

City of Fayetteville Staff Review Form

2019-0483

Legistar File ID

8/20/2019

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Susan Norton

8/9/2019

COMMUNICATIONS/MARKETING (055)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Revision of Small Cell Facilities Ordinance

Budget Impact:

Account Number	Fund
Project Number	Project Title
Budgeted Item? <u>NA</u>	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
Does item have a cost? <u>No</u>	Item Cost
Budget Adjustment Attached? <u>No</u>	Budget Adjustment
	Remaining Budget \$ -

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF AUGUST 20,2019

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff

FROM: Susan Norton, Communications Director
Blake Pennington, Assistant City Attorney

DATE: 8/8/19

SUBJECT: Revision of City Small Cell Facilities and Networks Ordinance

RECOMMENDATION:

City staff recommends revision of the Small Cell Facilities and Networks ordinance in response to recent federal and state actions.

BACKGROUND:

On November 21, 2017, the City enacted an ordinance to provide for the permitting of small cell (potential 5G) structures in accordance with FCC rules and with guidance from the National League of Cities. In developing the City's ordinance, an internal team made up of Administration, Development Services, Information Technology staff, and the City Attorney's office spent several months reviewing similar ordinances and statutes from a number of cities and states across the region, looking for what would be the best fit for Fayetteville. The team also met with small-cell providers who reviewed draft language for the ordinance.

Subsequently, in September of 2019, the Federal Communications Commission issued an industry-backed declaratory ruling that included several preemption provisions, including a "shot clock" for time limits for processing applications and limiting fees that local governments can charge providers to use the city's right of way. The FCC ruling is currently being challenged and legislation has been introduced in Congress to reverse the order. Additionally, the Arkansas State Legislature in the 2019 session enacted Act 999, "To Establish the Small Wireless Facility Deployment Act," which added Arkansas to over 20 states that had previously enacted legislation to pre-empt local authority in this same manner. Act 999 is set to take effect September 1, 2019.

DISCUSSION:

City staff and Assistant City Attorney worked together with assistance from the Arkansas Municipal League's consultant to review the City's existing ordinance and suggest modifications in order to be in compliance with the state legislation.

BUDGET/STAFF IMPACT: None

EXHIBIT A

110.03 Small Cell Facilities and Networks

- (A) Definitions: Unless otherwise defined below, the terms used in § 110.03 shall have the meanings set forth in the Arkansas Small Wireless Facility Deployment Act, Ark. Code Ann. § 23-17-501, et seq:
- (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) *Stealth technology* means systems, components and materials used in the construction of wireless communications facilities to make it compatible with the surrounding property.
- (B) Compliance with Local, 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. No person shall attach, install, or maintain a small cell facility in the right-of-way without a permit issued by the City or in violation thereof.
- (C) Applications. 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) Micro-wireless facilities. No permit shall be required for any person to install, maintain or operate a micro-wireless facility that is suspended on cables that are strung between existing poles and comply with applicable codes, provided that a permit may be required for work requiring lane closure or excavation.
- (F) Permits.
- (1) City right of way Permit. Upon proper application, City shall timely grant a wireless provider a revocable, nonexclusive permit authorizing the installation and maintenance of a small wireless facility and, if applicable, a pole that will be used to support a small wireless facility, within the City's public rights-of-way, as provided in this regulation.
 - (a) ARDOT right of way. Applications to install small wireless facilities and/or poles used to support small wireless facilities in a right-of-way controlled by the Arkansas Department of Transportation must be approved by the Arkansas Department of Transportation prior to submission to the City.
 - (b) Outside the right of way. Applications to install small wireless facilities and/or poles used to support small wireless facilities outside of the right-of-way will be evaluated and processed according to City ordinances governing the zoning and development of property.

- (c) Special Locations. No application or permit shall be required under this regulation to install a small wireless facility that is located within an interior structure or upon the site of a campus, stadium, or athletic facility that is not controlled by the City.
 - (d) Maintenance. No permit shall be required for any person to perform routine maintenance on a previously permitted small wireless facility or to replace a previously permitted small wireless facility with one that is substantially similar or smaller, provided that a permit may be required for work requiring lane closure or excavation.
 - (2) City Collocation Permit. Upon proper application, City shall timely grant a wireless provider a revocable, nonexclusive permit authorizing the attachment of a small wireless facility to a City pole, as provided in this regulation. A single permit form may be used to issue permits for the installation of small wireless facilities in the right-of-way and collocation on City poles.
 - (3) Installation on Other City Property. Upon proper application, City may grant a wireless provider a revocable, nonexclusive permit authorizing the installation and maintenance of a small wireless facility on property owned by the City upon such terms and conditions as may be approved by City in accordance with state law.
 - (4) Duration of Permits. Permits issued pursuant to this regulation shall terminate ten (10) years after the date the permit was issued. The holder of any permit so terminated shall be entitled to:
 - (a) Renew the permit for a successive ten (10) year term, provided that the permitted facilities and/or poles conform to all safety and appearance requirements at the time the permit terminated;
 - (b) Replace the permitted facilities and/or poles at the previously permitted location with facilities and/or poles that conform to all safety and appearance requirements at the time of renewal; or
 - (c) Remove the small wireless facilities and/or poles used to the support small wireless facilities within one year of the date that the permit lapsed.
- (G) Administrative Approval of Co-Located Facilities Within the Right-of-Way. 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 regulated under § 163.13 of the Unified Development Code (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 percent (10%) above the existing structure on which it is located or fifty (50) feet above the ground, whichever is greater.
 - (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, except as otherwise allowed by 47 U.S.C. § 1455.

- (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 co-location of facilities or installation of facilities on an existing structure.
- (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) Historic Districts. No person shall install a small wireless facility in any historic district unless and until issued a certificate of appropriateness by the historic district commission.
- (8) Additional requirements for collocation on City poles.
 - (a) Bucket-truck access. No person shall install a small wireless facility on any City pole or structure that is inaccessible from a street with a bucket truck. The purpose of this rule is to protect the safety of City workers.
 - (b) Streetlight and traffic poles. No person shall install a small wireless facility on or within a streetlight or traffic pole that, when combined with the existing lighting equipment and other existing facilities, shall require more electricity than can be safely provided by the existing service line.
 - (c) Reserved space. City may reserve space on poles for future public safety or transportation use according to a plan that has been documented and approved by the Mayor prior to the submission of application to occupy the space reserved.
 - i. Notice of reserved space. An applicant will be notified at the time an application is filed, or as soon thereafter as possible, that space on one or more poles within an application has been reserved for future use. A reservation of space shall not preclude placement of a pole or collocation of a small wireless facility. If replacement of the City's pole is necessary to accommodate the collocation of the small wireless facility and the future use, the wireless provider shall pay for the replacement of the authority pole and the replaced pole shall accommodate future use.
 - ii. Reclaiming reserved space. When notice was provided in accordance with this subsection, City may reclaim reserved space by giving the wireless provider at least ninety (90)

calendar days prior notice. City shall give the wireless provider the option to remove its attachment(s) from the affected poles or pay for the cost of any make-ready work needed to expand capacity for City service requirements, so that the wireless provider can maintain its attachment(s) on the affected poles. The allocation of the cost of any such make-ready work (including the transfer, rearrangement, or relocation of third-party attachments) shall be determined in accordance with this section.

- iii. Third-party attachers. Wireless provider shall not be required to bear any of the costs of rearranging or replacing its attachment(s), if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any entity other than City.

(H) 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 (including 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) Height Limitations. New poles placed by the provider in public rights of way are permitted to be a maximum height of no more than fifty (50) feet or 10% taller than the tallest pole within three hundred (300) feet in the right of way. Facilities may be installed on the new poles provided that the facilities do not extend any higher than fifty (5) feet above the ground or more than ten percent (10%) above the pole on which it is located.
- (3) 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 no more than fifty (50) feet in height or no more than 10% higher than the same height as the existing 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.
- (4) Camouflaging or Stealth Technology Required. New facilities shall be designed to be camouflaged to the greatest extent reasonably 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 reasonably 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. If an applicant establishes that it is not technically feasible to meet this requirement, the Administrator may grant a variance in the minimum amount necessary.

- (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 poles.
 - (a) New non-camouflaged or non-stealth poles shall be spaced a minimum of five hundred feet (500') from any other new or replacement non-camouflaged or non-stealth pole approved in accordance with this section.
 - (b) New camouflaged facilities or poles or new facilities utilizing stealth technology to fit within the streetscape (e.g., incorporated within a street light pole) shall be subject to the following distance requirement
 - i. Where streetlights are present, no person shall install a new pole in the right of way when there is an existing pole located in the right-of-way within one hundred feet (100') of the proposed location that is reasonably suitable for collocation, unless collocation on the existing pole will impose technical limits on the small wireless facilities to be installed or significant additional costs. A pole is deemed reasonably suitable if it will structurally support the attachment and the owner will permit attachment at a rate that is equal to or less than the rate provided by this section. The purpose of this rule is to reduce the number of poles within the right-of-way in areas with heightened aesthetic concern.
 - ii. Where streetlight poles are not present, new poles will be aligned with, and generally match the appearance of existing poles within the right-of-way that are within three hundred feet (300') of the proposed location; however, if such alignment or

appearance will impose technical limits on the small wireless facilities to be installed or impose significant additional costs, new poles will be constructed using a stealth design that fully conceals all small wireless facilities and associated equipment within the pole. New poles will not vary from the height of existing poles by more than ten percent (10%). Where poles of different heights are present, new poles shall match the height of existing poles that are closest to the new pole. The purpose of this rule is to ensure uniformity in the appearance and height of poles within the right-of-way in areas with heightened aesthetic concern.

- (7) Placement. No person shall install a new pole within a right-of-way unless the pole is within ten feet (10') of a side lot line and at least eighteen inches (18") from the road surface. When compliance with this rule is not technically feasible, the new pole will be installed in a location that avoids obstructing the view of occupiable structures and as close to the lot line as possible. This rule shall not apply when installing new poles in a median between roadways or within a right-of-way controlled by the Arkansas Department of Transportation. The purpose of this rule is to avoid obstructing views from the right-of-way and occupied structures.
- (8) Information Required to Process Requests for New Facilities.
 - (a) Identification of the applicant.
 - (b) A map or description of the location of the facilities.
 - (c) An illustration that shows the final appearance of the facilities.
 - (d) Engineered drawings of the facilities to be installed, including required make-ready work.
 - (e) Worker safety information related to small wireless facility installation.
 - (f) Evidence of bonding as required by § 158.02 of the Unified Development Code.
 - (g) Evidence of insurance as required by this section.
 - (h) Required application fees.
 - (i) Describe your efforts to collocate your facility on existing structures or poles. The applicant should demonstrate a good faith effort to locate facilities on existing structures and/or co-locate with other carriers.
 - (j) 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.
- (9) Historic Districts. No person shall install a small wireless facility in any historic district unless and until issued a certificate of appropriateness by the historic district commission.

- (I) Application Time Frame. A final decision shall be issued for applications for facilities under subsections (G) and (H) subject to the following:
- (1) The City shall supply written notice to the Applicant within ten days of receipt of an Application whether the application is complete. If an application is incomplete, the City shall clearly and specifically delineate any missing documents or information. The processing deadline shall restart at zero (0) on the date the applicant provides the missing information identified by the City to complete the application.
 - (2) Applications shall be processed within:
 - (a) Sixty (60) days of receipt of a completed application for the collocation of a small wireless facility; and
 - (b) Ninety (90) days of receipt of an application to install, modify, or replace a pole on which a small wireless facility is or will be collocated.
 - (3) The processing deadline may be tolled by agreement of the applicant and the City.
 - (4) Denial of Permits.
 - (a) If a permit is denied, the City shall document the basis for the denial and send the documentation to the applicant on or before the day the City denies the application.
 - (b) The applicant may cure the deficiencies identified by the City and resubmit its application within thirty (30) days of the denial without paying an additional fee.
 - (c) The City shall approve or deny the revised application within thirty (30) days of resubmission and shall limit a review of the resubmitted application to the deficiencies cited in the denial.
 - (5) Abandoned applications. After notice is provided to an applicant that an application is incomplete as described above, the applicant will be afforded thirty (30) days to provide missing information without submitting a new application or application fee. If incomplete for more than thirty (30) days, the application will be deemed abandoned and the City will return all forms and information to the applicant. The application fee will not be refunded. The applicant may later resubmit the forms and information as a new application with an appropriate application fee.
 - (6) Professional Engineer. Unless otherwise waived in writing by City, as part of the permit application process, and at the wireless provider's sole expense, a qualified and experienced professional engineer, or an employee or contractor of the wireless provider who has been approved by City, must undertake and complete the engineering design and pole loading analyses calculations required in completing a permit application, participate in the pre-construction survey, and certify that the wireless provider's small wireless facilities can be and were installed on the identified poles in compliance with the applicable codes and in accordance with the permit. The professional engineer's qualifications must include experience performing such work, or substantially similar work, as reflected in the application and unless otherwise waived by City, such engineer must be licensed in the State of Arkansas. The City may allow a wireless

provider's professional engineer, employee or contractor to conduct a post-construction inspection that the City will verify by means that it deems to be reasonable.

(J) Application Fees and Annual Rates.

- (1) Applicants shall submit a fee in the amount of \$100.00 for each small wireless facility proposed to be installed on an existing wireless support structure or pole.
- (2) Applicants shall submit a fee in the amount of \$250.00 for the installation, modification, or replacement of a pole together with the collocation of an associated small wireless facility in the right-of-way.
- (3) Providers shall pay an annual rate of \$30.00 per small wireless facility for use of the public right-of-way.
- (4) Providers shall pay an annual rate of \$240.00 per small wireless facility that is collocated on a City-owned pole.
- (5) Applicants shall pay a fee of \$150.00 for each small wireless facility that does not pass an initial inspection and requires re-inspection. This fee ensures the City shall recover its costs associated with administering and conducting a reinspection.
- (6) A provider who attaches a small wireless facility to a City pole or other structure without proper authority shall pay a fee of \$480.00 per year. This fee is in addition to any penalty that may be assigned or adjudicated for violation of a City ordinance. This fee ensures that the City shall recover its costs associated with locating and remediating unauthorized attachments.
- (7) A provider shall pay \$10.00 per day for each small wireless facility that is attached to a City facility in violation of a permit or an applicable code for more than thirty (30) days after notice of the violation. This fee ensures that the City shall recover its costs associated with locating and remediating specific permit violations.
- (8) Refunds. No fees and charges specified in Appendix A shall be refunded on account of any relinquishment or abandonment of a permit granted under this regulation.
- (9) Late Charges. If City does not receive payment for any amount owed within sixty (60) calendar days after it becomes due, wireless providers shall pay a late processing charge equal to five percent (5%) of the amount owed. In addition to assessing a late processing charge, if any fees or charges remain unpaid for a period exceeding ninety (90) days: (1) wireless providers shall be charged interest at the rate of ten percent (10%) per year on the amount owed; (2) City may discontinue the processing of applications for new small wireless facilities and/or poles until such fees or charges are paid; and (3) City may cause the disconnection of electric service from wireless provider's small wireless facilities at wireless provider's expense.

(K) New Structures on Private Property. Telecommunications providers proposing the construction or installation of new poles or towers on privately owned property in the City, but not within any right-of-way as defined by Ark. Code Ann. § 23-17-503(24)(A), shall comply with the provisions of § 163.13 Wireless Communications Facilities and shall obtain a conditional use permit.

(L) 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 (H) and shall not be charged additional fees under this subsection.

(M) Specifications

(1) Installation. Every small wireless facility, pole and other structures in the right-of-way shall be erected and maintained in accordance with the requirements and specifications found in applicable codes, including the latest revision of the National Electric Code (NEC) and National Electrical Safety Code (NESC), as may be amended from time to time, and in compliance with any construction standards now in effect or that may hereafter be issued by City (provided such construction standards are not inconsistent with this regulation and are applied on a non-discriminatory basis) or any rules or orders of a governmental authority having jurisdiction. The location of any small wireless facility may be reasonably re-designated from time to time to accommodate other pole attachments, for reasons of electrical service safety or reliability, with costs allocated in accordance with subsection (N) below. Notwithstanding the foregoing, with respect to any small wireless facility that was in compliance with applicable codes at the time such small wireless facility was installed but has become noncompliant because of revisions to the NESC, wireless providers shall be required to bring their small wireless facilities into compliance with then-current standards only in connection with relocation, pole replacement, or rebuild affecting such attachment or in the event such noncompliance creates an imminent threat to public safety. When maintenance or repair work is needed with respect to noncompliance with applicable codes as set forth in this Section, the actual costs of maintenance, repair, and inspection shall be borne by wireless providers.

(2) Maintenance of Facilities. Wireless providers shall, at their own expense, make and maintain their small wireless facilities and any associated poles in safe condition and good repair, in accordance with all applicable codes. All maintenance work on small wireless facilities shall only be performed by qualified personnel. During the period described in subsection (F)(4), wireless providers shall not be required to update or upgrade its small wireless facilities if they complied with applicable codes at the time they were made; provided, however, wireless providers shall update or upgrade their small wireless facilities in connection with relocation, pole replacement or rebuild affecting such small wireless facilities or in the event such update or upgrade is required or necessary in order to resolve an imminent threat to public safety.

- (3) Tagging. Upon installation, wireless providers shall affix a tag to any pole or structure upon which the wireless provider's small wireless facilities have been installed and to the exterior of any underground or ground-mounted small wireless facility equipment. The tag will be constructed of aluminum, plastic or other material of extended durability. Tags will be installed on any pole or structure to which a small wireless facility has been installed.
- (4) Interference. Wireless providers will not allow their small wireless facilities to interfere with the operation of any pre-existing City or third-party facilities.
 - (a) RF Responsibility. Wireless providers are solely responsible for the radio frequency ("RF") emissions emitted by its small wireless facilities and associated equipment, ensuring that the RF exposure from its emissions are within the limits permitted under all applicable rules of the FCC. City is solely responsible for the RF emissions emitted by its equipment or facilities and ensuring that the RF exposure from its emissions are within the limits permitted under all applicable rules of the FCC.
 - (b) Signage. To the extent required by FCC rules and/or applicable local, state or federal law, wireless providers shall install appropriate signage to notify workers and third parties of the potential for exposure to RF emissions. The signage will be placed so that it is clearly visible to workers who climb the pole or ascend by mechanical means.
 - (c) Duty to Others. Wireless providers shall be under a duty and obligation in connection with the operation of its facilities to protect against RF interference to the RF signals of City, all other wireless providers, and any other entities with attachments on poles with the wireless provider. City shall be under no obligation to remedy or resolve RF interference among wireless providers or other attaching entities and shall not be liable for any such RF interference among wireless providers or other attaching entities. City will, however, endeavor to have all attaching entities coordinate and cooperate with each other relating to the resolution of interference. Notwithstanding the foregoing, in the event City's operations create RF interference to wireless providers or other attaching entities, City will endeavor to correct such RF interference promptly and shall cooperate with the other parties relating to the correction.
- (5) Protective Equipment. Each wireless provider and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and facilities pursuant to FCC rules and requirements. Every permit issued by City pursuant to this regulation shall bear the warning and condition that CITY SHALL NOT BE LIABLE FOR ANY ACTUAL OR CONSEQUENTIAL DAMAGES TO SMALL WIRELESS FACILITIES, WIRELESS PROVIDER'S CUSTOMERS' FACILITIES, OR TO ANY OF WIRELESS PROVIDER'S EMPLOYEES, CONTRACTORS, CUSTOMERS, OR OTHER PERSONS.
- (6) Safety Briefing. Wireless providers shall prepare a written "Safety Briefing" suitable for City employees and contractors who may be required to work near

and/or around small wireless facilities. This safety briefing will be submitted as part of each permit application.

- (7) Cut-Off Switch. Each wireless provider shall install a lockable power cut-off switch as directed by City and consistent with applicable codes for every pole to which the wireless provider has attached facilities that can emit RF energy. The cut-off switch will allow for the power source and any back-up power sources to be disconnected. If required by City, the power source must also be equipped with an external indicator light to provide certainty that the power has been disconnected. Wireless providers shall provide City with access to disconnect switch by providing keys or combinations to the locks.
- (8) Cut-Off Procedure. In ordinary circumstances, City's authorized field personnel will contact the applicable wireless provider's designated point of contact to inform a wireless provider of the need for a temporary power shut down. Upon receipt of the call, the wireless provider will power down its antenna remotely, the power-down will occur during normal business hours and City will endeavor to provide 24 hours' advance notice. In the event an emergency or unplanned cut-off is required, advance notice will only be provided at City's sole discretion and, if circumstances warrant, employees and contractors of City may accomplish the power-down by operation of the power disconnect switch without advance notice to the wireless provider and shall notify the wireless provider as soon as possible. In all such instances, once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power-down shall restore power and inform the other party as soon as possible that power has been restored.
- (9) Emergency Contact Information. Each wireless provider shall provide emergency after hours contact information to City to ensure proper notification in case of an emergency. Information will include 24/7 telephone, cell phone and/or pager information, a list of duty managers by district and escalation procedures. Wireless providers shall provide City with updated emergency contact information on an annual basis and whenever changes are made.
- (10) Removal of Nonfunctional Attachments. At its sole expense, each wireless provider shall remove any of its small wireless facilities, or any part thereof, that becomes nonfunctional and no longer fit for service ("nonfunctional attachment"). Except as otherwise provided in this regulation, each wireless provider shall remove nonfunctional attachments within one (1) year of the date that it became nonfunctional, unless the wireless provider receives written notice from City that removal is necessary to accommodate City's or another attaching entity's use of the affected pole(s), in which case the wireless provider shall remove the nonfunctional attachment within ninety (90) days of receiving the notice. After the time designated for removal, City may, in its sole discretion, remove and dispose of the nonfunctional attachment and the wireless provider shall be responsible for the costs therefor.

(N) Make-Ready Work/Installation

- (1) Who May Perform Make-Ready. Make-ready work on City poles shall only be performed by the City or a qualified contractor authorized by City to perform such work.

- (2) Time Frame for Completion of Make-Ready. If City, or its contractor, is performing make-ready work it will complete the make-ready work within sixty (60) days of receipt of the wireless provider's acceptance of the make-ready estimate and advance payment, if required. Completion time may be extended by agreement between the City and the wireless provider. If City does not complete the make-ready work within the time allotted, the wireless provider may demand a return of deposited funds and proceed with required make-ready work using authorized and qualified contractors who are approved by the City. The City shall not unreasonably withhold or delay approval of a contractor to perform required make-ready.
- (3) Payment for Make-Ready Work. Upon completion of the make-ready work performed by City, City shall invoice the wireless provider for City's actual and documented cost of such make-ready work. The costs of the work shall be itemized, and if City received advance payment, the costs shall be trued up. Each wireless provider shall be responsible for entering into an agreement with other existing attaching entities to reimburse them for any costs that they incur in rearranging or transferring their facilities to accommodate the wireless provider's attachments.
- (4) Wireless Provider's Installation/Removal/Maintenance Work.
 - (a) Quality workmanship required. All of the wireless provider's installation, removal, and maintenance work, by either the wireless provider's employees or authorized contractors, shall be performed at the wireless provider's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of City's poles or other facilities or other attaching entity's facilities or equipment. All such work is subject to the insurance requirements of this section.
 - (b) Qualified workers required. All of a wireless provider's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all applicable regulations specified in this section. Wireless providers shall assure that any person installing, maintaining, or removing its small wireless facilities is fully qualified and familiar with all applicable codes, and the design specifications established by City.
 - (c) Authorization not required for maintenance. Notwithstanding anything to the contrary in this regulation, subsequent to the original installation of a wireless provider's small wireless facilities, the wireless provider may modify or replace the small wireless facilities without obtaining prior written consent of City so long as such modification or replacement does not substantially: (i) modify the external appearance of the small wireless facility; (ii) increase the electric consumption of the small wireless facility; (iii) increase the load on the applicable pole beyond the loading, if any, that was established in the approved permit application; or (iv) involve placement of equipment outside the area designated in the approved permit application. A wireless provider may request, and City shall

timely provide, a determination as to whether a modification or replacement made subsequent to original installation deviates from the original permit sufficiently to require the issuance of a permit.

(5) Allocation of Costs. The costs for any rearrangement or transfer of any small wireless facilities or the replacement of a pole (including, without limitation, any related costs for tree cutting or trimming) shall be allocated on the following basis:

(a) Pole replacement for City. If City intends to modify or replace a pole solely for its own requirements, it shall be responsible for the City's costs related to the modification or replacement of the pole. The wireless provider shall be responsible for costs associated with the rearrangement or transfer of the wireless provider's small wireless facilities.

(b) Replacement for wireless provider. If the modification or replacement of a pole is necessitated by the requirements of a wireless provider, the wireless provider shall be responsible for all costs caused by the modification or replacement of the pole as well as the costs associated with the transfer or rearrangement of any other attaching entity's facilities. At the time the wireless provider submits a permit application to City, the wireless provider shall submit evidence in writing that it has arranged to reimburse all affected attaching entities for their costs caused by the transfer or rearrangement of their facilities. City shall not be obligated in any way to enforce or administer the wireless provider's responsibility for the costs associated with the transfer or rearrangement of another attaching entity's facilities pursuant to this Section.

(c) Replacement for additional attachment. If the modification or replacement of a pole is the result of an additional attachment or the modification of an existing attachment sought by an attaching entity other than City or a wireless provider, the entity requesting the additional or modified attachment shall bear the entire cost of the modification or replacement, as well as the costs for rearranging or transferring the wireless provider's small wireless facilities. The wireless provider shall cooperate with such third-party attaching entity to determine the costs of moving the wireless provider's facilities.

(O) Permit Expiration. Permits issued for the construction or installation of any telecommunication facilities under this chapter shall expire after a period of one (1) year unless construction or installation of the permitted facility has been initiated.

(P) Variances and Appeals.

(1) An Applicant may request a variance of any requirement in this section through the Board of Adjustment by complying with the procedures set forth in Chapter 156 of the Unified Development Code. Requests to vary from any City aesthetic requirements applicable to a new small wireless facility must be made in writing by a wireless provider to the City's Planning Division for submission to the Board of Adjustment. The request must specifically identify the provision requested to be varied, justification for requesting the variance,

and the proposed solution as a result of the variance. A request for variance or waiver shall be heard expeditiously by the Board of Adjustment at the first available regular meeting after the request is received. The request will be considered according to the normal rules and procedures of the Board of Zoning Adjustments and shall afford the requestor the right to present evidence and testimony that shall be considered in any final determination.

- (2) An applicant may appeal to the Board of Adjustment 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.
 - (3) Findings and Determinations. The Board of Zoning Adjustment shall make findings of fact and determinations as are necessary to: (1) fulfill the intent of this regulation; (2) prevent the prohibition of wireless service; and (3) otherwise comply with the law; provided that, the Board of Zoning Adjustment shall not make any finding or determination contrary to applicable codes.
- (Q) 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.
- (R) 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.
- (S) Violations.
- (1) Notice. If a pole, wireless support structure, or small wireless facility is installed, used, or maintained in violation of this regulation and such violation does not pose a potential emergency, City shall provide notice of the violation to the owner. Notice may be provided by any written or electronic form, so long as notice is documented and received. If the owner is unknown (such as, an unauthorized installation), notice shall be made by conspicuously posting the same on the pole, wireless support structure, small wireless facility or other suitable place in proximity to the pole, wireless support structure or small wireless facility for a period of thirty (30) days.
 - (2) Remedies. If the owner of a pole, wireless support structure, or small wireless facility neglects, refuses, or otherwise fails to cure a violation within thirty (30) days from receipt of notice of the violation from the City, the following remedies shall apply:
 - (a) Continuing violation fees. Any person who installs, uses or maintains a pole, wireless support structure, or small wireless facility in violation of this regulation after having received notice thereof for a period of more than thirty (30) days shall be subject to assessment of a continuing violation fee as shown in Appendix A to recover the City's costs associated investigating, monitoring, and resolving the violation.

- (b) Self-help. After sixty (60) days has elapsed after providing notice of a violation to the owner of a pole, wireless support structure, or small wireless facility, City may take such corrective measures as are reasonably warranted to resolve the violation and the owner shall be responsible for the actual and documented costs incurred by the City, including overhead.
- (c) Remedies not exclusive. The remedies provided in this section are in addition to every other legal and equitable remedy available to the City.
- (3) Exceptions. In the event City or another attaching entity prevents the owner of a pole, wireless support structure, or small wireless facility from correcting a non-emergency violation, the timeframe for correcting such violation shall be extended one day for each day the owner was so delayed. No wireless provider will be responsible for any fee or cost associated with violations caused by other entities that are not affiliated with them or acting under their direction. In all circumstances, attaching entities and City will work together to maximize safety while minimizing the cost of correcting deficiencies, but the entity responsible for the violation will be responsible for the actual and documented cost of any necessary or appropriate corrective measures, including without limitation, removal and replacement of a pole, transfers or other such work.
- (4) Notice of Completion. Wireless providers shall provide timely written notification to City upon completion of work necessary to correct a violation or deficiency. All applicable daily penalties and fees will continue to accrue until City's receipt of such notice of completion. Notice of completion shall be delivered by the same means as the notice of violation was received from City.

(T) Liability and Indemnification

- (1) Liability. City reserves to itself the right to maintain and operate its poles and facilities in the manner that will best enable City to fulfill its service requirements. As a condition of every permit, wireless providers must agree that its use of City's poles and facilities is at the sole risk of the wireless provider. Notwithstanding the foregoing, City shall seek to exercise reasonable precaution to avoid damaging small wireless facilities and report to wireless providers the occurrence of any such damage caused by its employees, agents or contractors
- (2) Indemnification. As a condition of every permit, wireless providers, as well as their agents, contractors, and subcontractors, ("wireless provider indemnitors") shall be required to defend, indemnify, and hold harmless City and its respective officers, board members, council members, representatives, employees, and agents against any and all claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, fines, taxes, special charges by others, penalties, payments (including payments made by City under any workers' compensation laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of City and all other costs and expenses of litigation) ("covered claims") arising in any way or in connection with the negligence of the wireless provider or their officers, directors, employees, agents, contractors, or subcontractors, except when caused by the sole negligence of City, or their respective officers, board members, council

members, representatives, employees, and agents. Covered claims shall include, but are not limited to, the following:

- (a) Communication-based torts. Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;
- (b) Local compliance. Cost of work performed by City that was necessitated by a wireless provider's failure, or the failure of a wireless provider's officers, directors, employees, agents, contractors, or subcontractors to install, maintain, use, transfer, or remove their small wireless facilities in accordance with the requirements and specifications of this regulation, or from any other work this regulation authorizes City to perform on behalf of a wireless provider;
- (c) Harm to persons or property. Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by a wireless provider, or its agents, contractors, or subcontractors, pursuant to this regulation;
- (d) Regulatory violations. Liabilities incurred as a result of a wireless provider's violation, or a violation by a wireless provider's officers, directors, employees, agents, contractors, or subcontractors of any law, rule, or regulation of the United States, any state, or any other governmental entity or administrative agency.
- (e) Environmental harm. Environmental harm arising from or due to the release, threatened release or storage of hazardous substances on, under, or around City's rights-of-way, poles or facilities attributable to a wireless provider indemnitor.

(U) Insurance. All providers receiving permits pursuant to this chapter shall have in effect at all times the following minimum insurance coverage:

- (a) Commercial general liability insurance coverage with a limit of no less than one million dollars (\$1,000,000) for each occurrence and five million dollars (\$5,000,000) aggregate;
- (b) Umbrella or excess liability coverage with a limit of no less than five million dollars (\$5,000,000) for each occurrence and five 35 million dollars (\$5,000,000) aggregate; and
- (c) Workers' compensation coverage as required by law.
- (d) A provider shall not be self-insured unless it provides evidence, according to an independent audit or report of net assets of at least five hundred million dollars (\$500,000,000.00), including the assets of its affiliates. In the event a wireless provider elects to self-insure one or more obligations under this regulation, the following conditions apply: (i) City shall promptly and no later than thirty (30) days after notice thereof provide wireless provider with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide wireless provider with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) City shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of wireless

provider; and (iii) City shall fully cooperate with wireless provider in the defense of the claim, demand, lawsuit, or the like. A wireless provider that self-insures shall immediately notify City of any change in its self-insured status as to any required coverage and of any change in the ability of the wireless provider to cover the risk of loss under this regulation.

- (e) Qualification; Priority; Contractors' Coverage. Insurance required by this subsection must be provided by an insurer that is eligible to do business in Arkansas and have an "A minus" or better rating in Best's Guide. Such required insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of a wireless provider shall carry workers' compensation and employers' liability, commercial general liability, and automobile liability insurance coverages of the type that wireless providers are required to obtain under this subsection with reasonable and prudent limits.
 - (f) Certificate of Insurance; Other Requirements. As a condition of every permit, wireless providers will furnish City with a certificate of insurance ("certificate"). City shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of required insurance if not replaced during the term of this regulation. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. Policies may be written with deductibles or self-insured retentions. Upon request, wireless service providers shall obtain certificates from its agents, contractors, and their subcontractors working hereunder and provide a copy of such certificates to City.
 - (g) Prohibited Exclusions. No policies of insurance required to be obtained by a wireless provider or its contractors or subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this regulation with City except as to infringement of patents or copyrights or for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage for injuries to City's employees or agents, or (4) exclude coverage of liability for injuries or damages caused by the wireless provider's contractors or the contractors' employees, or agents.
 - (h) Deductible/Self-insurance Retention Amounts. Wireless providers shall be responsible for any deductible or self-insured retention amounts contained in their insurance or for any deficiencies in the amounts of insurance maintained.
- (V) Bonding. All providers shall comply with the bonding requirements set forth in § 158.02 of the Unified Development Code as applicable.
- (W) Assignment.
- (1) Limitations on Assignment. Wireless providers shall not assign any permits granted under this regulation, nor any part of such permits, without the prior written consent of City, which consent shall not be unreasonably withheld;

provided, however, a wireless provider may assign its rights and obligations to an affiliate without consent upon prior written notice to City.

- (2) Obligations of Assignee/Transferee and Permittee. No assignment or transfer under this subsection shall be allowed until the assignee or transferee becomes a signatory to the permit issued under this regulation and assumes all associated obligations arising under this regulation. Wireless providers who seek to assign or transfer a permit shall furnish City with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee.
 - (3) Sub-permitting. Permit holders shall not sub-permit, sub-license, lease, or otherwise allow a third party to place attachments on City's poles or structures, except the authorized use of small wireless facilities by third parties that involves no additional attachment.
- (X) Severability. If any provision or portion thereof of this regulation is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this regulation to either party, such provision shall not render unenforceable this entire regulation. Rather, the parties intend that the remaining provisions shall be administered as if the regulation did not include the invalid provision.

Small Cell Ordinance Substantive Changes

Even though the federal and state regulations substantially weakened our own ability to regulate the deployment of this technology we believe these amendments accomplish the following things:

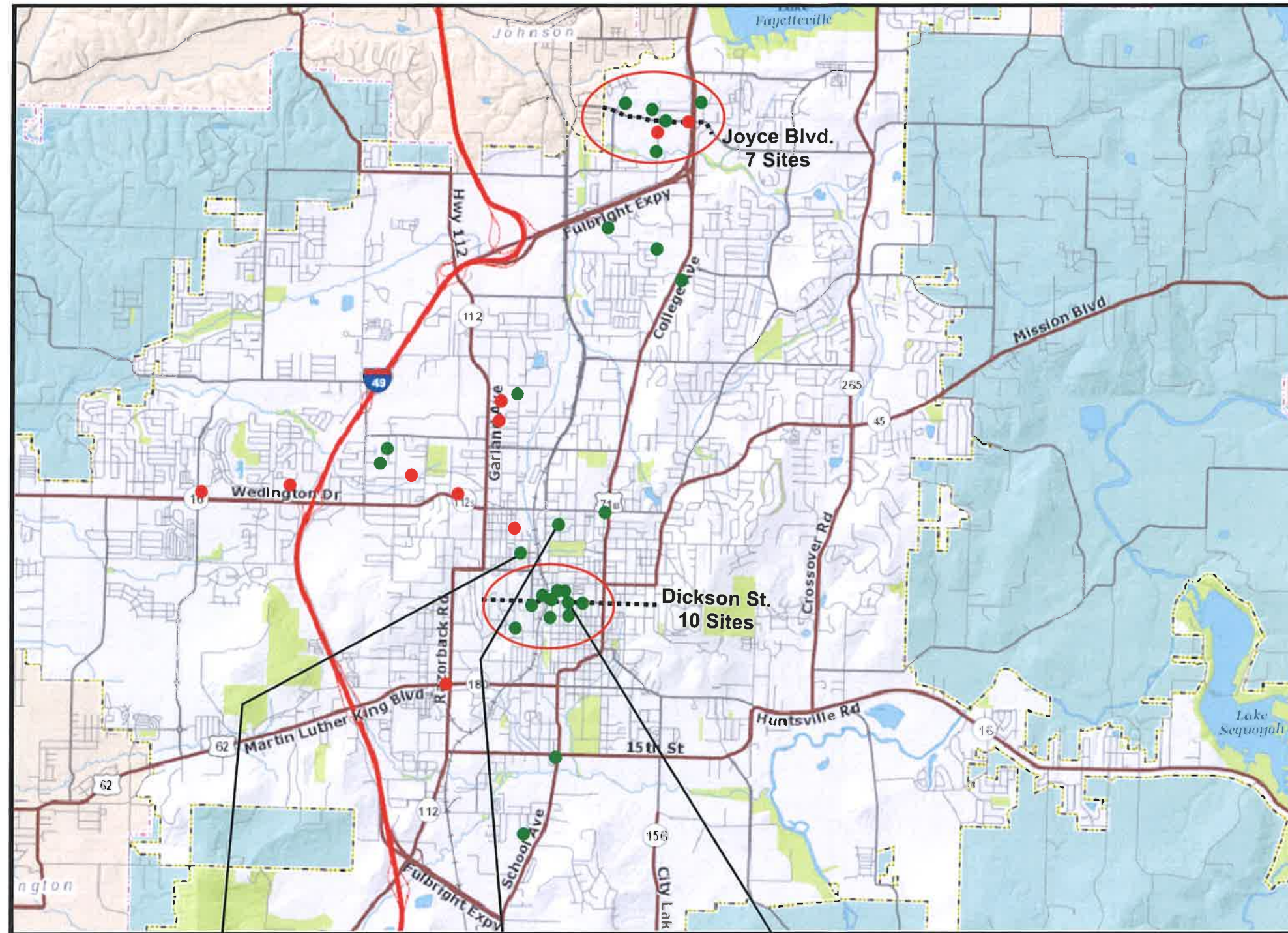
1. We are protecting our residents' private property rights to the extent permitted by the federal and state regulations.
 2. We are preserving to the extent possible our previously established aesthetic standards through an emphasis on collocation and camouflaging/stealth.
 3. We are strengthening the safety and construction requirements to ensure that the way these providers are deploying this technology provides a safe environment for residents, users of the public rights of way, City employees, and utilities operating within these rights of way.
 4. We are giving providers robust variance and appeal processes:
 - a. Layer 1 - significant discretion by the Administrator primarily considering technical issues and granting administrative variances based on technical infeasibility and undue hardship with respect to costs.
 - b. Layer 2 - Variances not heard or granted by the Administrator and appeals of Administrator's decisions will be heard by the Board of Adjustment.
- 110.03(A) - Amendment deletes nearly all definitions, with the exception of "Administrative Review" and "Stealth technology" and defers to the definitions set forth in the Arkansas Small Wireless Facility Deployment Act. State law now defines "right of way" as including public utility easements.
 - 110.03(C) - Removed the batching requirement – state law allows providers to apply for as many facilities and poles as they want at any time.
 - 110.03(D) – Requires an applicant to provide documentation to the administrator to establish the structural soundness of the poles and facilities proposed.
 - 110.03(E) – Recognizes that micro-wireless facilities are exempt. These are small cell facilities attached to existing cables that are strung between existing poles.
 - 110.03(F) – Addresses types of permits and the permit duration. Authorizes a 10-year permit with 10-year renewals as long as the provider is in compliance.
 - 110.03(G) – this used to be subsection (E) and regulates the administrative approval process for collocated facilities within the public rights of way.
 - Significant change of the height regulations – current ordinance allows facilities to extend 5 feet above a current support structure (pole, building, etc.) with a variance of an additional 10 feet; the amendment complies with state law and allows 10% above the existing pole or structure or 50 feet above the ground, whichever is greater.
 - Previously we treated a replacement pole as an "existing structure" but state law treats them as new structures; all replacement pole language has been moved to subsection (H).
 - Additional requirements for collocation on City poles
 - Ensure access by City employees, no excessive power requirements, allow City to reserve space on poles.
 - 110.03(H) – this used to be section (F) and regulates the administrative approval process for new facilities in right of ways now including replacement poles.
 - Height limitations for new poles and facilities have been changed to fifty feet or 10% taller than the tallest pole within 300 feet in the right of way. Replacement poles are

- treated exactly the same and must be within 5 feet of the location of the original structures.
- Camouflaging and stealth technology requirements are still the same but the applicant may request a variance because of technical infeasibility.
 - Retained our distance requirement for non-camo or non-stealth poles.
 - Added distance requirements for stealth and camo poles where streetlights are present (100 feet) and on streets where no streetlights are present the provider must align the new poles with other poles in that area.
 - Added setback and placement requirements to avoid obstructing the view of drivers and blocking occupied structures.
 - Changed the required information on applications to match the statutory requirements.
 - State law allows us to propose alternative locations in residential zoned areas within 100 feet of the applicant's proposed location; the City's alternative must be used unless it imposes technical limits or significant additional costs.
- 110.03(I) – Governs application processing time frames which comply with the FCC order and state law regarding the permit review shot clock, denial of permits, and abandoned applications.
 - Current: 60 days processing time for all applications.
 - Proposed: 60 days for collocation; 90 days for new/replacement poles.
 - 110.03(J) – Adopted the application fees and annual rates set forth by Arkansas law.
 - Current: Application fee of \$200 + \$25/facility; annual fees of \$250 for collocation and \$50 for new poles/structures.
 - Proposed: Application fees of \$100 for attachments to existing poles and \$250 for new/replacement poles; annual fees of \$30 for facilities in public right of way but \$240 for facilities collocated on City poles.
 - Also provides for penalties for unauthorized attachments; re-inspection fees in the event of a failed initial inspection requiring another review; and late charges for late payments.
 - 110.03(M) – Establishes specifications for poles and facilities constructed or installed pursuant to this ordinance.
 - Installation, maintenance, tagging, interference, safety requirements, cut-off procedures, emergency contact information, and removal of nonfunctional attachments.
 - 110.03(N) – New provisions for make-ready work in the event a provider wants to attach to a City pole.
 - 110.03(O) – Establishes the permit expiration of one year unless construction or installation has been initiated.
 - 110.03(P) – Revisions to the appeals process and a new variance procedure.
 - Current ordinance provides for appeals to the City Council.
 - Amendment complies with state law and provides for both variance requests and appeals to be heard by the Board of Adjustment.
 - 110.03(S) – Broadens and strengthens the City's ability to remedy and penalize violations of the ordinance.
 - 110.03(T) – New liability and indemnification provisions
 - 110.03(U) – New and substantial insurance requirements
 - 110.03(V) – Providers must comply with the bonding requirements of the Unified Development Code.

Handed out at Agenda Session
8/13/19

Small Cell Submittals Exhibit

Fayetteville, AR



- Submitted, but not approved
- Submitted, and approved

NUMBER OF LOCATIONS

44 - Locations Submitted

26 - Locations Approved

REVIEW TIMES

84 - Average review time to approval - Total (in days)

31 - Average time in staff review (in days)

NUMBER OF REVISIONS

15% Percent requiring no revision

31% Percent requiring one revision

54% Percent requiring two revisions



740 W. Taylor



900 N. Vandeventer



303 W. Dickson

All addresses are approximate