710

Previous Ordinance or Resolution #

Original Contract Number:

Approval Date:

Comments:



MEETING OF OCTOBER 3, 2017

TO: Mayor and City Council
THRU: Don Marr, Chief of Staff
FROM: Susan Norton, Communications Director
DATE: 9/18/17
SUBJECT: **Small Cell Ordinance**

RECOMMENDATION:

The Mayor's Administration recommends approval of the Small Cell Facilities Ordinance. An internal team made up of Administration, Development Services, Information Technology staff and City Attorney's office spent several months reviewing recently enacted ordinances and statutes from a number of cities and states across the region, looking for what would be the best fit for Fayetteville.

BACKGROUND:

Over the past several months, the City has been approached by at least 5 providers who are interested in erecting small cell facilities to provide telecommunications services to the citizens of Fayetteville. City staff have met with these providers to review draft language for the ordinance that we now propose.

DISCUSSION:

There are four primary issues to be considered as we implement this new technology in our city:

1. Providing a streamlined application window that enables providers to proceed to implementation while creating procedures for existing staff to establish criteria for review and a process to facilitate approvals.
2. Ensuring that the city's right-of-way management remains with the city.
3. Ensuring that the aesthetics of the small cell facilities are consistent with city design principles and do not clutter the landscape.
4. Coming up with fair and reasonable application and annual lease fees.

We ultimately chose an ordinance from Overland Park, Kansas as our model and then the City Attorney's office helped craft the language to fit within our existing code. Some issues we found needed to be addressed with respect to the types of technologies that may be implemented, including but not limited to: types of new pole installations (standard wood poles or stealth, such as facilities hidden within lightpoles); types of structures that may be attached to city owned assets (traffic signals) or utility company

poles and how they may be camouflaged; both ensuring and limiting distances between licensees or pole operators so the installations would not be crowded nor would they impede equal opportunity for the carriers to support their networks; and “pole standards,” to help maintain consistency in attachments.

We recognize that there are certain technologies that should have access to the public rights of way but can not be required to enter into a franchise agreement, which is why we established this new section of code 110.03 Small Cell Facilities and Networks.

BUDGET/STAFF IMPACT:

None

EXHIBIT A

110.03 Small Cell Facilities and Networks

(A) Definitions: As used in § 110.03, the following terms shall have the meanings set out below:

(1) *Administrative Review* means non-discretionary evaluation of an Application by the Zoning and Development Administrator. This process is not subject to a public hearing or conditional or special review process.

(2) *Antenna* means communications equipment that transmits or receives electromagnetic radio signals used in the provision of telecommunications services:

(a) *Distributed antenna system (DAS)* means a network that distributes radio frequency signals and consisting of:

1. Remote communications or Antenna nodes deployed throughout a desired coverage area, each including at least one Antenna for transmission and reception;
2. A high capacity signal transport medium that is connected to a central communications hub site; and
3. Radio transceivers located at the hub's site to process or control the communications signals transmitted and received through the Antennas to provide Wireless or mobile Service within a geographic area or structure.

(b) *Small Cell Facility* means a Telecommunications Facility that meets both of the following qualifications:

1. Each Antenna is located inside an enclosure of no more than six (6) cubic feet in volume, or in the case of an Antenna that has exposed elements, the Antenna and all of the Antenna's exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and
2. Primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the FCC has excluded from review pursuant to 54 U.S.C. § 306108. Accessory Facilities may be located outside the primary equipment, and if so located, are not to be included in the calculation of equipment volume. Accessory Facilities includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

(c) *Small Cell Network* means a collection of interrelated Small Cell Facilities designed to deliver wireless service.

- (3) *Applicant* means any person or entity that is engaged in the business of providing wireless services or the wireless infrastructure required for wireless services.
- (4) *Competing local exchange carrier* means a telecommunications provider that has received a certificate of public convenience and necessity from the Arkansas Public Service Commission under the authority of Ark. Code Ann. § 23-17-409 and is authorized to install equipment and operate within the public rights of way or on public or private property in the City of Fayetteville. This shall include distributed antenna systems, small cell facilities and small cell networks.
- (5) *Person* means any individual, resident, citizens, business firm, corporation, partnership, governmental agency, or institution.
- (6) *Streets* means all streets, roads, highways, alleys, rights-of-way, public utility easements, public property, public ways and air space over such streets, roads, alleys, public rights-of-way, public utility easements, public property and public ways located within the geographic limits of the city.
- (7) *Telecommunications* means the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information sent and received, whether wired or wireless.
- (8) *Telecommunications facilities or facilities* means all conduits, manholes, poles, antennas, transceivers, wires, cable (including fiber optic cable), technology, and appurtenances owned or utilized by a telecommunications provider or third party infrastructure provider and located in, under or over the streets of the city or on public or private property and utilized in the provision of telecommunications services. This includes without limit, towers of all types, and base stations, including but not limited to buildings, church steeples, water towers, signs, poles, streetlights, traffic signals, or other structures that can be used as a support structure for antennas or the functional equivalent of such. It further includes all related accessory facilities associated with the site. It is a structure and facility intended for transmitting and/or receiving, wireless services, Specialized Mobile Radio (SMR), personal communications services (PCS), commercial satellite services, microwave services, radio, television, and any commercial Wireless Service not licensed by the FCC.
- (9) *Telecommunications Provider or provider* means any person, firm, corporation, partnership or other business entity, other than the city, that provides telecommunications services within or without the geographic boundaries of the city by utilizing telecommunications facilities to provide telecommunications services. This shall include competing local exchange carriers or businesses that install small cell facilities on behalf of telecommunications providers.

(10) *Telecommunications services or services* means any service delivering telecommunications by a telecommunications provider that the provider is authorized to provide under federal, state and local law, except that these terms do not include cable service as defined by the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. §521 et seq., and the Telecommunications Act of 1996.

(B) Compliance with State and Federal Regulations. Applicant shall comply with all applicable state and federal regulations. Proof of compliance shall be provided upon request of the Zoning and Development Administrator. Applicant shall not be required to enter into any franchise agreement with the City.

(C) Consolidated Application. An applicant may file one consolidated application for a small cell network of up to ten (10) individual small cell facilities of a substantially similar design every seven calendar days. The City may require a separate application for any small cell facilities that are not of a substantially similar design. The form of the permit Application is located on the City's website under Small Cell Facilities and Networks.

(D) An applicant shall submit with the application all documentation or other evidence required by the Zoning and Development Administrator to sufficiently establish the structural soundness of proposed facilities.

(E) Administrative Approval of Co-Located Facilities. The Zoning and Development Administrator, following an Administrative Review, may approve the following facility installations:

(1) Locating on Existing Structures. Installation of facilities on an existing structure other than a tower (such as a building, light pole, electric transmission tower, water tank, or other free-standing non-residential structure) provided that the facilities do not extend any higher than the existing structure. The Zoning and Development Administrator may grant a variance of up to ten (10) feet in height when such additional height is necessary for improved functionality or safety.

(a) Facilities Placed on Top of Buildings. When facilities extend above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front façade in order to limit their impact on the building's silhouette.

(b) Facilities Placed on Sides of Buildings. Facilities which are side-mounted on buildings shall be camouflaged (such as in a light fixture), shrouded, painted or constructed of materials to match the color of the building material directly behind them, and shall not extend above the roof line or extend more than five (5) feet from the façade of the building.

(2) Locating on Existing Tower Not Previously Approved Through §163.13 of the U.D.C. Existing towers that do not have facilities may not add such

capability without securing a conditional use permit. Antennas may be replaced by similar antennas at the same height and for the same basic usage as the antennas being replaced.

- (3) Locating on Existing Towers Previously Approved Through §163.13. Additional facilities may be placed upon any tower already approved through §163.14 of the U.D.C. so long as such additional facilities would not violate any requirements of the conditional use permit or other provisions of §163.13.
- (4) The applicant must submit a letter of intent indicating the intent and agreement to allow colocation of facilities.
- (5) If proposed facilities are not or cannot be adequately camouflaged, the City may require the installation of new stealth facilities.
- (6) Any disturbance of City infrastructure (such as, but not limited to, streets, sidewalks, and utilities) shall be repaired and restored by the applicant at its expense and to a condition at least as good as that existing before the work causing such disturbance was commenced.
- (7) Fees. An applicant shall pay an application fee in the amount of \$200.00 for a single facility and \$25.00 for each additional facility included in the application. Providers with approved permits shall pay an annual fee in the amount of \$250.00 for each facility co-located on an existing structure in the public rights-of-way. If the Provider is installing its own fiber optic technology to a particular location and does not otherwise have a City franchise to do so, the Wireless Provider shall also provide the City with four (4) dark pairs of fiber that the City may use for a public purpose.

(F) Administrative Approval of New Facilities in Public Rights of Way. Providers proposing the construction or installation of new facilities in the public rights of way shall comply with following requirements:

- (1) Construction Maintenance. The provisions of § 110.02(E), with the exception of §§ 110.02(E)(3) and (E)(10), shall govern the process of approval for the construction or installation of any new facilities within the public rights of way.
- (2) Fees. An applicant shall pay an application fee in the amount of \$200.00 for a single facility and \$25.00 for each additional facility included in the application. Providers with approved permits shall pay an annual fee in the amount of \$50.00 for each new facility located in the public right of way. If the Provider is installing its own fiber optic technology to a particular location and does not otherwise have a City franchise to do so, the Wireless Provider shall also provide the City with four (4) dark pairs of fiber that the City may use for a public purpose.
- (3) Height Limitations. New facilities placed by the provider in public rights of way are permitted to be a maximum height of no more than ten (10) feet above the median height of other telecommunications facilities in the block for the proposed location, but in no event taller than thirty (30) feet above grade.

- (4) Camouflaging or Stealth Technology Required. New facilities shall be designed to be camouflaged to the greatest extent possible including, but not limited to, use of compatible building materials and colors, incorporation within street lights, screening, landscaping, and placement within trees. All antenna arrays, cables, and other accessories used for providing the services shall not be obtrusive or noticeably visible. The Zoning and Development Administrator may approve the installation of a standard utility pole in areas where such installation will not degrade the streetscape but any facilities shall be camouflaged to the greatest extent possible. Camouflaging and stealth technology shall be required in all residential areas, improvement districts (including, but not limited to, the Dickson Street area and College Avenue improvement corridor), and any area in which utilities have been installed or relocated underground. Understanding that new technologies are anticipated to change the components of telecommunications facilities, the Administrator may determine if a telecommunications facility or component of a telecommunications facility is designed to be stealth.
- (5) Fall Zone. The minimum distance from the base of any facility to any residential dwelling unit shall be the lower height or required setback, whichever is greater, unless all persons owning said residence or the land on which said residences are located consent in a signed writing to the construction of said facility. This setback is considered a "fall zone." In the event that an existing facility is proposed as a mount for the provider's equipment, a fall zone shall not be required.
- (6) Distance between new facilities. New facilities, excluding facilities camouflaged to fit within the streetscape (e.g., facilities incorporated within a street light), shall be spaced a minimum of five hundred feet (500') from any other new facility approved under this section.
- (7) Information Required to Process Requests for New Facilities.
- (a) Provide a map of the geographic area that your project will serve;
 - (b) Provide a map that shows other existing or planned facilities that will be used by the telecommunications provider who is making the application;
 - (c) Provide a map that shows other potential standalone locations for your facility that have been explored;
 - (d) Provide a scaled site plan containing information showing the property boundaries, proposed facility, existing land use, surrounding land uses and zoning, access road(s) location and surface material, existing and proposed structures and topography. The plan shall indicate proposed landscaping, fencing, parking areas, location of any signage and specifications on proposed lighting of the facility;
 - (e) Describe why the proposed location is superior, from a community perspective, to other potential locations. Factors to consider in the community perspective should include: visual aspects, setbacks, and proximity of single-family residences;

- (f) Describe your efforts to co-locate your facility on existing structures, one of the poles or towers that currently exists, or is under construction. The applicant should demonstrate a good faith effort to co-locate with other carriers. The city may deny a request to construct or install a new structure by an applicant that has not demonstrated a good faith effort to provide for co-location. Such good faith effort includes:
 - 1. A survey of all existing structures that may be feasible sites for co-locating wireless communications facilities;
 - 2. Contact with all other telecommunications providers;
 - 3. Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location; and
 - 4. Letter from tower or pole owner stating why co-location is not feasible.
- (g) Describe whether you will or will not accommodate equipment of other telecommunications providers that could co-locate on your facility. Describe how such accommodation will impact both your pole and your ground mounted facilities. Provide documentation of your provider's willingness or unwillingness to accommodate other providers who may be able to co-locate on your facility.
- (8) Application Time Frame. A final decision shall be issued for applications for facilities under subsections (E) and (F) within 60 calendar days subject to the following:
 - (a) The City shall supply written notice to the Applicant within thirty days of receipt of an Application clearly and specifically delineating any missing documents or information.
 - (b) Applicant shall submit any supplemental documentation and information to the City.
 - (c) City shall then have up to ten (10) calendar days to notify Applicant that the supplemental documentation or information satisfies the City's request.
 - (d) Second or subsequent notices may not specify missing documents or information that were identified in the original notice of incompleteness.
 - (e) This timeframe shall be tolled in cases in which the City determines that the application is incomplete. This timeframe may also be tolled by mutual agreement of the Applicant and City.
- (G) New Structures on Private Property. Telecommunications providers proposing the construction or installation of new poles or towers on privately owned property in the City shall comply with the provisions of § 163.13 **Wireless Communications Facilities** and shall obtain a conditional use permit.
- (H) New Facilities on Public Property. The City of Fayetteville will actively market its own property and existing facilities as suitable co-location sites. . Applications for new facilities on public property shall be subject to the Administrative Review process. An annual lease amount should be charged according to the fair market value

of the location. In cases in which the company no longer needs the facility, the city may require it to be removed. Applicants may be required to provide co-location space for city-owned facilities.

- (I) Appeals. An Applicant may appeal to the City Council a decision or interpretation made in the Administrative Review process by the Zoning and Development Administrator. Appeals shall follow the procedure set forth in Section 155.02 of the Unified Development Code. Pedestrian access and safety. All facilities shall be installed in such a manner not to impede, restrict, or adversely impact pedestrian or vehicular safety or convenience, or violate any provision of the Americans with Disabilities Act.
- (J) Emergency removal or relocation of facilities. The City retains the right to cut or move any facility located within its rights-of-way as the City, in its sole discretion, may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. City shall notify the provider after cutting or removing any facility within its rights-of-way. If circumstances permit, the City shall notify the provider in advance of any cutting or removal and give the provider an opportunity to move its own facilities.

Updated 10-14-17

Section Text	A 2 b (2) Primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the FCC has excluded from review pursuant to 54 U.S.C. § 306108. Accessory Facilities may be located outside the primary equipment, and if so located, are not to be included in the calculation of equipment volume. Accessory Facilities includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.	A 6 (6) Stealth technology means systems, components, and materials used in the construction of wireless communications facilities to make it compatible with the surrounding property.	E 1 (1) Locating on Existing Structures. Installation of facilities on an existing structure other than a tower (such as a building, light pole, electric transmission tower, water tank, or other free-standing non-residential structure), provided that the facilities do not extend any higher than 10 feet above the existing structure. The Zoning and Development Administrator may grant a variance of up to an additional ten (10) feet in height when such additional height is necessary for improved functionality or safety.	E 1 a (a) Facilities Placed on Top of Buildings. When facilities extend above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. If concealment behind existing architectural features is not possible, screening panels manufactured to match existing architectural features may be used. Facilities mounted on a roof shall be stepped back from the front façade to the extent practicable in order to limit their impact on the building's silhouette. Screening panels, if used, shall not exceed five (5) feet in height above the existing building's roofline.
Provider Comments	Suggest dimensions consistent with the dozen statewide small cell bills passed within the last year. Suggest: “Small Wireless Facility” means a Wireless Facility that meets both of the following qualifications: (i) each Wireless Provider’s Antenna could fit within an enclosure of no more than six cubic feet in volume; and (ii) all other wireless equipment associated with the Wireless Facility, whether ground- or pole-mounted, is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, vertical cable runs for the connection of power and other services.	Some providers have concerns with the interpretation of the stealth and camouflaging provisions and the potential increased cost it may impose for compliance and are concerned these stealth requirements could be applied arbitrarily and may be disparately treating wireless infrastructure in streetscapes that are otherwise dominated by utility poles and other apparatuses that are not subject to similar stealth requirements. In addition, some have indicated that high-cost stealth requirements may drive up the cost of small cell installations by 30-50%, which will impede our ability to invest elsewhere.	Not allowing facilities to extend any higher than the existing pole limits options for deployment – e.g., it would preclude deployments of canisters on top of poles. We recommend revising to allow for some additional height by right, with a provision for an additional increase based on a variance request. One provider requested that height limits be permitted up to forty-five (45) feet in residential zones and fifty-six (56) feet in all other zones (with the ability to allow an additional ten (10) feet).	In general, understood the limitations imposed by this provision, but have concerns as drafted it may not reflect technical realities and/or does not have sufficient flexibility that can be found on roof tops city-wide.

City Notes

We have seen a range from 17 to 28 cubic feet. Some cities/states allow some kind of variance. The Council could consider granting a variance up to 28 cubic feet.

Our team recommended including a definition of stealth technology. This is the same definition that appears in Section 151.01 Definitions of the Unified Development Code. Camouflaging does not need to be defined because we can use the plain and ordinary dictionary definition. We realize the stealth requirement may increase cost, but we feel the cost is justified to preserve the aesthetics for our community. We have recognized this additional cost to providers by lowering the annual fee charged for these stealth facilities.

If we are going to give the provider an attachment of 5 feet by right on an existing pole then we would limit the overall height of an attachment to 10 feet in total.

This is a request from Smith Communication. Per the recommendation of the Planning Director, we established concealment behind existing architectural features will be the priority and screening panels could be a secondary option if the first is not possible.

The screening panels would be installed at the façade of the building and still limit the visibility while making less of an impact on the silhouette. This is intended to provide the applicant and staff more flexibility for design to fit within the streetscape.

E 4

(4) Replacement of Existing Structures . If installation of facilities requires the removal and replacement of an existing structure, such as a pole, the new structure shall be considered an existing structure for the purposes of this section as long as the replacement structure is constructed of substantially similar material or is a camouflaged/stealth structure and the replacement structure is located within five (5) feet of the location of the original structure. The provisions of § 110.02(E) shall govern the standards of and procedures for construction or installation of replacement facilities within the public rights of way. The Zoning and Development Administrator may grant a variance of up to ten (10) feet in height when such additional height is necessary for improved functionality or safety.

AT&T was originally concerned that a replacement of an existing structure would be treated like a new pole (stealth requirement and 30 ft. height limit).

E 8

(8) Fees. An applicant shall pay an application fee in the amount of \$200.00 for a single facility and \$25.00 for each additional facility included in the application. Providers with approved permits shall pay an annual fee in the amount of \$250.00 for each facility co-located or installed on an existing structure in the public rights-of-way. If the Provider is installing its own fiber optic technology to a particular location and does not otherwise have a City franchise to do so, or does not pay franchise fees to the City pursuant to another agreement, the Provider shall also provide the City with four (4) dark pairs of fiber that the City may use for a public purpose.

The annual fee for a co-location should be \$50.00 instead of \$250.00. Since the city reduced the charge for new facilities in (F)(2), the fee for co-locations (where there are existing facilities) should be the same — there is no basis for a distinction. Further, the requirement to provide four pairs of dark fiber must be removed as the City will already be compensated, and provision of fiber for free is an unjustified additional cost and compensation, and without legal basis. The fiber provision is problematic and should be removed.

E 9

(9) Variances. In order to receive a variance under this subsection, an applicant must show that strict enforcement would make it difficult because of circumstances unique to the facility under consideration (e.g., topological challenges or line of sight issues) and demonstrate that the granting of the variance will be in keeping with the spirit and intent of this ordinance.

This seems like a strict standard.

F 2

(2) Fees. An applicant shall pay an application fee in the amount of \$200.00 for a single facility and \$25.00 for each additional facility included in the application. Providers with approved permits shall pay an annual fee in the amount of \$50.00 for each new facility located in the public right of way. If the Provider is installing its own fiber optic technology to a particular location and does not otherwise have a City franchise to do so, or does not pay franchise fees to the City pursuant to another agreement, the Provider shall also provide the City with four (4) dark pairs of fiber that the City may use for a public purpose.

This provision should be consistent with (E)(8). The requirement here to provide four pairs of dark fiber must be removed as the City will already be compensated, and provision of fiber for free is an unjustified additional cost and compensation, and without legal basis.

At AT&T’s request we included language clarifying that a provider can replace an existing pole and have the replacement pole treated as an existing structure. The provider would have to follow the procedures in 110.02(E) which governs the construction standards for telecommunications facilities in the public rights of way. As an existing structure, the 10 foot height variance could be requested.We are trying to encourage locating on existing structures and have included this language to allow pole replacements to be of substantially similar materials. Because of the height limitation on existing structures, this will discourage new facilities in the ROW.

Little Rock ordinance included the fiber request for non-franchise holders. Our fee structure recognizes the value of the use of existing city structures in the public ROW. As we mentioned in the previous presentation, fees are variable but can run as high as several thousand dollars per pole per year. This is a more equitable system and goes back to the fact that existing franchise holders are going to be paying: 1) the standard 4% franchise taxes; and 2) the annual fees for small cell facilities. New providers who do not have to pay the 4% franchise tax will be placed on a more even field by providing fiber rather than entering into a separate franchise agreement for laying the fiber within the public ROW.

The revised language is much more amenable than the original; it is clear and can be applied equitably by staff. The phrase "strict enforcement" is good language and will ensure that the standard is applied equally to all applicants.

The lower fee for new facilities recognizes that the provider is bearing the cost of installing the new facility.

F 3 (3) Height Limitations. New facilities placed by the provider in public rights of way are permitted to be a maximum height of no more than ten (10) feet above the median height of other telecommunications facilities in the block for the proposed location, but in no event taller than thirty (30) feet above grade.	F 5 (5) Fall Zone. The minimum distance from the base of any facility to any residential dwelling unit shall be the lower height or required setback, whichever is greater, unless all persons owning said residence or the land on which said residences are located consent in a signed writing to the construction of said facility. This setback is considered a "fall zone." In the event that an existing facility is proposed as a mount for the provider's equipment, a fall zone shall not be required.	F 6 (6) Distance between new facilities. New facilities, excluding facilities camouflaged to fit within the streetscape (e.g., facilities incorporated within a street light), shall be spaced a minimum of five hundred feet (500') from any other new facility approved under this section.	F 7 c (c) Provide a map that shows other potential stand-alone locations for your facility that have been explored;
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Same concerns as in (E)(1)	Many facilities will be on poles in rights-of-way. We understand that, by the final sentence, no landowner approval is required for an existing facility. Landowner approval should not be required for any new facility either. The facility will be in the City's right-of-way and, as such, the City's approval (as the right-of-way owner) should be sufficient. Requiring landowner approval will be an added expense and will also add significant time delays to the deployment process, which would be inconsistent with the intent of the ordinance to promote the efficient deployment of small cell facilities.	Arbitrary separation distances have unintended consequences. Placing restrictions on the placement of poles carries the very real possibility of creating areas of inadequate wireless coverage in Fayetteville. Furthermore, it is important to note that there may be areas in Fayetteville requiring additional wireless capacity where there are no poles or the existing poles are inadequate. Wireless communications in those areas, including emergency communications, may be at risk.	Concerns about providing a map. Confidential, that site may be explored at a later date. Or, if the original site fails may look to move to that location. The proposed site has already been invested in, money spent on surveys, construction drawings, RF analysis.
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This height limitation for new facilities is to encourage co-location/installation on existin facilities and discourage the placement of new facilities in the public ROW.

This is simply a safety issue as well as an aesthetic issu. Only applies to new facilities. A property owner would likely have concerns that a new facility pole should be far enough that it won't fall on any structures and there may also be some aesthetic concerns, particularly with structures in a build-to zone, that a provider could install a new facility just feet from a property owner's windows, door, patio, etc.

500 feet was included in several examples we reviewed. We reduced this number if a stealth pole was used, intent was to provide incentive to install integrated poles instead of utilizing existing.

It is reasonable to ask, from both safety and aesthetic points of view, which other locations in that limited area would be appropriate for the facility being proposed. Staff may be able to help the applicant identify more appropriate locations.

F 7 f

(f) Describe your efforts to install your facility on existing structures. The applicant should demonstrate a good faith effort to locate facilities on existing structures and/or co-locate with other carriers. The city may deny a request to construct or install a new structure by an applicant that has not demonstrated a good faith effort to with respect to this requirement.

No technology to collocate on new poles. If/when technology is produced, it will likely require all new technology which would require a replacement of the pole.

F 8

(8) Application Time Frame. A final decision shall be issued for applications for facilities under subsections (E) and (F) within 60 calendar days subject to the following:

(a) The City shall supply written notice to the Applicant within 30 days of receipt of an application clearly and specifically delineating any missing documents or information.

(b) Applicant shall submit any supplemental documentation and information to the City.

(c) City shall then have up to ten (10) calendar days to notify Applicant that the supplemental documentation or information satisfies the City’s request.

(d) Second or subsequent notices may not specify missing documents or information that were identified in the original notice of incompleteness.

(e) This timeframe shall be tolled in cases in which the City determines that the application is incomplete. This timeframe may also be tolled by mutual agreement of the Applicant and City.

H

(H) New Facilities on Public Property. The City of Fayetteville will actively market its own property and existing facilities as suitable co-location sites.

—Applications for new facilities on public property shall be subject to the Administrative Review process. An annual lease amount should be charged according to the fair market value of the location. In cases in which the company no longer needs the facility, the city may require it to be removed. Applicants may be required to provide co-location space for city-owned facilities. For purposes of this subsection, public property shall not include any public right of way or structures in any public right of way. Small cell facilities installed in the public right of way or on structures in the public right of way shall pay only the fees set forth in subsection (E) and shall not be charged additional fees under this subsection.

No definition of “fair market value” is given. Fees should be reasonable and predictable in light of the significant capital investment to bring this technology to the City. Proposed fees should be disclosed and discussed with carriers in advance of setting them. The “fair market value” basis for fees should be removed.

The new proposed language of this requirement is substantially amenable than the original draft. Co-location is important because evolving technology could allow it to be done in a way that providers are willing to incorporate. We should not remove it completely just because providers are unwilling or unable to co-locate at this time. It is important to preserve the good faith language to ensure that our priority (installation on existing structures or co-location) is maintained.

It has been suggested that we may try to come up with language for fast tracking certain types of new stealth poles but we have not had a chance to draft this.

We are not going to define fair market value in this context. The City owns a number of properties and if a provider wants to install a new facility or install on an existing structure, we will negotiate an agreement with that provider. It will likely be dependent upon the number of facilities proposed, the locations of those facilities, the current uses of the proposed locations and the demand/attractiveness of the proposed locations, and the City's aesthetic concerns. In way of example, a facility located in Wilson Park would have requirements of stealthing or camouflaging and the fair market value would be substantially higher than a location in the industrial park, which would also likely not have the same strict stealth/camo requirement.

EXHIBIT A

110.03 Small Cell Facilities and Networks

(A) Definitions: As used in § 110.03, the following terms shall have the meanings set out below:

- (1) *Administrative Review* means non-discretionary evaluation of an Application by the Zoning and Development Administrator. This process is not subject to a public hearing or conditional or special review process.
- (2) *Antenna* means communications equipment that transmits or receives electromagnetic radio signals used in the provision of telecommunications services:
 - (a) *Distributed antenna system (DAS)* means a network that distributes radio frequency signals and consisting of:
 1. Remote communications or Antenna nodes deployed throughout a desired coverage area, each including at least one Antenna for transmission and reception;
 2. A high capacity signal transport medium that is connected to a central communications hub site; and
 3. Radio transceivers located at the hub's site to process or control the communications signals transmitted and received through the Antennas to provide Wireless or mobile Service within a geographic area or structure.
 - (b) *Small Cell Facility* means a Telecommunications Facility that meets both of the following qualifications:
 1. Each Antenna is located inside an enclosure of no more than six (6) cubic feet in volume, or in the case of an Antenna that has exposed elements, the Antenna and all of the Antenna's exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and
 2. Primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the FCC has excluded from review pursuant to 54 U.S.C. § 306108. Accessory Facilities may be located outside the primary equipment, and if so located, are not to be included in the calculation of equipment volume. Accessory Facilities includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.
 - (c) *Small Cell Network* means a collection of interrelated Small Cell Facilities designed to deliver wireless service.

- (3) *Applicant* means any person or entity that is engaged in the business of providing wireless services or the wireless infrastructure required for wireless services.
- (4) *Competing local exchange carrier* means a telecommunications provider that has received a certificate of public convenience and necessity from the Arkansas Public Service Commission under the authority of Ark. Code Ann. § 23-17-409 and is authorized to install equipment and operate within the public rights of way or on public or private property in the City of Fayetteville. This shall include distributed antenna systems, small cell facilities and small cell networks.
- (5) *Person* means any individual, resident, citizens, business firm, corporation, partnership, governmental agency, or institution.
- ~~(5)~~(6) *Stealth technology* means systems, components and materials used in the construction of wireless communications facilities to make it compatible with the surrounding property.
- ~~(6)~~(7) *Streets* means all streets, roads, highways, alleys, rights-of-way, public utility easements, public property, public ways and air space over such streets, roads, alleys, public rights-of-way, public utility easements, public property and public ways located within the geographic limits of the city.
- ~~(7)~~(8) *Telecommunications* means the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information sent and received, whether wired or wireless.
- ~~(8)~~(9) *Telecommunications facilities or facilities* means all conduits, manholes, poles, antennas, transceivers, wires, cable (including fiber optic cable), technology, and appurtenances owned or utilized by a telecommunications provider or third party infrastructure provider and located in, under or over the streets of the city or on public or private property and utilized in the provision of telecommunications services. This includes without limit, towers of all types, and base stations, including but not limited to buildings, church steeples, water towers, signs, poles, streetlights, traffic signals, or other structures that can be used as a support structure for antennas or the functional equivalent of such. It further includes all related accessory facilities associated with the site. It is a structure and facility intended for transmitting and/or receiving, wireless services, Specialized Mobile Radio (SMR), personal communications services (PCS), commercial satellite services, microwave services, radio, television, and any commercial Wireless Service not licensed by the FCC.
- ~~(9)~~(10) *Telecommunications Provider or provider* means any person, firm, corporation, partnership or other business entity, other than the city, that provides telecommunications services within or without the geographic boundaries of the city by utilizing telecommunications facilities to provide telecommunications services. This shall include competing local exchange

Commented [PB1]: Our team recommended including a definition of stealth technology. This is the same definition that appears in Section 151.01 *Definitions* of the Unified Development Code. Camouflaging does not need to be defined because we can use the plain and ordinary dictionary definition.

carriers or businesses that install small cell facilities on behalf of telecommunications providers.

~~(10)~~(11) *Telecommunications services or services* means any service delivering telecommunications by a telecommunications provider that the provider is authorized to provide under federal, state and local law, except that these terms do not include cable service as defined by the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. §521 et seq., and the Telecommunications Act of 1996.

(B) Compliance with State and Federal Regulations. Applicant shall comply with all applicable state and federal regulations. Proof of compliance shall be provided upon request of the Zoning and Development Administrator. Applicant shall not be required to enter into any franchise agreement with the City.

(C) Consolidated Application. An applicant may file one consolidated application for a small cell network of up to ten (10) individual small cell facilities of a substantially similar design every seven calendar days. The City may require a separate application for any small cell facilities that are not of a substantially similar design. The form of the permit Application is located on the City's website under Small Cell Facilities and Networks.

(D) An applicant shall submit with the application all documentation or other evidence required by the Zoning and Development Administrator to sufficiently establish the structural soundness of proposed facilities.

(E) Administrative Approval of Co-Located Facilities and Facilities Located on Existing Structures. The Zoning and Development Administrator, following an Administrative Review, may approve the following facility installations:

(1) Locating on Existing Structures. Installation of facilities on an existing structure other than a tower (such as a building, light pole, electric transmission tower, water tank, or other free-standing non-residential structure) provided that the facilities do not extend any higher than the existing structure. ~~The Zoning and Development Administrator may grant a variance of up to ten (10) feet in height when such additional height is necessary for improved functionality or safety.~~

(a) Facilities Placed on Top of Buildings. When facilities extend above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. If concealment behind existing architectural features is not possible, screening panels manufactured to match existing architectural features may be used. Facilities mounted on a roof shall be stepped back from the front façade in order to limit their impact on the building's silhouette. Screening panels, if used, shall not exceed five (5) feet in height above the existing building's roofline.

(b) Facilities Placed on Sides of Buildings. Facilities which are side-mounted on buildings shall be camouflaged (such as in a light fixture),

Commented [PB2]: Change in this subsection title to clarify the difference between co-location (two providers on the same structure) and installation on an existing structure. The City is not requiring co-location but will leave it as a priority option as technology evolves.

Commented [PB3]: This is a request from Smith Communication. Per the recommendation of the Planning Director, we established concealment behind existing architectural features will be the priority and screening panels could be a secondary option if the first is not possible.

The screening panels would be installed at the façade of the building and still limit the visibility while making less of an impact on the silhouette. This is intended to provide the applicant and staff more flexibility for design to fit within the streetscape.

shrouded, painted or constructed of materials to match the color of the building material directly behind them, and shall not extend above the roof line or extend more than ~~five-two~~ (52) feet from the façade of the building. The Zoning and Development Administrator may grant a variance of up to three (3) additional feet from the façade of a building when such additional clearance is necessary for improved functionality or safety.

- (2) Locating on Existing Tower Not Previously Approved Through §163.13 of the U.D.C. Existing towers that do not have facilities may not add such capability without securing a conditional use permit. Antennas may be replaced by similar antennas at the same height and for the same basic usage as the antennas being replaced.
- (3) Locating on Existing Towers Previously Approved Through §163.13. Additional facilities may be placed upon any tower already approved through §163.14 of the U.D.C. so long as such additional facilities would not violate any requirements of the conditional use permit or other provisions of §163.13.
- (4) Replacement of Existing Structures. If installation of facilities requires the removal and replacement of an existing structure, such as a pole, the new structure shall be considered an existing structure for the purposes of this section as long as the replacement structure is constructed of substantially similar material or is a camouflaged/stealth structure and the replacement structure is located within five (5) feet of the location of the original structure. The provisions of § 110.02(E) shall govern the standards of and procedures for construction or installation of replacement facilities within the public rights of way. The Zoning and Development Administrator may grant a variance of up to ten (10) feet in height when such additional height is necessary for improved functionality or safety.
- (5) The applicant must submit a letter of intent indicating the intent and agreement to allow co-location of facilities or installation of facilities on an existing structure.
- (6) If proposed facilities are not or cannot be adequately camouflaged, the City may require the installation of new stealth facilities.
- (7) Any disturbance of City infrastructure (such as, but not limited to, streets, sidewalks, and utilities) shall be repaired and restored by the applicant at its expense and to a condition at least as good as that existing before the work causing such disturbance was commenced.
- (8) Fees. An applicant shall pay an application fee in the amount of \$200.00 for a single facility and \$25.00 for each additional facility included in the application. Providers with approved permits shall pay an annual fee in the amount of \$250.00 for each facility co-located or installed on an existing structure in the public rights-of-way. If the Provider is installing its own fiber optic technology to a particular location and does not otherwise have a City franchise to do so, or does not pay franchise fees to the City pursuant to

Commented [PB4]: Verizon had requested that we allow up to five feet from the façade through a variance procedure. The original language unintentionally granted 5 feet of clearance by right. The recommended language grants 2 feet by right and an additional 3 feet through a variance.

Commented [PB5]: At AT&T's request we included language clarifying that a provider can replace an existing pole and have the replacement pole treated as an existing structure. The provider would have to follow the procedures in 110.02(E) which governs the construction standards for telecommunications facilities in the public rights of way. As an existing facility, the 10 foot height variance could be requested.

Commented [PB6]: Clarification as noted in the title of this subsection.

Commented [PB7]: Clarification as noted in the title of this subsection.

~~another agreement,~~ the Provider shall also provide the City with four (4) dark pairs of fiber that the City may use for a public purpose.

~~(7)(9) Variances. In order to receive a variance under this subsection, an applicant must show that strict enforcement would make it difficult to use undue hardship due because of to circumstances unique to the facility under consideration (e.g., topological challenges or line of sight issues) and demonstrate that the granting of the variance will be in keeping with the spirit and intent of this ordinance.~~

(F) Administrative Approval of New Facilities in Public Rights of Way. Providers proposing the construction or installation of new facilities in the public rights of way ~~(specifically excluding the replacement of existing structures)~~ shall comply with following requirements:

- (1) Construction Maintenance. The provisions of § 110.02(E), with the exception of §§ 110.02(E)(3) and (E)(10), shall govern the process of approval for the construction or installation of any new facilities within the public rights of way.
- (2) Fees. An applicant shall pay an application fee in the amount of \$200.00 for a single facility and \$25.00 for each additional facility included in the application. Providers with approved permits shall pay an annual fee in the amount of \$50.00 for each new facility located in the public right of way. If the Provider is installing its own fiber optic technology to a particular location and does not otherwise have a City franchise to do so, ~~or does not pay franchise fees to the City pursuant to another agreement,~~ the Provider shall also provide the City with four (4) dark pairs of fiber that the City may use for a public purpose.
- (3) Height Limitations. New facilities placed by the provider in public rights of way are permitted to be a maximum height of no more than ten (10) feet above the median height of other telecommunications facilities in the block for the proposed location, but in no event taller than thirty (30) feet above grade.
- (4) Camouflaging or Stealth Technology Required. New facilities shall be designed to be camouflaged to the greatest extent possible including, but not limited to, use of compatible building materials and colors, incorporation within street lights, screening, landscaping, and placement within trees. All antenna arrays, cables, and other accessories used for providing the services shall not be obtrusive or noticeably visible. The Zoning and Development Administrator may approve the installation of a standard utility pole in areas where such installation will not degrade the streetscape but any facilities shall be camouflaged to the greatest extent possible. Camouflaging and stealth technology shall be required in all residential areas, improvement districts (including, but not limited to, the Dickson Street area and College Avenue improvement corridor), and any area in which utilities have been installed or relocated underground. Understanding that new technologies are anticipated to change the components of telecommunications facilities, the Administrator

Commented [PB8]: At the request of Cox Communications we are recommending that we recognize that providers who have a franchise through the State of Arkansas but still pay City franchise fees should be exempt.

Commented [PB9]: At the Planning Director's request, we have included a clear standard for staff to consider variance requests. This is the same standard used by the Board of Adjustment when considering variances to zoning regulations.

Commented [PB10]: Further clarification that replacement of a pole is not installation of a new facility.

Commented [PB11]: Same change as (E)(8) above.

may determine if a telecommunications facility or component of a telecommunications facility is designed to be stealth.

- (5) Fall Zone. The minimum distance from the base of any facility to any residential dwelling unit shall be the lower height or required setback, whichever is greater, unless all persons owning said residence or the land on which said residences are located consent in a signed writing to the construction of said facility. This setback is considered a "fall zone." In the event that an existing facility is proposed as a mount for the provider's equipment, a fall zone shall not be required.
- (6) ~~Distance between new facilities.~~ New facilities, excluding facilities camouflaged to fit within the streetscape (e.g., facilities incorporated within a street light), shall be spaced a minimum of five hundred feet (500') from any other new facility approved under this section.
- (7) Information Required to Process Requests for New Facilities.
- (a) Provide a map of the geographic area that your project will serve;
 - (b) Provide a map that shows other existing ~~or planned facilities that will~~ are be used by the telecommunications provider who is making the application;
 - (c) Provide a map that shows other potential standalone locations for your facility that have been explored;
 - (d) Provide a scaled site plan containing information showing the property boundaries, proposed facility, existing land use, surrounding land uses and zoning, access road(s) location and surface material, existing and proposed structures and topography. ~~The plan shall indicate proposed landscaping, fencing, parking areas, location of any signage and specifications on proposed lighting of the facility;~~
 - (e) Describe why the proposed location is superior, from a community perspective, to other potential locations. Factors to consider in the community perspective should include: visual aspects, setbacks, and proximity of single-family residences;
 - ~~(e) -;~~
 - ~~(f) Describe your efforts to co-locate~~ install your facility on existing structures; ~~one of the poles or towers that currently exists, or is under construction.~~ The applicant should demonstrate a good faith effort to locate facilities on existing structures and/or co-locate with other carriers. The city may deny a request to construct or install a new structure by an applicant that has not demonstrated a good faith effort ~~to with respect to this requirement. provide for co-location. Such good faith effort includes:~~
 - ~~(g) A survey of all existing structures that may be feasible sites for co-locating wireless communications facilities;~~
 - ~~(h) Contact with all other telecommunications providers;~~
 - ~~(i)(f) Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location; and~~

Commented [PB12]: AT&T requested that we clarify this language. The team does not think this is necessary. The original intent was to make sure new wood poles were spaced out; however, the application of this would also limit other types of poles or structures that don't fit into the streetscape. We want to encourage camouflaging and stealth technology and do not limit the spacing of those types of facilities as long as they fit within the streetscape.

Commented [PB13]: Some providers are concerned about issues with releasing confidential information about future planned facilities to the City that could negatively impact their competitive advantage. While I believe the City would not be allowed to release this if we received a Freedom of Information Act request, because of the competitive advantage exception, we understand the sensitive nature of this information and do not believe it would be necessary for staff to make its decision on applications.

Commented [PB14]: This language is from our cell tower ordinance and would not apply to the small cell facilities. We recommend removing the language. The remaining language is relevant to staff's consideration of the applications.

~~Letter from tower or pole owner stating why co-location is not feasible.~~

(g) Describe whether you will or will not accommodate equipment of other telecommunications providers that could co-locate on your facility. Describe how such accommodation will impact both your pole and your ground mounted facilities. Provide documentation of your provider's willingness or unwillingness to accommodate other providers who may be able to co-locate on your facility.

(8) Application Time Frame. A final decision shall be issued for applications for facilities under subsections (E) and (F) within 60 calendar days subject to the following:

- (a) The City shall supply written notice to the Applicant within thirty days of receipt of an Application clearly and specifically delineating any missing documents or information.
- (b) Applicant shall submit any supplemental documentation and information to the City.
- (c) City shall then have up to ten (10) calendar days to notify Applicant that the supplemental documentation or information satisfies the City's request.
- (d) Second or subsequent notices may not specify missing documents or information that were identified in the original notice of incompleteness.
- (e) This timeframe shall be tolled in cases in which the City determines that the application is incomplete. This timeframe may also be tolled by mutual agreement of the Applicant and City.

(G) New Structures on Private Property. Telecommunications providers proposing the construction or installation of new poles or towers on privately owned property in the City shall comply with the provisions of § 163.13 *Wireless Communications Facilities* and shall obtain a conditional use permit. ~~This excludes the replacement of existing structures as provided in subsection (E)(4) above.~~

(H) New Facilities on Public Property. The City of Fayetteville will actively market its own property and existing facilities as suitable co-location sites. Applications for new facilities on public property shall be subject to the Administrative Review process. An annual lease amount should be charged according to the fair market value of the location. In cases in which the company no longer needs the facility, the city may require it to be removed. Applicants may be required to provide co-location space for city-owned facilities. For purposes of this subsection, public property shall not include any public right of way or structures in any public right of way. Small cell facilities installed in the public right of way or on structures in the public right of way shall pay only the fees set forth in subsection (E) and shall not be charged additional fees under this subsection.

(I) Appeals. An Applicant may appeal to the City Council a decision or interpretation made in the Administrative Review process by the Zoning and Development Administrator. Appeals shall follow the procedure set forth in Section 155.02 of the Unified Development Code. Pedestrian access and safety. All facilities shall be

Commented [PB15]: Nearly all carriers have indicated that they will be unwilling to co-locate their facilities with other providers. Recognizing this, we recommend removing some of the specific requirements but still requiring providers to show a good faith effort to co-locate and/or install on existing structures before they receive approval to install a new pole or structure in the right of way. This is in line with the Administration's priority to encourage co-location and installation on existing facilities and reduce the number of new poles and other structures in town.

Commented [PB16]: Clarification that replacements are not new structures.

Commented [PB17]: Clarification at AT&T's request.

installed in such a manner not to impede, restrict, or adversely impact pedestrian or vehicular safety or convenience, or violate any provision of the Americans with Disabilities Act.

- (J) Emergency removal or relocation of facilities. The City retains the right to cut or move any facility located within its rights-of-way as the City, in its sole discretion, may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. City shall notify the provider after cutting or removing any facility within its rights-of-way. If circumstances permit, the City shall notify the provider in advance of any cutting or removal and give the provider an opportunity to move its own facilities.

Updated 10-14-17

Section Text	A 2 b (2) Primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the FCC has excluded from review pursuant to 54 U.S.C. § 306108. Accessory Facilities may be located outside the primary equipment, and if so located, are not to be included in the calculation of equipment volume. Accessory Facilities includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.	A 6 (6) Stealth technology means systems, components, and materials used in the construction of wireless communications facilities to make it compatible with the surrounding property.	E 1 (1) Locating on Existing Structures. Installation of facilities on an existing structure other than a tower (such as a building, light pole, electric transmission tower, water tank, or other free-standing non-residential structure), provided that the facilities do not extend any higher than 10 feet above the existing structure. The Zoning and Development Administrator may grant a variance of up to an additional ten (10) feet in height when such additional height is necessary for improved functionality or safety.	E 1 a (a) Facilities Placed on Top of Buildings. When facilities extend above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. If concealment behind existing architectural features is not possible, screening panels manufactured to match existing architectural features may be used. Facilities mounted on a roof shall be stepped back from the front façade to the extent practicable in order to limit their impact on the building's silhouette. Screening panels, if used, shall not exceed five (5) feet in height above the existing building's roofline.
Provider Comments	Suggest dimensions consistent with the dozen statewide small cell bills passed within the last year. Suggest: “Small Wireless Facility” means a Wireless Facility that meets both of the following qualifications: (i) each Wireless Provider’s Antenna could fit within an enclosure of no more than six cubic feet in volume; and (ii) all other wireless equipment associated with the Wireless Facility, whether ground- or pole-mounted, is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, vertical cable runs for the connection of power and other services.	Some providers have concerns with the interpretation of the stealth and camouflaging provisions and the potential increased cost it may impose for compliance and are concerned these stealth requirements could be applied arbitrarily and may be disparately treating wireless infrastructure in streetscapes that are otherwise dominated by utility poles and other apparatuses that are not subject to similar stealth requirements. In addition, some have indicated that high-cost stealth requirements may drive up the cost of small cell installations by 30-50%, which will impede our ability to invest elsewhere.	Not allowing facilities to extend any higher than the existing pole limits options for deployment – e.g., it would preclude deployments of canisters on top of poles. We recommend revising to allow for some additional height by right, with a provision for an additional increase based on a variance request. One provider requested that height limits be permitted up to forty-five (45) feet in residential zones and fifty-six (56) feet in all other zones (with the ability to allow an additional ten (10) feet).	In general, understood the limitations imposed by this provision, but have concerns as drafted it may not reflect technical realities and/or does not have sufficient flexibility that can be found on roof tops city-wide.

City Notes

We have seen a range from 17 to 28 cubic feet. Some cities/states allow some kind of variance. The Council could consider granting a variance up to 28 cubic feet.

Our team recommended including a definition of stealth technology. This is the same definition that appears in Section 151.01 Definitions of the Unified Development Code. Camouflaging does not need to be defined because we can use the plain and ordinary dictionary definition. We realize the stealth requirement may increase cost, but we feel the cost is justified to preserve the aesthetics for our community. We have recognized this additional cost to providers by lowering the annual fee charged for these stealth facilities.

If we are going to give the provider an attachment of 5 feet by right on an existing pole then we would limit the overall height of an attachment to 10 feet in total.

This is a request from Smith Communication. Per the recommendation of the Planning Director, we established concealment behind existing architectural features will be the priority and screening panels could be a secondary option if the first is not possible.

The screening panels would be installed at the façade of the building and still limit the visibility while making less of an impact on the silhouette. This is intended to provide the applicant and staff more flexibility for design to fit within the streetscape.

E 4

(4) Replacement of Existing Structures . If installation of facilities requires the removal and replacement of an existing structure, such as a pole, the new structure shall be considered an existing structure for the purposes of this section as long as the replacement structure is constructed of substantially similar material or is a camouflaged/stealth structure and the replacement structure is located within five (5) feet of the location of the original structure. The provisions of § 110.02(E) shall govern the standards of and procedures for construction or installation of replacement facilities within the public rights of way. The Zoning and Development Administrator may grant a variance of up to ten (10) feet in height when such additional height is necessary for improved functionality or safety.

AT&T was originally concerned that a replacement of an existing structure would be treated like a new pole (stealth requirement and 30 ft. height limit).

E 8

(8) Fees. An applicant shall pay an application fee in the amount of \$200.00 for a single facility and \$25.00 for each additional facility included in the application. Providers with approved permits shall pay an annual fee in the amount of \$250.00 for each facility co-located or installed on an existing structure in the public rights-of-way. If the Provider is installing its own fiber optic technology to a particular location and does not otherwise have a City franchise to do so, or does not pay franchise fees to the City pursuant to another agreement, the Provider shall also provide the City with four (4) dark pairs of fiber that the City may use for a public purpose.

The annual fee for a co-location should be \$50.00 instead of \$250.00. Since the city reduced the charge for new facilities in (F)(2), the fee for co-locations (where there are existing facilities) should be the same — there is no basis for a distinction. Further, the requirement to provide four pairs of dark fiber must be removed as the City will already be compensated, and provision of fiber for free is an unjustified additional cost and compensation, and without legal basis. The fiber provision is problematic and should be removed.

E 9

(9) Variances. In order to receive a variance under this subsection, an applicant must show that strict enforcement would make it difficult because of circumstances unique to the facility under consideration (e.g., topological challenges or line of sight issues) and demonstrate that the granting of the variance will be in keeping with the spirit and intent of this ordinance.

This seems like a strict standard.

F 2

(2) Fees. An applicant shall pay an application fee in the amount of \$200.00 for a single facility and \$25.00 for each additional facility included in the application. Providers with approved permits shall pay an annual fee in the amount of \$50.00 for each new facility located in the public right of way. If the Provider is installing its own fiber optic technology to a particular location and does not otherwise have a City franchise to do so, or does not pay franchise fees to the City pursuant to another agreement, the Provider shall also provide the City with four (4) dark pairs of fiber that the City may use for a public purpose.

This provision should be consistent with (E)(8). The requirement here to provide four pairs of dark fiber must be removed as the City will already be compensated, and provision of fiber for free is an unjustified additional cost and compensation, and without legal basis.

At AT&T’s request we included language clarifying that a provider can replace an existing pole and have the replacement pole treated as an existing structure. The provider would have to follow the procedures in 110.02(E) which governs the construction standards for telecommunications facilities in the public rights of way. As an existing structure, the 10 foot height variance could be requested.We are trying to encourage locating on existing structures and have included this language to allow pole replacements to be of substantially similar materials. Because of the height limitation on existing structures, this will discourage new facilities in the ROW.

Little Rock ordinance included the fiber request for non-franchise holders. Our fee structure recognizes the value of the use of existing city structures in the public ROW. As we mentioned in the previous presentation, fees are variable but can run as high as several thousand dollars per pole per year. This is a more equitable system and goes back to the fact that existing franchise holders are going to be paying: 1) the standard 4% franchise taxes; and 2) the annual fees for small cell facilities. New providers who do not have to pay the 4% franchise tax will be placed on a more even field by providing fiber rather than entering into a separate franchise agreement for laying the fiber within the public ROW.

The revised language is much more amenable than the original; it is clear and can be applied equitably by staff. The phrase "strict enforcement" is good language and will ensure that the standard is applied equally to all applicants.

The lower fee for new facilities recognizes that the provider is bearing the cost of installing the new facility.

F 3	F 5	F 6	F 7 c
(3) Height Limitations. New facilities placed by the provider in public rights of way are permitted to be a maximum height of no more than ten (10) feet above the median height of other telecommunications facilities in the block for the proposed location, but in no event taller than thirty (30) feet above grade.	(5) Fall Zone. The minimum distance from the base of any facility to any residential dwelling unit shall be the lower height or required setback, whichever is greater, unless all persons owning said residence or the land on which said residences are located consent in a signed writing to the construction of said facility. This setback is considered a "fall zone." In the event that an existing facility is proposed as a mount for the provider's equipment, a fall zone shall not be required.	(6) Distance between new facilities. New facilities, excluding facilities camouflaged to fit within the streetscape (e.g., facilities incorporated within a street light), shall be spaced a minimum of five hundred feet (500') from any other new facility approved under this section.	(c) Provide a map that shows other potential stand-alone locations for your facility that have been explored;

Same concerns as in (E)(1)	Many facilities will be on poles in rights-of-way. We understand that, by the final sentence, no landowner approval is required for an existing facility. Landowner approval should not be required for any new facility either. The facility will be in the City's right-of-way and, as such, the City's approval (as the right-of-way owner) should be sufficient. Requiring landowner approval will be an added expense and will also add significant time delays to the deployment process, which would be inconsistent with the intent of the ordinance to promote the efficient deployment of small cell facilities.	Arbitrary separation distances have unintended consequences. Placing restrictions on the placement of poles carries the very real possibility of creating areas of inadequate wireless coverage in Fayetteville. Furthermore, it is important to note that there may be areas in Fayetteville requiring additional wireless capacity where there are no poles or the existing poles are inadequate. Wireless communications in those areas, including emergency communications, may be at risk.	Concerns about providing a map. Confidential, that site may be explored at a later date. Or, if the original site fails may look to move to that location. The proposed site has already been invested in, money spent on surveys, construction drawings, RF analysis.
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This height limitation for new facilities is to encourage co-location/installation on existin facilities and discourage the placement of new facilities in the public ROW.

This is simply a safety issue as well as an aesthetic issu. Only applies to new facilities. A property owner would likely have concerns that a new facility pole should be far enough that it won't fall on any structures and there may also be some aesthetic concerns, particularly with structures in a build-to zone, that a provider could install a new facility just feet from a property owner's windows, door, patio, etc.

500 feet was included in several examples we reviewed. We reduced this number if a stealth pole was used, intent was to provide incentive to install integrated poles instead of utilizing existing.

It is reasonable to ask, from both safety and aesthetic points of view, which other locations in that limited area would be appropriate for the facility being proposed. Staff may be able to help the applicant identify more appropriate locations.

F 7 f

(f) Describe your efforts to install your facility on existing structures. The applicant should demonstrate a good faith effort to locate facilities on existing structures and/or co-locate with other carriers. The city may deny a request to construct or install a new structure by an applicant that has not demonstrated a good faith effort to with respect to this requirement.

No technology to collocate on new poles. If/when technology is produced, it will likely require all new technology which would require a replacement of the pole.

F 8

(8) Application Time Frame. A final decision shall be issued for applications for facilities under subsections (E) and (F) within 60 calendar days subject to the following:

(a) The City shall supply written notice to the Applicant within 30 days of receipt of an application clearly and specifically delineating any missing documents or information.

(b) Applicant shall submit any supplemental documentation and information to the City.

(c) City shall then have up to ten (10) calendar days to notify Applicant that the supplemental documentation or information satisfies the City’s request.

(d) Second or subsequent notices may not specify missing documents or information that were identified in the original notice of incompleteness.

(e) This timeframe shall be tolled in cases in which the City determines that the application is incomplete. This timeframe may also be tolled by mutual agreement of the Applicant and City.

H

(H) New Facilities on Public Property. The City of Fayetteville will actively market its own property and existing facilities as suitable co-location sites.

—Applications for new facilities on public property shall be subject to the Administrative Review process. An annual lease amount should be charged according to the fair market value of the location. In cases in which the company no longer needs the facility, the city may require it to be removed. Applicants may be required to provide co-location space for city-owned facilities. For purposes of this subsection, public property shall not include any public right of way or structures in any public right of way. Small cell facilities installed in the public right of way or on structures in the public right of way shall pay only the fees set forth in subsection (E) and shall not be charged additional fees under this subsection.

No definition of “fair market value” is given. Fees should be reasonable and predictable in light of the significant capital investment to bring this technology to the City. Proposed fees should be disclosed and discussed with carriers in advance of setting them. The “fair market value” basis for fees should be removed.

The new proposed language of this requirement is substantially amenable than the original draft. Co-location is important because evolving technology could allow it to be done in a way that providers are willing to incorporate. We should not remove it completely just because providers are unwilling or unable to co-locate at this time. It is important to preserve the good faith language to ensure that our priority (installation on existing structures or co-location) is maintained.

It has been suggested that we may try to come up with language for fast tracking certain types of new stealth poles but we have not had a chance to draft this.

We are not going to define fair market value in this context. The City owns a number of properties and if a provider wants to install a new facility or install on an existing structure, we will negotiate an agreement with that provider. It will likely be dependent upon the number of facilities proposed, the locations of those facilities, the current uses of the proposed locations and the demand/attractiveness of the proposed locations, and the City's aesthetic concerns. In way of example, a facility located in Wilson Park would have requirements of stealthing or camouflaging and the fair market value would be substantially higher than a location in the industrial park, which would also likely not have the same strict stealth/camo requirement.



Small Cells

Presentation to the City of Fayetteville, October 2017

Enhancing our network to meet consumer demand today while preparing for the technologies and innovations of tomorrow.

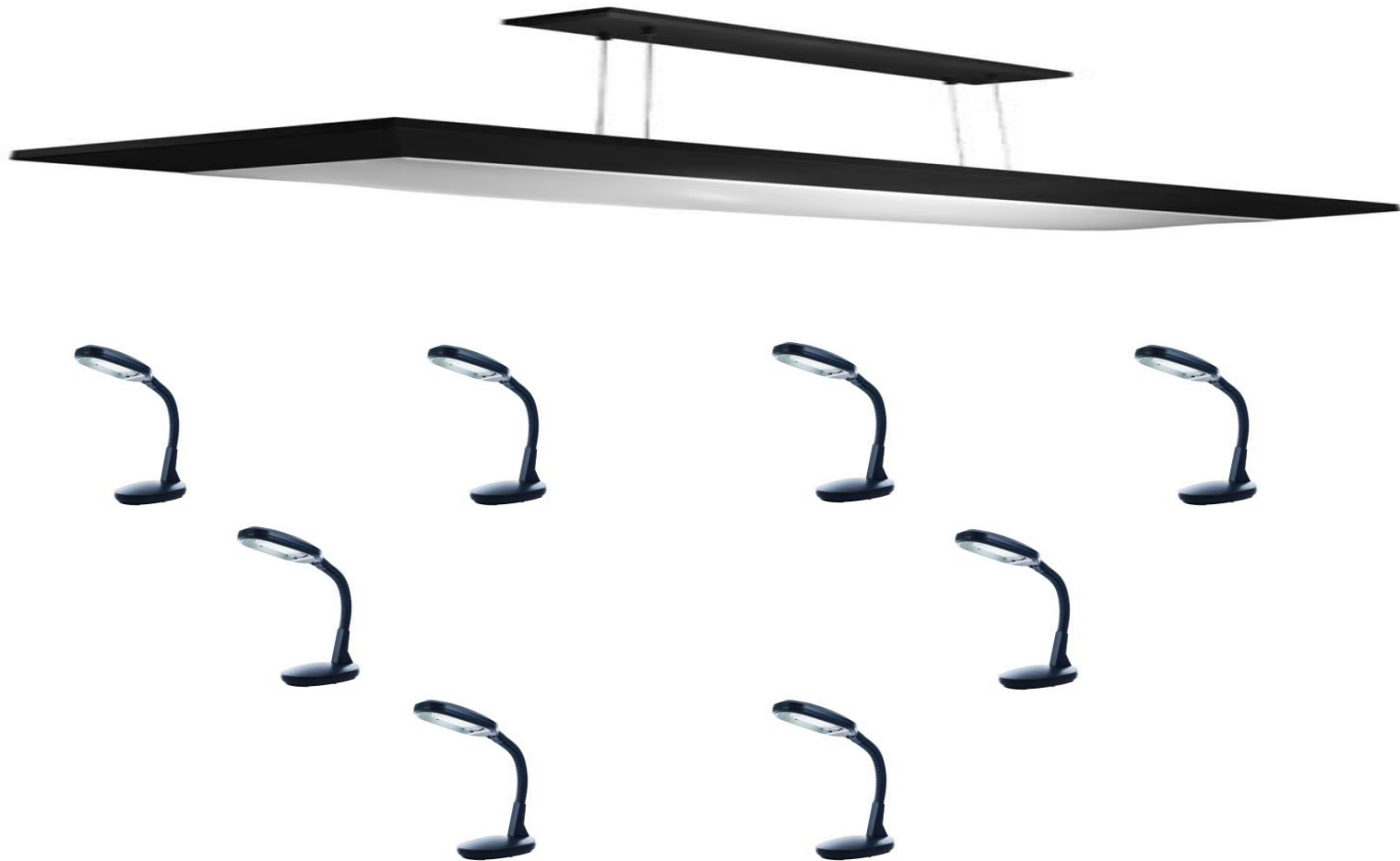
Cathy Foraker – AT&T Arkansas



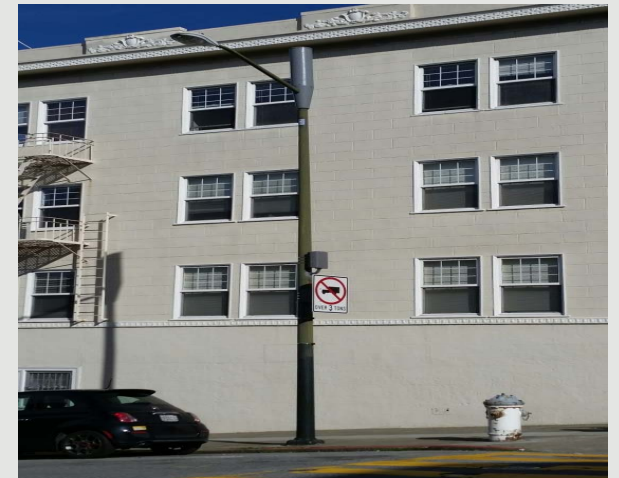
Andy Slater – Verizon Arkansas



What does a small cell do?



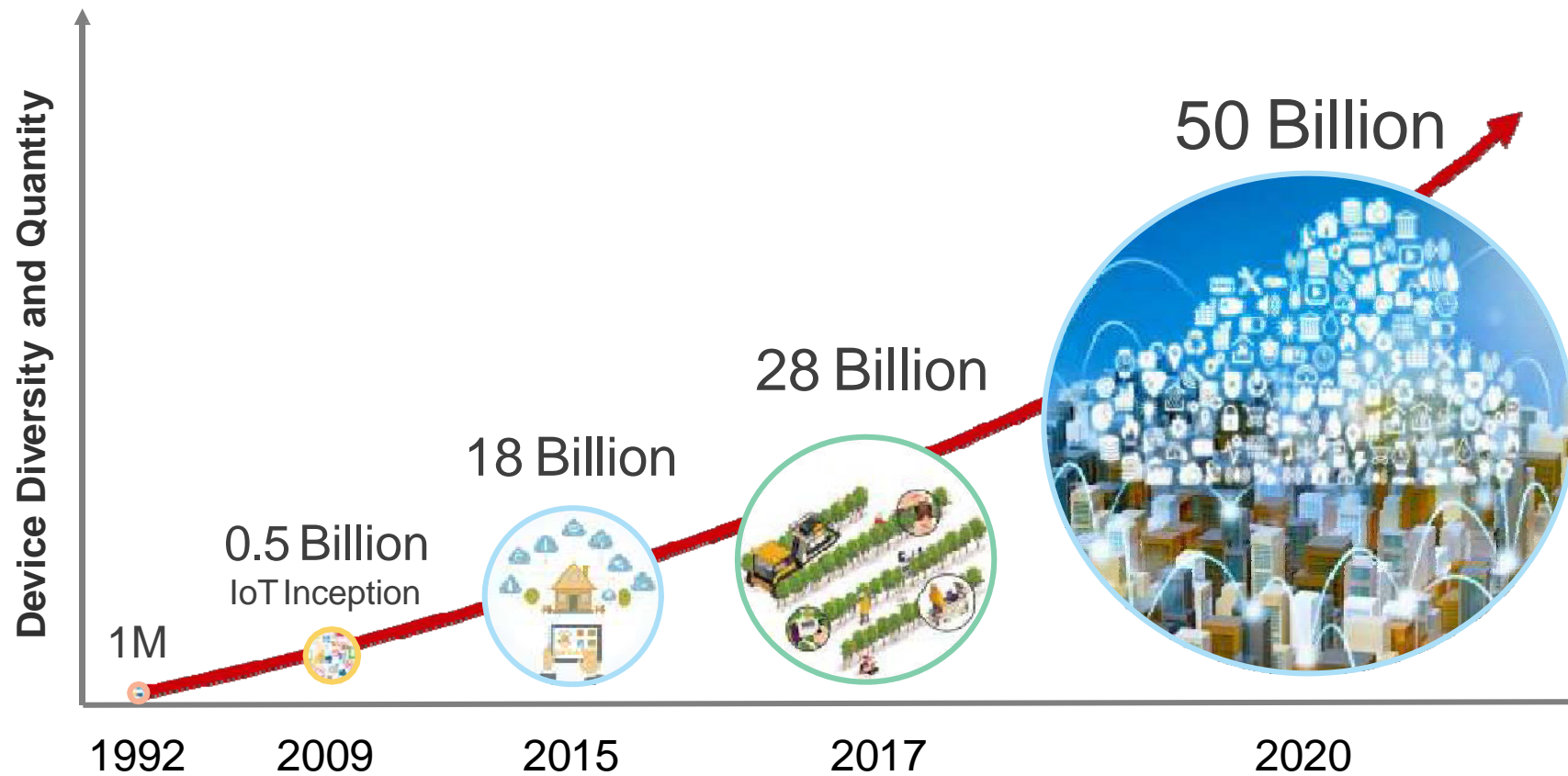
Examples of small cells deployed in our communities



Why Small Cell Facilities?

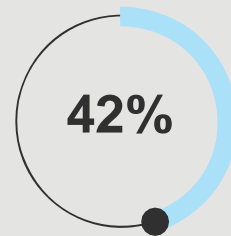
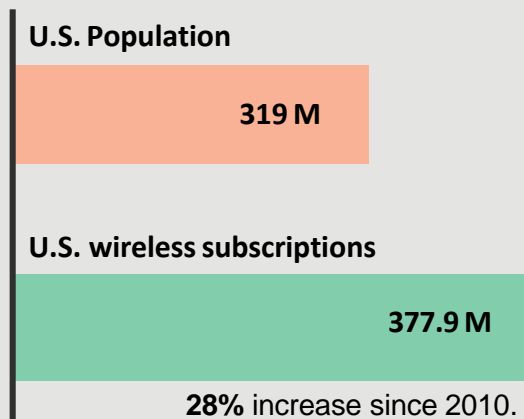
- Fayetteville's leaders are visionary and want to provide the very best of everything for all citizens – including enhanced wireless services vital to a growing, vibrant economy.
- Unlike other major infrastructure projects that use taxpayer monies, wireless providers will invest tens of millions of dollars in the Fayetteville area to build the newest, fastest networks.
- Small cell technologies will provide immediate relief to consumers in congested areas while laying the foundation for 5G services, expected to begin deployment in 2020.
- 5G is the future, and will have the capacity to enable future transportation network innovations and more efficient and reliable services to all citizens.

Future Device Explosion!

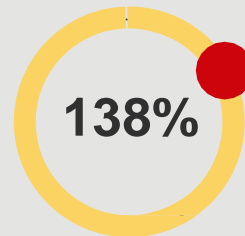


Why is wireless use growing so fast?

Consider these statistics:



In the United States, mobile data traffic from 2015 to 2020 will grow at a **compound annual growth rate** of 42%.



Data traffic increased from 2015 to 2016 at a rate of 138% to **9.6 trillion megabytes**.

Those numbers will continue to grow as more people use smartphones to keep up with breaking news, learn about community events, share photos, and much more.

(Fortune, Tech Wireless Wireless Subscribers Used 10 Trillion Megabytes of Data Last Year, May 23, 2016)
(CTIA, 2015 Annual Wireless Industry Survey, May 2016)
(Fortune, May 23, 2016)
(Cisco, VNI Mobile Forecast Highlights 2015-2020)

Staying ahead of demand.

A wireless network is like a highway system...



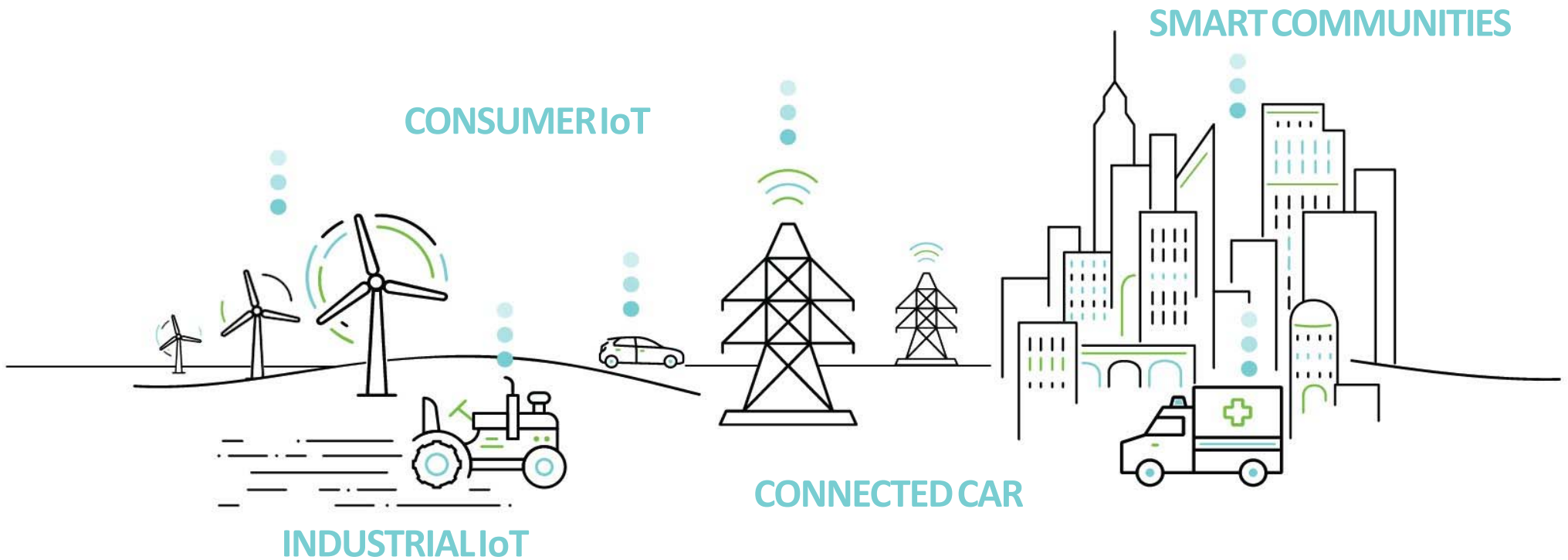
More wireless traffic needs more wireless facilities just like more vehicle traffic needs more lanes.

- Many wireless users share each cell site and congestion may result when too many try to use it at the same time.
- Wireless coverage may already exist in an area, but with data usage growth increasing exponentially each year, more capacity is needed.
- To meet capacity demands, we need to add more wireless antennas closer to users and closer to other cell sites to provide the reliable service customers have come to expect from Verizon.

In the US, mobile data traffic was 1.3 Exabytes per month in 2016, the equivalent of 334 million DVDs each month or 3,687 million text messages each second.*

*Cisco VNI Mobile Forecast Highlights, 2016-2021, February 2017

5G Connecting Everything



Different locations require different solutions.

Balanced approach to engineering the best possible network given the local community's needs.

Traditional, or macro cell sites, are most often the best choice for meeting coverage and capacity needs. Macro sites are traditional cell sites or towers that provide coverage to a broad area, up to several miles.



Small cells are just like the name implies – short range cell sites used to complement macro cell towers in a smaller geographic area ranging from a few hundred feet to upwards of 1,000 feet. These lower power antennas enhance capacity in high traffic areas, dense urban areas, suburban neighborhoods, and more. Small cells use small radios and a single antenna placed on existing structures including utility poles and street lights.

Local officials can facilitate the deployment of small cells to bring their citizens enhanced coverage and capacity, while helping to prepare our network to accommodate future technologies in their city by:

Providing a streamlined process:

- Consistent, non-discriminatory approval standards
- Reasonable non-discriminatory rates, commensurate with the cost to facilitate processing applications; and for pole attachment rates consistent with FCC standards
- Flexibility in spacing requirements and height standards allowing the city to address topography issues