

ORDINANCE NO. 2019- 08-856

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

AN ORDINANCE ESTABLISHING STANDARDS FOR SMALL WIRELESS FACILITIES WITHIN THE CITY OF TONTITOWN, ARKANSAS; DECLARING AN EMERGENCY AND FOR OTHER PURPOSES

WHEREAS, the City of Tontitown does not currently have standards or regulations pertaining to the placement of small wireless facilities within the city;

WHEREAS, the City Council of the City of Tontitown finds that the City of Tontitown is experiencing substantial residential and commercial growth within its city limits, and also experiencing increasing traffic congestion on its streets that makes the orderly maintenance and use of its right-of-ways of upmost importance and concern;

WHEREAS, the City Council of the City of Tontitown finds it necessary for the health, safety and welfare of its citizens to enact uniform standards to preserve to integrity, provide for the safe usage, and maintain the visual qualities of the city;

WHEREAS, the City Council of the City of Tontitown find the standards set forth in this ordinance to be in the best interests of its citizens of the City of Tontitown; and

WHEREAS, the City Council for the City of Tontitown desires to enact regulations pertaining to the placement of small wireless facilities within the City that are in line with applicable state and federal law, regulations and guidelines.

NOW THEREFORE, BE IT ENACTED, by the City Council of the City of Tontitown, as follows:

Section 1 – Purpose and Scope

1. Purpose: The purpose of this Section is to provide policies and procedures for the placement of small wireless facilities, which will provide a public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the city and comply with applicable state and federal laws, regulations and guidelines.
2. Intent. In enacting this Chapter, the City is establishing uniform standards to address issues presented by small wireless facilities, including without limitation:
 - a. Health, safety, and welfare of citizens;
 - b. Limit interference with the use of streets, sidewalks, alleys, parkways, public utilities, public views, certain city corridors, and other public ways and places;
 - c. Limit the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic

- d. Limit interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;
 - e. Limit environmental damage, including damage to trees;
 - f. Respect the character of the neighborhoods in which facilities are installed by minimization of visual clutter and preservation of the character and aesthetics of areas in close proximity to small wireless communication facilities;
 - g. Facilitate the city's permitting process to encourage fair and meaningful competition;
 - h. Encourage collocation of antenna on existing facilities; and
 - i. Facilitate deployment of small cell facilities to provide the benefits of advanced wireless services to all citizens and organizations throughout the city. Municipalities recognize the economic and social value of data connectivity and desire to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities within the public rights-of-way in a manner that is:
 - i. Safe;
 - ii. Compatible with and complementary to the provision of services by the municipality and others lawfully using the rights-of-way; and
 - iii. Consistent with the aesthetic standards of the municipality.
3. Zoning and Use of Rights of Way by Wireless Provider.
- a. A wireless provider shall have the right, as a permitted use not subject to zoning review or approval, to **collocate, maintain, modify, operate, and replace** small wireless facilities and to install, maintain, modify, and replace poles it owns or manages or, with the permission of the owner, a third party's pole, associated with a small wireless facility, along, across, upon, and under the right-of-way.
 - b. Small wireless facilities and associated poles shall be installed and maintained as to not obstruct or hinder the usual travel or public safety of the right-of-way or the usage of the right-of-way by utilities.
 - c. Therefore, applications to collocate a small wireless facility or install or modify an associated utility pole in the rights-of-way shall be treated as a permitted use in all districts within the City, but are not exempt from the following local regulations and review.
 - d. All wireless facilities not meeting the definition of a small wireless facility shall be subject to applicable local zoning and development requirements.
4. Conflicts with Other Chapters. This Chapter supersedes all Chapters or parts of Chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.
5. Conflicts with State and Federal Laws. In the event that applicable federal or state laws or regulations conflict with the requirements of this Chapter, the Wireless Services Provider shall comply with the requirements of this Chapter to the extent that its provisions are not preempted by, or do not conflict with, applicable federal or state laws or regulations.

Section 2 – Permitted Use; Height, Location, Design, Aesthetics, and other Standards

1. Location. While small cells facilities are permitted uses within all zoning districts within the city, deployment of small cell facilities within the City is subject to the standards set forth in this ordinance.
2. Height:
 - a. Each new or modified pole installed in the right-of-way for the purpose of collocation of small wireless facilities shall not exceed the greater of:
 - i. Fifty feet (50') in height above ground level; or
 - ii. Ten percent (10%) taller than the tallest existing pole in place in the same right-of-way as of September 1, 2019, within three hundred feet (300') of the new or modified pole.
 - b. A new small wireless facility in the right-of-way shall not extend more than ten percent (10%) above the existing structure on which it is located or fifty feet (50') above ground level, whichever is greater.
 - c. A wireless provider shall have the right to collocate a wireless facility and install, maintain, modify, and replace a pole that exceeds the height limits required under subsection (a) of this section along, across, upon and under the right-of-way, subject to this section and any applicable zoning regulations.
3. Location and Design:
 - a. A wireless provider shall not install a small wireless facility or pole in a historic district without complying with the requirements of general application for structures within the historic district.
 - b. A wireless provider may replace decorative poles when necessary to deploy a small wireless facility so long as the replacement reasonably conforms to the design of the original decorative pole.
4. Damage and repair: Replacements, Abandonment, Removal
 - a.
 - i. A wireless provider shall repair all damage to the right-of-way directly caused by the activities of the wireless provider in the right-of-way and return the right-of-way to its functional and aesthetic equivalence before the damage under the competitively neutral, reasonable requirements and specifications of the City.
 - ii. If the wireless provider fails to make the repairs required by the City within a reasonable time after written notice, the City may make those repairs and charge the applicable party the actual and reasonable documented cost, including overhead, of the repairs.
 - b.
 - i. A wireless provider is not required to replace or upgrade an existing pole except for reasons of structural necessity or compliance with applicable codes.

- ii. A wireless provider may, with the permission of the pole owner, replace or modify existing poles, but any such replacement or modification shall substantially conform to the design aesthetics of the pole being modified or replaced.
 - c.
 - i. A wireless provider shall notify the City at least thirty (30) days before the wireless provider's abandonment of a small wireless facility.
 - ii. If the wireless provider fails to remove the abandoned small wireless facility within ninety (90) days after the notice, the City may undertake the removal and recover the actual and reasonable documented cost, including overhead, of the removal from the wireless provider, or its successors or assigns.
 - d.
 - i. The City may order the removal of a small wireless facility or associated pole in the right-of-way that violates Ark. Code. Ann. §§ 23-17-505, § 23-17-506, or applicable codes.
 - ii. The City shall provide written notice of the violation to the owner of the small wireless facility at least thirty (30) days before removal to afford the owner the opportunity to conduct repairs or removal, or otherwise remedy the violation.
 - e.
 - i. If the City determines that a wireless provider's activity in a right-of-way under this subchapter creates an imminent risk to public safety, the City may provide written notice to the wireless provider and demand that the wireless provider address the risk.
 - ii. If the wireless provider fails to reasonably address the risk within twenty-four (24) hours of the written notice, the City may take or cause to be taken action to reasonably address the risk and charge the wireless provider the reasonable documented cost of the actions.
 - f.
 - i. A wireless provider shall not collocate a small wireless facility or install, modify, or replace a pole in the right-of-way that:
 - 1. Materially interferes with the safe operation of traffic control equipment;
 - 2. Materially interferes with sight lines or clear zones for transportation or pedestrians;
 - 3. Materially interferes with compliance with the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, or similar federal or state standards regarding pedestrian access or movement; or
 - 4. Fails to comply with applicable codes.
5. Collocation:
- a. This section applies to activities of a wireless provider collocating small wireless facilities on authority poles in the City's right-of-way or in a right-of-way controlled by the Arkansas Department of Transportation located within the City.
 - b.

- i. A person owning, managing, or controlling poles in the City or state right-of-way shall not enter into an exclusive arrangement with any person for the right to attach to the poles.
 - ii. A person who purchases or otherwise acquires a pole in the City or state right-of-way is subject to the requirements of this section.
- c. The City shall allow the collocation of small wireless facilities on authority poles on nondiscriminatory terms and conditions using the process in the “permits” section of this code.
- d. The rates to collocate on authority poles is provided in the “rates and fees” section of this code
- e.
 - i. As part of an application to collocate a small wireless facility on an authority pole, the wireless provider shall submit make-ready design drawings and work descriptions that enable the pole to support the requested collocation by the wireless provider, including pole replacement if necessary.
 - ii. The City may amend the make-ready design drawings and work to comply with applicable codes before the issuance of a permit to the extent reasonably necessary.
 - iii. The rates, fees, and terms and conditions for the make-ready work to collocate on an authority pole shall be nondiscriminatory, competitively neutral, and commercially reasonable and shall comply with this Chapter.
 - iv. The City shall not require more make-ready work than required to meet applicable codes or industry standards nor may the fees for make-ready work include costs related to preexisting or prior damage or noncompliance.
- f.
 - i. The City may require replacement of an authority pole only if the collocation would make the authority pole structurally unsound.
 - ii. The City may require that the replaced authority pole have the same functionality as the pole being replaced.
 - iii. If the authority pole is replaced, the City shall take ownership of the new pole and operate authority fixtures on the pole.
- g.
 - i. Make-ready fees charged by the City may include the amount the authority pays a professional engineer registered in Arkansas to review the wireless provider's make-ready work plans.
 - ii. Fees for make-ready work shall not include any revenue or contingency-based consultant's fees or expenses of any kind.
- h. Within sixty (60) days of the receipt of the application filed to collocate on a City pole, the City shall elect to:
 - i. Perform the make-ready work necessary to enable the pole to support the requested collocation by a wireless provider and provide a good-faith estimate for the work, including pole replacement, if necessary; or
 - ii. Authorize the wireless provider to perform the make ready work.
- i.

- i. The City shall complete make-ready work it elects to perform, including any pole replacement, within sixty (60) days of written acceptance of the good faith estimate of the applicant.
 - ii. If the City, electing to perform the make-ready work, has not completed the work within sixty (60) days after the written acceptance and deposit of the good faith estimate by the applicant, the applicant may demand a return of any deposited funds and proceed with the make-ready work as described in subsection (e) of this section, using authorized, qualified contractors approved by the City with the authorization not to be unreasonably withheld, conditioned, or delayed.
- j.
- i. The City or other applicable authority may reserve space on an authority pole for future public safety or transportation uses in a documented and approved plan in place at the time an application is filed.
 - a. A reservation of space shall not preclude placement of a pole or collocation of a small wireless facility.
 - b. 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.

6. Aesthetics:

- a. The aesthetic appearance of small wireless facilities and associated poles is regulated by the City to ensure coordinated, adjusted, and harmonious development, as provided in this section. The City may apply these requirements to areas of the City in which coordinated, adjusted, and harmonious development has been established through the use of overlay districts or historical districts which have been in existence at least ninety (90) days prior to the passage of this ordinance.
- b. These aesthetic standards shall adhere to the following requirements:
 - i. Reasonable, in that they are technically feasible and reasonably directed to avoiding or remedying unsightly or out-of-character deployments;
 - ii. No more burdensome than those applied to other types of utility and communications infrastructure deployments;
 - iii. Objective and published at least ninety (90) days in advance of the filing of an application under this Chapter;
 - iv. Any design or concealment measures are not considered a part of the small wireless facility for purposes of the size parameters in the definition of "small wireless facility"; and
 - v. The City may deny an application for not complying with aesthetic requirements only if the City finds that the denial does not prohibit or have the effect of prohibiting the provision of wireless service.
- c. The Board of Zoning Adjustment may:
 - i. Hear appeals of the decision of the Administrative Officer in respect to the enforcement and application of the aesthetic standards, and may affirm or reverse, in whole or in part, the decision of the administrative officer.

1. Decisions of the Administrative Officer shall be rendered to the applicant in writing; and
 2. An appeal must be filed within ten (10) days of the written decision of the Administrative Officer.
- ii. Hear requests for variances from the literal provisions of the aesthetic standards and grant the variances only when it is necessary to avoid the prohibition of wireless service or otherwise comply with the law.
- d. Decisions of the Board in respect to this section shall be subject to appeal only to a court of record having jurisdiction.
 - e. Equipment Enclosures:
 - i. To the extent technically feasible, if the support structure is a pole, all radios and wireless communication equipment, except the antenna, shall be enclosed within an equipment cabinet and housed: at the base of the support structure, pole mounted (at a height and placement that will not interfere with pedestrian, cyclist, or vehicular movements), or below grade.
 - ii. Where underground utilities are required by the provisions of this Code or other City adopted regulations or codes, *ancillary* equipment related to the small wireless facility shall be placed in an underground vault to the greatest extent possible.
 - f. Design: Consistent with the provisions of this section, a small wireless facility shall be installed using the following design approaches to the extent reasonable including without limitation the following:
 - i. For location on newly proposed Wireless Support Structures, the following options are available:
 1. New poles installed to support small wireless facilities shall be made of the same or similar material as existing poles in the immediate area.
 2. In an area where other above ground utilities are present, the deployment of a new small cell facility shall be located on the same side of the street which the existing above ground utilities are located and a similar style utility pole (as those utilized by existing above ground utilities) may be utilized.
 3. In an area where the City has required all electrical and communication lines to be placed underground by a date certain that is three (3) months before the submission of the application or where undergrounding is required after small wireless facilities have been installed, an explanation as to why collocation or use of an existing structure, remaining pole or replacement pole is not technically feasible shall be required. This shall apply to the location of *all* pole attached utilities and shall include demonstration of a reasonable attempt to collocate or utilize an existing structure. A wireless provider may install a new pole in the designated area that otherwise complies with this section when it is not able to provide wireless service by collocating on an existing structure, remaining pole or replacement pole

4. When a wireless provider applies to install a new pole in the right-of-way in an area zoned for residential use, the City may propose an alternative location in the right-of-way within one hundred feet (100') of the location stated in the application, and the wireless provider shall use the City's proposed alternative location unless the location imposes technical limits or significant additional costs.
 - (i) The wireless provider shall certify that it has made the determination in good faith, based on the assessment of a licensed engineer, and the wireless provider shall provide a written summary of the basis for the determination.
 5. The City may require wireless providers to comply with reasonable and nondiscriminatory horizontal spacing requirements of general application for new poles and ground-mounted small wireless facilities, but the requirements shall not prevent a wireless provider from serving any location.
- ii. For location on existing Pole Structures:
 - a) Stealth antennas and mounts (completely encased or screened antennas, when possible, to approximately match the color of the existing poles). In the event that some antennas cannot be covered due to their operational wavelength, the applicant shall provide proof of such to the City and the antenna shall be required to be painted in a way that blends with the pole.
 - b) Stealth base cabinet enclosures (completely encases base cabinet equipment to match the colors of the existing poles to the extent feasible). Base cabinet may be placed in any location on the lower portion of the pole, but may not impede ADA accessibility of a sidewalk. The base cabinet may also be placed underground.
 - c) The City shall not limit the collocation of small wireless facilities by minimum horizontal separation distance requirements from existing small wireless facilities, poles, or wireless support structures.
 - iii. For location on existing Building Structures:
 - a) New steeple, extension to existing steeple, and replacement steeple concealment structures,
 - b) Chimney concealment structures,
 - c) Chimney pot concealment structures,
 - d) Rooftop façade extension concealment,
 - e) Rooftop cupola concealment,
 - f) Rooftop screen concealment,
 - g) Roof top pod concealment systems,
 - h) Building side grid concealment structures,
 - i) Building side screen concealment structures,
 - j) Rooftop or wall mounted lantern concealment structures.
- ii. Antenna arrays, cables, and other ancillary facilities used for providing the wireless service shall not be obtrusive or noticeably visible from adjacent properties or adjacent rights-of-way.

- iii. The color of the facility shall be compatible with that of the non-tower support structure. To the extent any small wireless facilities extend above the height of the vegetation buildings and utilities immediately surrounding it, they shall be painted in a non-reflective light gray, light blue, or other hue, which blends with the skyline and horizon.
 - iv. Attachments which are ancillary to the antenna arrays mounted onto a non-tower support structure shall not project greater than three (3) feet, as measured horizontally, from the surface of the non-tower support structure and shall be painted or screened with materials that are a compatible color to the non-tower support structure. Cables that travel along the exterior of a non-tower support structure shall be closely connected to the structure creating a minimal appearance of gaps or loose wires. When possible, visible cables should be in conduit or otherwise covered in a material visually compatible in color to the support structure.
 - v. The general design of a small wireless facility shall be compatible to the streetscape and aesthetics of the surrounding area with respect to street furniture and lights, building façade designs, and area character.
 - vi. Other design elements which by industry standards are considered stealth technology deployment may also be used.
 - vii. Within enacted overlay district stealth concealment is required except when specifically identified by the applicant that such stealth concealment results in a material reduction in the functionality of the proposed small wireless facility.
7. Signage: The provisions of Section 153.180-153.185 of the Tontitown Municipal Code regarding signage shall apply to all small wireless facilities.
 8. Illumination: A small wireless facility shall not have lights on the facility unless the lights are required by other laws and consistent with the requirements of law or designed as an intended amenity of the support structure.
 9. Fencing: A small wireless facility installed in the public right-of-way shall not be fenced.
 10. Use of Right-of-Way and indemnification:
 - a. The wireless provider shall fully indemnify and hold harmless the City and its officers, agents and employees against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney's fees resulting from the installation, construction, repair, replacement, operation, or maintenance of poles, small wireless facilities, or attachments to City poles to the extent directly caused by the negligence of the wireless provider, its contractors, subcontractors and their officers, employees or agents.
 - b. A permit from the City shall not create a property right or grant any authority to the owner of the small wireless facility to impinge upon the rights of others who may already have an interest in the right-of-way.
 11. Appendix to Section 6. Attached to this Ordinance as an Appendix to this Section are illustrations to provide guidance to applicants of aesthetic standards encouraged and preferred by the city in the installation of small wireless facilities and associated poles.

Section 3 –Application and Review Process

1. Permit and Application. A permit is required for the placement and construction of a small wireless facility. Approval of a permit shall require an application.
2. Contents of Application. The small wireless facility permit application shall be made by the Wireless Services Provider or an authorized agent. A permit application shall contain the following:
 - a. The applicant’s name, address, telephone number and e-mail address;
 - b. The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application;
 - c. A general description of the proposed work. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters, including but not limited to sub-surface utilities, likely to be affected or impacted by the work proposed;
 - d. Authorization for any consultant acting on behalf of the Applicant to speak with the city, or a designee of the city;
 - e. Verification from an appropriate professional that the small wireless facility shall comply with all applicable codes;
 - f. Drawings and descriptions of the proposed facilities, non-tower support structures, and ancillary equipment;
 - g. Maps with the specific locations;
 - h. Geographic coordinates of the locations;
 - i. If the proposed location is a new pole, an explanation as to why collocation or use of an existing structure is not technically feasible. This shall apply to the location of all pole attached utilities and shall include demonstration of a reasonable attempt to collocate or use an existing structure, remaining pole or replacement pole;
 - j. If the applicant proposes to collocate on, or occupy any existing structure not owned by the applicant, a letter or written statement from the owner allowing the use; and
 - k. A description and substantiation of any requests for exceptions from the requirements of this Section.
3. Batch Applications. The city may require the applicant to file a separate application for any small wireless facility that is not of a substantially similar design to the others included in the application, or if submitted in a batch, the application must be sufficiently clear so that the City may determine whether one or more of the proposed facilities is not of a substantially similar design.
4. Bond. The city may require the applicant to post a bond as required for any open cut, sidewalk, curb and gutter or other public right of way work as set forth in the Tontitown Municipal Code Section § 90.1000.2.
5. Routine Maintenance and Replacement.

- a. An application shall not be required for:
 - i. routine maintenance that does not expand the size or height of the small wireless facility; and
 - ii. the replacement of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height.
- b. Provided, however, on a location where the City or another provider has placed equipment or facilities, any routine maintenance or replacement that is done shall not occur until written notice of an intent to proceed is provided to the City.

6. Review Procedure:

- a. The Administrative Official shall review the application for compliance with these and other applicable laws and regulations. Review and approval shall be in accordance with timeframes established by federal and state law/policy and the following:
 - i. All applications shall be processed on a nondiscriminatory basis within:
 - a. Sixty (60) days of receipt of an application for the collocation of a small wireless facility; and
 - b. Ninety (90) days for an application to install, modify, or replace a pole on which a small wireless facility is or will be collocated.
 - ii. Within ten (10) days of receiving an application, the Administrative Official shall determine and notify the applicant in writing:
 - 1. Whether the application is complete; or
 - 2. If the application is incomplete, what specific information is missing.
 - iii. If the application is incomplete, the applicant shall be allowed to resubmit the amended application without penalty or payment of any additional application fees, if resubmission occurs within thirty (30) days of notification.
 - iv. The time frame for reviewing shall commence when the application is submitted, but may be tolled upon notification of incompleteness. If the application is incomplete, the applicable time frame for reviewing is reset when the missing information is provided by the applicant.
 - v. Once the application is determined to be complete, the Administrative Official shall review the application and if the application meets the requirements and standards set forth in this section the application shall be granted and a permit issued.
 - vi. If the applicant is requesting an exception to any requirement, the standard of review shall be to determine if the exception is warranted due to an identifiable site-specific hardship or a technological challenge, and more specifically if the excepted requirement is:

- a) Not necessary or desirable for the protection of the surrounding property, public health, public safety, or general welfare; or
 - b) Unreasonable as applied to the particular application.

- vii. The Administrative Official may approve some or all of the requested exception, and advise the applicant in writing of the extent of approval and/or reasons for denial. At his/her discretion, the Administrative Official may also submit the application to the Development Review Committee for input or comment.
 - a) If the applicant believes the decision of the Administrative Official to be in error, an appeal may be made to the Tontitown Board of Zoning Adjustments.
 - b) If the applicant accepts the decision of the Administrative Official the application shall proceed with review and approval/denial.

- viii. The Administrative Official shall have the authority to defer an exception request to the Board of Zoning Adjustment. The Board of Zoning Adjustment shall act upon the request in a timely manner. If the decision of the Board of Zoning Adjustment is in the affirmative, the permit shall be approved, provided all other review requirements are met. If not, the application shall be referred to the Administrative Official for continued review.

- ix. If the Board of Zoning Adjustment denies any or all of the requested exception, the applicant may appeal the decision to a court of jurisdiction in accordance with state law.

- x. The Administrative Official or designee shall notify the applicant in writing of its final decision:
 1. Within sixty (60) days of receiving an application for the collocation of a small wireless facility; using an existing structure.
 2. Within ninety (90) days for an application to collocate a small wireless facility on a new structure.
 - i. These timelines may be tolled only by mutual agreement between the applicant and the City.
 3. If the application is approved, a permit shall be issued;
 4. If the application is denied, the Administrative Official shall specify, in writing, the basis for denial, citing specific code provisions from federal, state, or local law as to why the application was denied.
 5. Notwithstanding the initial denial, the applicant may cure any deficiencies identified by the Administrative Official within thirty (30) days of the denial without paying an additional application fee. The Administrative Official shall approve or deny the revised application within thirty (30) days of receipt of the amended application and its review shall be limited to the deficiencies specified in the original notice of denial.

6. If a decision on an application is not made within the applicable time frame, the application shall be deemed approved ten (10) days after written notice is provided by the applicant to the City that the time-period for acting on the application has lapsed.
- xi. If after commencement of construction but before construction is complete for an approved permit, circumstances unforeseen at the time of approval arise which make continued construction unsafe or impracticable, the applicant may request an amendment to the application or plan by filing a request to amend the approved application. The applicant shall cease work, and the procedure for the amendment request shall proceed in the same manner as if it were a new application under this section. There is no application fee for an amendment request.
 - xii. Prohibitions and Work Requirements:
 1. Within sixty (60) days of written notice, the owner of the small wireless facility shall:
 - a. Remove all graffiti on the facility at his or her expense; and
 - b. Repair or replace any damaged equipment.
 2. Facilities located in the public right-of-way shall not materially visually obstruct traffic signals or signage and shall be maintained in a manner that does not materially interfere with public safety equipment.
 3. The owner shall employ due care during the installation, maintenance or any other work in the ROW, and shall comply with all safety and Public ROW protection requirements of all applicable local, state, and federal laws. The owner shall restore, repair and/or replace any portion of the public improvements in the ROW that are damaged or disturbed by the owner's work or small wireless facilities.
 4. Unless otherwise specified in the permit, the owner shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs and lights to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the Uniform Manual of Traffic Control Devices. The owner shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is restored to a safe condition or as otherwise directed by the city.
 5. If use of the right-of-way on which the Small Wireless Facility is located is necessary for a construction or improvement project undertaken by the City of Tontitown or on its behalf, the Small Wireless Facility shall be relocated. Notice of such relocation shall be provided by the City as soon practicable and at least ninety (90) days before the deadline for completing the relocation. The City shall not bear any expense of any necessary relocation.

6. A small wireless facility shall not interfere with City and public safety communication systems and shall comply with all FCC regulations governing interference.
7. A guy wire or other support wire shall not be used in connection with an antenna, antenna array, or a non-tower support structure except when used to anchor the antenna, antenna array, or non-tower support structure to an existing building or ground to which such antenna, antenna array, or non-tower support structure is attached.
8. The owner of a small wireless facility that is not in service or use for more than six (6) months shall disassemble and remove the facility.

xiii. Fees and rates:

1. For the co-location of a small wireless facility on an existing pole or structure: One Hundred Dollars (\$100.00) non-recurring application fee.
 - a. Additionally, except as described in Ark. Code Ann. § 23-17-510(e), a wireless provider shall pay the City compensation for use of the right-of-way, an annual rate of thirty dollars (\$30.00) per small wireless facility. The annual rate shall be paid to the City by January 31st of the following year.
 - b. A wireless provider shall pay the City compensation for collocation of small wireless facilities on City poles an annual rate of Two Hundred and Forty Dollars (\$240.00) for each City pole.
2. For the installation of a small wireless facility and a pole: Two Hundred Fifty Dollars (\$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.
 - a. Additionally, except as described in Ark. Code Ann. § 23-17-510(e), a wireless provider shall pay the City compensation for use of the right-of-way, an annual rate of thirty dollars (\$30.00) per small wireless facility. The annual rate shall be paid to the City by January 31st of the following year.
3. If the application is for multiple facilities, the fee is One Hundred Dollars (\$100.00) (non-recurring application fee) for each additional facility.
4. Exceptions:
 - a. A wireless provider is not required to pay an authority compensation for micro-wireless facilities that are suspended on cables strung between

existing utility poles in the right-of-way as long as the wireless provider compensates the authority through other licenses or franchises held directly or through one (1) of the wireless provider's affiliates for the placement of the suspension cables in the right-of-way.

Section 4 –Exclusive Arrangements Prohibited

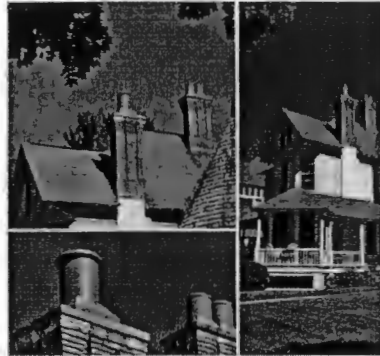
1. Non-exclusivity. The City shall not enter into an exclusive arrangement with a person for use of the right-of-way for the collocation of small wireless facilities or the installation, operation, marketing, modification, maintenance, or replacement of poles for the collocation.

Section 5–Local Authority

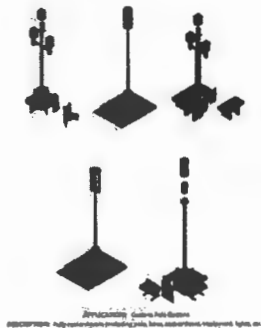
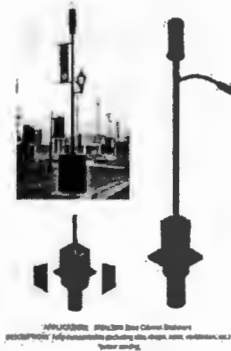
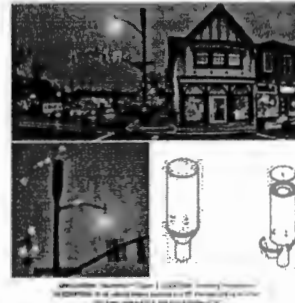
1. Exercise of Zoning Authority. Subject to the provisions of the Small Wireless Facility Deployment Act codified at Ark. Code Ann. § 23-17-501 et seq. and applicable federal law, the City may continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries with respect to wireless support structures, including the enforcement of applicable codes.
2. Interior Installations. The City shall not have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of a small wireless facility located in an interior structure or upon the site of a campus, stadium, or athletic facility not owned or controlled by the City, other than to require compliance with applicable codes.

Appendix Section 6 - Guidance illustrations.

Examples of stealth building attachments.



Examples of stealth pole attachments for small wireless facilities.



Section 7 - Definitions

"Affiliate" means an entity that directly or indirectly controls, is controlled by, or is under common control with another party;

"Antenna" means communications equipment that transmits or receives an electromagnetic radio frequency signal in the provision of wireless service;

"Antenna equipment" means equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with an antenna, located at the same fixed location as the antenna, and when collocated on a structure is mounted or installed at the same time as the antenna.

"Antenna equipment" does not include:

- (i) The structure or improvements on, under, or within which the equipment is collocated; or
- (ii) Wireline backhaul facilities, coaxial or fiber optic cable that is between structures, or coaxial or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna;

"Antenna facility" means an antenna and associated antenna equipment;

"Applicable codes" means uniform electrical reliability, building, fire, electrical, plumbing, or mechanical codes, as adopted by a recognized national code organization, or local amendments to the codes that are of general application, or local ordinances that are of general application, that address public health, safety, or welfare and are consistent with this subchapter;

"Applicant" means a person who submits an application as or on behalf of a wireless provider;

"Application" means a request submitted by an applicant to an authority for a permit:

- (A) To collocate small wireless facilities; or
- (B) To install, modify, or replace a pole on which a small wireless facility is or will be collocated, in the right-of-way;

"Authority" means the City.

"Authority pole" means a pole owned, managed, or operated by or on behalf of an authority;

"Collocate" or **"collocate on"** means the placement, mounting, replacement, or modification of a small wireless facility on, or of ground-mounted antenna equipment adjacent to, a structure.

"Collocate" or **"collocate on"** includes collocated ground-mounted antenna equipment as a small wireless facility if it meets the requirements of Ark. Code Ann. § 23-17-503(25)(A)(iii)-(vi) and the associated facilities on the adjacent structure meet the requirements of Ark. Code Ann. § 23-17-503(25)(i)-(vi);

"Collocation," Collocation is defined as placing an antenna on any existing structure, regardless of whether that structure already has wireless equipment on it, or whether it has been zoned for placing that equipment.

"Communications service" means:

- (A) A cable service, as defined in 47 U.S.C. § 522(6), as it existed on January 1, 2019;

- (B) A telecommunications service, as defined in 47 U.S.C. § 153(53), as it existed on January 1, 2019;
- (C) An information service, as defined in 47 U.S.C. § 153(24), as it existed on January 1, 2019; or
- (D) Wireless service;

"Communications service provider" means:

- (A) A cable operator, as defined in 47 U.S.C. § 522(5), as it existed on January 1, 2019;
- (B) A provider of information service, as defined in 47 U.S.C. § 153(24), as it existed on January 1, 2019;
- (C) A telecommunications carrier, as defined in 47 U.S.C. § 153(51); or
- (D) A wireless provider;

"Control" means the direct or indirect:

- (A) Ownership of at least fifty percent (50%) of the equity;
- (B) Ability to direct at least fifty percent (50%) of voting power; or
- (C) Ability otherwise to direct management policies;

"Controlled-access facility" means a highway or street described in Ark. Code Ann. § 27-68-102;

"Decorative pole" means an authority pole that is specifically designed and placed for aesthetic purposes and on which limited appurtenances or attachments, such as a small wireless facility, lighting, specially designed informational or directional signage, or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory City rules or codes;

"Day" Calendar day unless there is a time frame for the City to respond to a request and the last day to respond ends on a weekend, holiday, or time when all but City emergency services are closed due to weather or some unforeseen situation.

"Facility" means an antenna facility or a structure that is used for the provision of wireless service;

"Fee" means a one-time, nonrecurring charge;

"Historic district" means a group of buildings, properties, or sites that are either:

- (A) Listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register of Historic Places, according to Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, 47 C.F.R. Part 1, Appendix C, as it existed on January 1, 2019;
- (B) A historic district designated under the Historic Districts Act, § 14-172-201 et seq.; or
- (C) A historic district otherwise designated under a local ordinance as of January 1, 2019;

"Micro-wireless facility" means a wireless facility that:

- (A) Is not larger in dimension than twenty-four inches (24") in length, fifteen inches (15") in width, and twelve inches (12") in height;
- (B) Has an exterior antenna that is no longer than eleven inches (11"); and
- (C) Is not placed any farther than ten feet (10') down the span as measured from the side of the pole;

"Permit" means an authorization, written or otherwise, required by an authority to perform an action or initiate, continue, or complete a project for the deployment of wireless service at a specified location;

"Person" means an individual, corporation, limited liability company, partnership, association, trust, authority, or other entity or organization;

"Pole" means a pole in a right-of-way that may be used by or for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, or for collocation of small wireless facilities.

"Pole" does not include a wireless support structure or an electric transmission structure;

"Rate" means a recurring charge;

"Right-of-way" means an area on, below, or above a public utility easement, roadway, highway, street, sidewalk, alley, or similar property. *Such areas are formally owned by the city or used as prescriptive easements.*

"Right-of-way" does not include a federal interstate highway, controlled-access facility, or a public utility easement that does not authorize the deployment sought by the wireless provider;

"Small wireless facility" means a wireless facility that meets all of the following specifications:

- (i) The facility:
 - (a) Is mounted on a structure fifty feet (50') or less in height, including the antennas;
 - (b) Is mounted on a structure no more than ten percent (10%) taller than other adjacent structures; or
 - (c) Does not extend an existing structure on which it is located to a height of more than fifty feet (50') or by more than ten percent (10%), whichever is greater;
- (ii) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet (3 cu. ft.) in volume;
- (iii) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any preexisting associated equipment on the structure, is no more than twenty-eight cubic feet (28 cu. ft.) in volume;
- (iv) The facility does not require antenna structure registration under 47 C.F.R. Part 17, as it existed on January 1, 2019;
- (v) The facility is not located on tribal lands, as defined in 36 C.F.R. 800.16(x), as it existed on January 1, 2019; and
- (vi) The facility does not result in human

exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b), as it existed on January 1, 2019.

"Small wireless facility" does not include:

- (i) The structure or improvements on, under, or within which the equipment is located or collocated or to which the equipment is attached; and
- (ii) Any wireline backhaul facility or coaxial or fiber optic cable that is between wireless support structures or utility poles, or that is otherwise not immediately adjacent to or directly associated with a particular antenna;

"Structure" means a pole or wireless support structure, whether or not it has an existing antenna facility, that is used or to be used for the provision of wireless service;

"Technically feasible" means that by virtue of engineering or spectrum usage the proposed placement for a small wireless facility, or its design, concealment measures, or site location, can be implemented without a material reduction in the functionality of the small wireless facility;

"Utility Pole" A pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control signage, or a similar function regardless of ownership. Such term shall not include structures supporting only Wireless Facilities.

"Wireless Facility" Equipment at a fixed location that enables wireless communications between user equipment and a communication network, including: (i) equipment associated with wireless communications; (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes Small Wireless Facilities. The term does not include the structure or improvements on, under, or within which the equipment is collocated, wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial or fiber optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.

"Wireless infrastructure provider" means a person or an affiliate thereof, including a person authorized to provide communications service in the state, that builds or installs facilities for the provision of wireless service, but that is not a wireless service provider;

"Wireless provider" means a wireless infrastructure provider or a wireless service provider;

"Wireless service" means any service using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public;

"Wireless service provider" means a person who provides wireless service;

"Wireless support structure" means a structure, including:

- (i) A monopole;
- (ii) A tower, either guyed or self-supporting;
- (iii) A billboard;

(iv) A building; or

(v) Any other existing or proposed structure designed to support or that is capable of supporting small wireless facilities, other than a structure designed solely for the collocation of small wireless facilities.

"Wireless support structure" does not include a pole

"Wireline backhaul facility" means an aboveground or underground facility used to transport communications services from a wireless facility to a network.

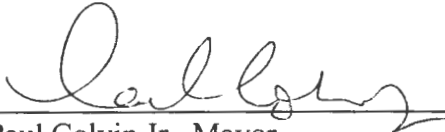
Section 8. Parts of Ordinances in Conflict Repealed. That all ordinances or parts of ordinances in conflict herewith, are hereby repealed to the extent of the conflict.

Section 9. Severance Clause. That the provisions of this Ordinance are hereby declared to be severable and if any section, phrase, or provision shall be declared or held invalid, such invalidity shall not affect the remainder of the sections, phrases or provisions.

Declaration of Emergency. It is hereby found and determined that there is an immediate need within the municipality for standards and regulations pertaining to small wireless facilities and that existing standards and regulations are not in place, and based upon the needs of the City of Tontitown in connection with its current and future growth the enactment of this Ordinance will provide for the safe and orderly control of small wireless facilities within the city and help assure the safe and proper growth and transmission of small wireless facilities, the safe development of land and the safe maintenance and use of city right-of-ways. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation and protection of the public peace, health, safety and welfare of the City and its citizens, shall become effective on the date of its passage and approval by the Mayor. If the Ordinance is neither approved nor vetoed by the Mayor, it shall become effective on the expiration of the period of time during which the Mayor may veto this Ordinance. If the Ordinance is vetoed by the Mayor and the veto is overridden by the City Council, it shall become effective on the date the City Council overrides the veto.


PASSED and APPROVED, this 20th day of August, 2019.

APPROVED:



Paul Colvin Jr., Mayor

ATTEST:



Rhonda Ardemagni, City Recorder/Treasurer

(SEAL)