

ORDINANCE NO. 2019-08-056

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 an 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.
- xii. 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 31<sup>st</sup> 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 31<sup>st</sup> 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**

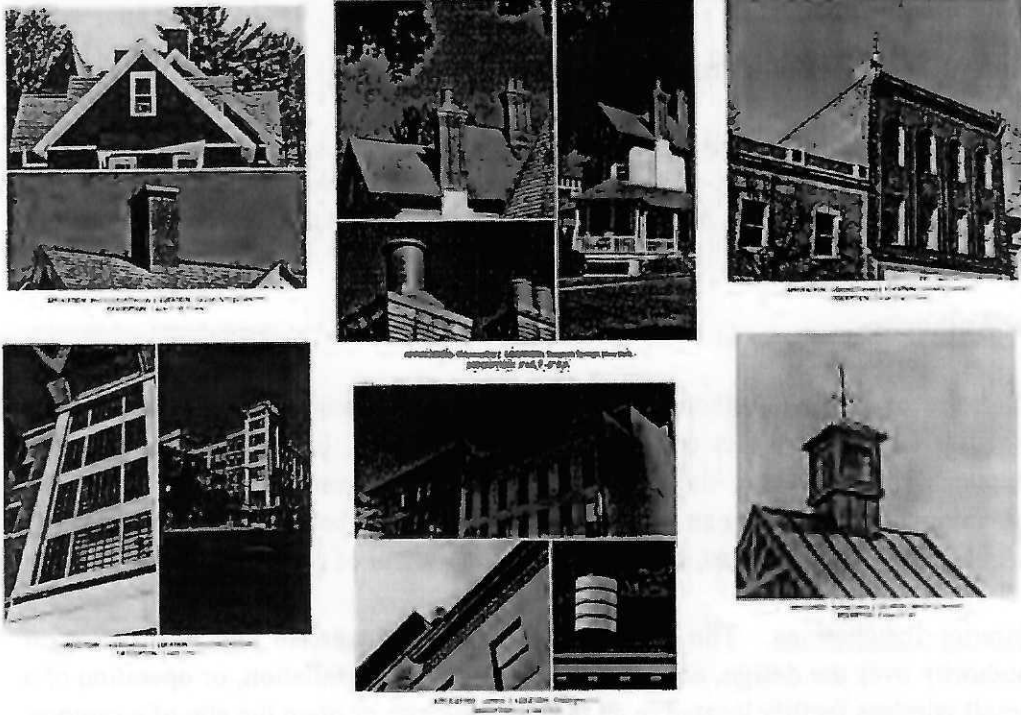
1. Non-exclusivity. The City shall not enter into an exclusive arrangement with a person for use of the right-of-way for the collocation of small wireless facilities or the installation, operation, marketing, modification, maintenance, or replacement of poles for the collocation.

#### **Section 5–Local Authority**

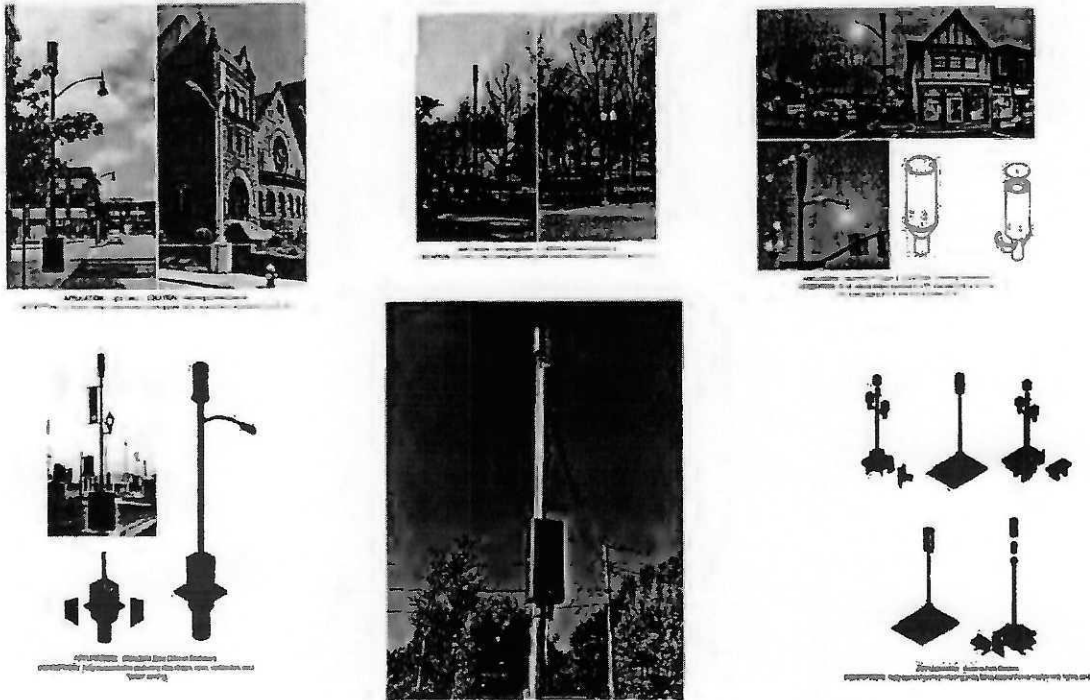
1. Exercise of Zoning Authority. Subject to the provisions of the Small Wireless Facility Deployment Act codified at Ark. Code Ann. § 23-17-501 et seq. and applicable federal law, the City may continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries 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 20<sup>th</sup> day of August, 2019.

APPROVED:

  
\_\_\_\_\_  
Paul Colvin Jr., Mayor

ATTEST:

  
\_\_\_\_\_  
Rhonda Ardemagni, City Recorder/Treasurer

(SEAL)

**§ 152.152 AESTHETICS FOR WIRELESS COMMUNICATION FACILITIES (WCF).**

The following guidelines shall govern the aesthetics of all towers and antennas, provided however, that the City Engineer may waive these requirements where it is determined that the goals of this chapter would be better served thereby.

(A) *Lighting.* Lighting of tower and antenna shall meet the following requirements:

(1) Towers shall be artificially illuminated if required by the FAA or other applicable authority or the governing authority. If artificial lighting is required, the lighting design and intensity chosen should be that which complies with the applicable guidelines, yet causes the least disturbance to the surrounding and nearby properties.

(2) Security lighting or motion-activated lighting may be used around the base of a tower and within the telecommunication facility, provided that the lighting is shielded in such a way that no light is directed towards adjacent properties or rights-of-way.

(B) *Stealth technologies.* This chapter encourages creative design measures to camouflage facilities by integrating them with existing buildings and among other existing uses. Based on this, the color and design of towers and antennas shall meet the following requirements:

(1) Towers shall be maintained with a galvanized steel finish, wood laminate or, subject to any applicable FAA standards, be painted a neutral color so that visual obtrusiveness is minimized.

(2) The design of buildings and related structures within a telecommunication facility shall, to the extent possible, utilize building materials, colors, screening, and landscaping that will camouflage and blend the tower and related facilities into the natural and/or surrounding environment.

(3) If an antenna is to be attached to a supporting structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a color closely compatible with the color of the supporting structure.

(Ord. 2013-04-417, passed 4-2-13; Am. Ord. 2013-09-440, § 152.1000.14, passed 9-3-13)



## **WIRELESS COMMUNICATION TOWERS**

### **Application and Zoning Requirements**

#### **A. Preamble and Adherence with Applicable Federal Laws and Regulations:**

The City of Tontitown recognizes that Wireless Communication Facilities, and the location and siting of Wireless Communications Facilities, are regulated by federal law, and this ordinance is not intended to conflict with federal law, including the Federal Telecommunications Act of 1996, 47 USC Section 332 ("TCA"), in any way. This Ordinance has been adopted so that the location and installation of Wireless Communication Facilities can be located and installed in a manner that best protects the health, safety, welfare of the citizens of Tontitown, addresses aesthetic concerns related inherit with the placement of Wireless Communications Facilities within the community, and seeks to regulate the location and installation only to the extent permitted by the TCA and other applicable law. It is also specifically noted that the City has reviewed publicly owned property in Tontitown, specifically property owned by the City and has noted that in many instances the location and institutional and public uses of that property make location of Wireless Communications Facilities appropriate. This Ordinance seeks to recognize this fact by encouraging the location of such facilities on City owned property wherever appropriate.

#### **B. Placement of New Wireless Facilities or Communication Towers**

Unless not permitted, New Wireless Communications Facilities or Communication Towers shall be allowed by Conditional Use Permit, unless specifically authorized.

#### **C. Statement of Goals and Intent with regard to new Wireless Communication Facilities or Communications Towers.**

- (1) It is the intent of the City of Tontitown to address the following issues when permitting the siting of a newly proposed Wireless Communications Facility or Communication Tower:
  - (a) Provision of adequate wireless services throughout the City to provide the Citizens, businesses, healthcare facilities, schools, and other institutions with the coverage and capacity needed.
  - (b) Provision for the Health Safety and Welfare of Citizens
  - (c) Working to minimize the impact to surrounding property owners through:
    - i. Assurance of good tower aesthetics
    - ii. Requiring the screening of the tower base and accessory ground equipment
    - iii. Requiring attractive screening, and vegetation and landscaping where appropriate.
    - iv. Minimization of noise and light
    - v. Assuring an attractive and minimally invasive tower structure
  - (d) Assurance of environmental compliance
  - (e) Creating an environment where multiple carriers can be placed on each tower and needless over-proliferation of towers throughout the City is avoided.



## Wireless Communications

A. The following general requirements shall apply to all Wireless Communications Facilities or Communications Towers.

- (1) Noise requirements. Equipment used in connection with a tower or antenna array shall not generate noise that can be heard beyond the site. This prohibition does not apply to air conditioning units no noisier than ordinary residential units or generators used in emergency situations where regular power supply for a facility is temporarily interrupted; provided that any permanently installed generator shall be equipped with a functional muffler and any onsite fuel storage meet all applicable building codes.
- (2) Compliance with federal regulations. Applicant shall comply with all applicable federal regulations. Proof of compliance shall be provided before the issuance of the facility building permit, or after the facility's construction.
- (3) Lighting and signage. Wireless communications facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Security lighting or motion-activated lighting may be used around the base of a tower and within the wireless communication facility, provided that the lighting is shielded in such a way that no light is directed towards adjacent properties or rights-of-way.
  - (a) Signs shall be limited to those needed to identify the property and the owner and warn of any danger. No signs, symbols, identifying emblems, flags, or banners shall be allowed on towers.

B. New towers. New Wireless Communications Facilities or Communications Towers shall meet the following requirements:

- (1) Type of towers allowed. New towers shall be limited to monopole type structures (with internal antennas) or stealth/camouflaged type tower structures, excluding towers which mimic trees or other vegetation.
- (2) Tower or antenna height limitations. Towers or tower structures shall be evaluated on an individual basis regarding the appropriate height of the requested tower or tower structure.
  - (a) Buffer zone. The minimum distance from the base of any tower to any residential dwelling unit shall be the tower height (as measured from the base of the tower) or the zone 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 tower. This setback is considered a "buffer zone." In the event that an existing structure (i.e. existing water tower, building or pole) is proposed as a mount for a wireless communication facility, a buffer zone shall not be required.
  - (b) Camouflaging or stealth technology for new towers. If the applicant demonstrates that it is not feasible to locate on an existing structure, towers shall be designed to be camouflaged to the greatest extent -practical including, but not limited to, use of compatible building materials and colors, screening, landscaping, and placement within trees, and other structures that may screen or partially screen the view of the tower from adjacent properties or rights-of-way

- (c) Color of towers. To the extent that any tower or antenna extends above the height of the vegetation immediately surrounding it, they shall be a neutral color, painted or unpainted, unless the FAA requires otherwise.
- (3) If a Conditional Use Permit is required by this Chapter for the placement of a new Wireless Communication Facilities or Communications Tower, then the applicant must proceed through the City of Tontitown Conditional Use Permit process as prescribed in § 153.120 et seq. In addition to the Conditional Use Permit Criteria found within Section § 153.120 et seq., the following Information is required to process new Communication Tower requests requiring a Conditional Use Permit.
- (a) Provide a map of the approximate geographic area that your project will serve;
  - (b) Provide a map showing the approximate location of all other existing communication towers within the area and a written explanation as to why co-location is not possible on an existing tower structure. Describe your efforts to co-locate your facility on one of the poles or towers that currently exists or is under construction. The applicant should demonstrate a good faith effort to co-locate with other carriers.
  - (c) This paragraph does not apply to applicants who desire to construct a tower for the primary purpose of attracting other persons to collocate on the tower.
  - (d) Provide a scaled site plan containing information showing the property boundaries, proposed tower lease area (if applicable), proposed tower, existing land use, surrounding land uses and zoning, access road(s) location and surface material, existing and proposed structures and topography. The plan shall indicate proposed landscaping, fencing, parking areas, location of any signage and specifications on proposed lighting of the facility;
  - (e) Provide a letter stating why the proposed site was chosen.
    - i. Submit a brief written statement describing how your proposed site and plan meet the City Tontitown's "Statement of Goals and Intent" (above).
    - ii. Each Goal should be addressed individually.
    - iii. The document should also include visual aspects, setbacks, and proximity of single-family residences;
    - iv. Describe how you will accommodate other antenna arrays that could co-locate on your facility. Describe how this accommodation will impact both your pole or tower, and your ground mounted facilities. Provide documentation of your provider's willingness to accommodate other providers who may be able to co-locate on your facility.
  - 1. A sight line representation may be requested by Planning Staff or Planning Commission in situations where the placement of the tower is proposed in areas where potentially there may be a visual impact to surrounding properties. A sight line representation shall be drawn from four points 90° apart and 100 feet from the proposed tower. Each sight line shall be depicted in section, drawn at one-inch equals 40 feet. The sections shall show all intervening trees and buildings.

#### 4.17.2 Review and Construction: Administrative Staff Review

Requirements for administrative review process for new Communication Towers (if a Conditional Use Permit is required, then the Conditional Use Permit must be granted by the Planning Commission and/or City Council prior to proceeding through this administrative review).

##### A. Structural integrity and inspections of towers.

(1) If a Conditional Use Permit for the tower is needed and approved, the applicant shall provide a complete set of plans for the proposed tower and a site plan of the property or proposed lease area.

##### (a) Tower Plans:

1. Engineer Stamped Plans for the proposed Tower and an accompanying structural analysis.
2. Engineer stamped plans for the proposed tower foundation based on the local geotechnical information gathered for the specific site.
3. A statement that the tower meets or exceeds design criteria for federal requirements regarding the construction of the tower.

##### (b) Site Plan

1. Name & address of owner, applicant & surveyor.
2. Date, scale (1"-100' preferred), and north arrow.
3. Vicinity map covering a minimum of one mile with a scale and north arrow indicating surrounding roads, municipal limit lines, growth area boundaries, state lines & county lines as applicable
4. Legal description of the property on which the tower is to be placed, with dimensions and angles sufficient to locate all lines. Property shall be located by Section, Township and Range, and tied to the nearest defined and referenced Section or Quarter Section Corner.
5. The precise location and dimensions of the proposed tower or existing tower as it is to be modified.
6. The location and identification of existing roads or access ways within and to the property (including proposed access easements).
7. The location and size of existing access and/or utility easements on or adjoining the property, or a note there are none.
8. The location of flood areas on the property or a note indicating there are none.
9. The location of USGS documented perennial and intermittent watercourses on or adjoining the property or a note indicating there are none.
10. The area set aside to accommodate future outbuildings and/or equipment pads to be placed on the property in the future in connection with the tower
11. The location of all personal residences within the height of the tower from the perimeter of the base of the tower.
12. The names of the owners of such residences within the buffer zone, being the height of the tower as measured from the base of the tower, and copies of their signed consent to the placement of the proposed tower (if applicable).
13. The existing topography on the property, as per existing U.S. Geological Services survey maps or other more current source
14. A note describing any plat and deed restrictions, or a note indicating there are none.

- (c) If a wireless communication facility fails to comply with the requirements and criteria above and constitutes a danger to persons or property, then upon written notice being provided to the owner of the Communications Tower, the owner shall have 90 days to bring such tower into compliance with such requirements and criteria. If the owner fails to bring such tower into compliance within 90 days, the City may terminate the owner's conditional use permit and/or cause the removal of such tower (at the owner's expense). In no instance shall this process prevent the City from taking whatever action to protect the public from imminent harm, including but not limited to immediate removal of a tower.
- (d) By making application hereunder, the applicant agrees to regularly maintain and keep in a reasonably safe and workmanlike manner all towers, antenna arrays, fences and outbuildings owned by applicant which are located in the City. The applicant further agrees to conduct inspections of all such facilities not less frequently than every 12 months. The applicant agrees that said inspections shall be conducted by one or more designated persons holding a combination of education and experience so that they are reasonably capable of identifying functional problems with the facilities.
- (2) Security fencing and anti-climbing device. Using security fencing, towers and equipment shall be enclosed by opaque fencing eight (8) feet in height. The fencing material shall be an opaque fencing made of durable materials. The tower shall also be equipped with an appropriate anti-climbing device. The facility shall place signs indicating "No Trespassing," "High Voltage," or other pertinent information on the outside of the fence, unless it is decided that the goals of this ordinance would be better served by waiving these provisions in a particular instance. Barbed wire fencing or razor wire shall be prohibited, unless a variance is requested.
- (3) Vegetative screening requirements. Wireless communications facilities shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both.
- (a) Vegetative screening should be designed to visually screen the area by using groups of clustered vegetation to achieve a screen natural in appearance. The screened area may exclude access and utility easements.
- (b) In order to effectively screen the tower site, for every 25 linear feet of perimeter of the leased area, property line (or defined property used for the tower site), the following landscaping is required to be installed unless an alternative plan is approved by the Planning Official:
1. One (1) large tree
  2. Two (2) understory trees
  3. Five (5) large shrubs
- (c) The screened area should generally include a mixture of evergreen and deciduous vegetation types of varying heights; other styles of effective vegetative screening may be considered for approval if deemed adequate by the Planning Official. Depending on the setting and existing vegetation on or near the tower property or leased area, a landscape easement adjacent to the site/leased area may be required. If a landscape easement is needed, it must be at least a minimum of 15' in width.



- (d) If there is existing vegetation onsite or within close-proximity that currently provides screening for the site, then the Planning Official may grant the applicant a waiver from the appropriate portions of the landscape screening requirements. Offsite landscape easements may be required to assure the existing vegetation persists.
  - (e) A landscape plan depicting varieties, sizes (upon planting), and proposed placement of all landscape materials shall be submitted with the application. All proposed or existing easements should also be shown (utility, access, rights of way, and landscape easements, etc.). If the applicant proposes to use existing onsite or nearby vegetation in lieu of required landscaping materials, then that existing vegetation must be shown on the plan.
  - (f) Irrigation- shall not be required, but the owners shall be required to care for the planted vegetation and replace any vegetation that does not survive.
- (4) Setbacks from property lines. Wireless Communication Facilities shall meet current building setbacks as required by the applicable zoning districts unless greater setbacks are required by this section.

**B. Co-location on an existing tower or other appropriate structure.**

- (1) The Planning Official, following an administrative review without the requirement of an issuance of Conditional Use Permit, may approve the following antenna installation.
  - (a) Locating on existing structures. Installation of an antenna or antenna array on an existing structure other than a tower (such as a building, light pole, electric transmission tower, water tank, or other free-standing non-residential structure) provided the antenna or antenna array and its support are not more than 20 feet in height. The Planning Official may grant a variance of up to 10 additional feet in height when such additional height is necessary for improved functionality or safety and where the requirements of (D) have been accomplished.
  - (b) Locating on existing towers. Additional antennas may be placed or upgraded upon any tower so long as such additional antenna would not violate any requirements of the conditional use permit or other provisions of the original approval. Antennas may be replaced by similar antennas at the same height and for the same basic usage as the antennas being replaced, however, a statement regarding the loading of the replacement equipment shall be submitted and the applicant shall certify that the loading of the proposed equipment shall be less than or equal to the existing. If no certification can be made, then a structural analysis for the tower and the proposed equipment shall be required.
  - (c) For the purpose of co-location, the applicant must submit information from a licensed professional Engineer certifying the capacity of the tower for additional providers and a letter of intent from the applicant indicating their intent to share space. Existing antennas may be replaced by updated antennas or equipment, however, a statement regarding the loading of the replacement equipment shall be submitted and the applicant shall certify that the loading of the proposed equipment shall be less than or equal to the existing equipment. If no certification can be made, then a structural analysis for the tower and the proposed equipment shall be required.



### **C. Other requirements.**

- (1) Wireless Communications Facilities placed on top of buildings. When a wireless communications facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Stealth (RF Transparent) screening visually appropriate to the specific site should be explored as an effective compatibility tool.
- (2) Wireless communications facilities placed on sides of buildings. Antennas which are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them.

### **D. Exemptions.**

- (1) Personal use. Wireless Communication Facilities for personal use which, including the height of all antenna arrays, are less than 50 feet in height from the ground and shall meet the current setbacks as required by zoning.
- (2) Temporary structures. Temporary structures designed to be used for not more than 14 days in connection with a special event or for any reasonable period of time in and immediately following an emergency, including without limitation those towers which are identified as "C.O.W.s" or "Cellular on Wheels."
- (3) Existing towers. All existing towers may be replaced with the same type and height of tower structure as currently exists. All replacement towers shall comply with (A) and (B) regarding color of towers, structural integrity and inspections of towers, security fencing and anti-climbing device, and vegetative screening requirements.

All existing guyed towers shall also be subject to the following conditions:

- (a) A demolition permit shall be issued prior to a building permit being issued for the replacement tower;
  - (b) The demolition permit shall expire within 90 days and shall require the existing tower to be demolished within 90 days from issuance of the building permit for the replacement tower;
  - (c) The new tower shall be constructed as close as technically feasible to the existing tower;
  - (d) The guyed replacement structure may be increased in width to a maximum of 36 inches. Existing guyed towers over 36 inches shall not be increased in width with a replacement tower.
- (4) Emergency and utility towers and antennas.  
Towers and antennas under 35 feet in height used for 9-1-1 services and utility monitoring (gas, water, sewer, traffic lights, etc.).
  - (5) Emergency services pole antennas and microwave dish antennas.

- (a) Mayoral determination. If sufficient information concerning gaps in vital emergency services radio coverage or microwave relay capability and the lack of any reasonable alternative is presented to the Mayor who concludes an exemption to the 150 foot height limitation or to a requirement that antennas must be mounted internal within a permitted cell tower may be made to ensure public safety, the Mayor may grant the following exemptions.
- (b) Emergency services antenna. The Mayor may authorize the placement or extension of an emergency service antennas affixed to the top of a permitted cell phone tower as long and the antenna has a main supporting section diameter no larger than four inches.
- (c) Emergency services microwave dish antenna. The Mayor may authorize the placement of an emergency services microwave dish antenna on the outside of a permitted cell phone tower as long as this dish antenna does not have a diameter more than four feet.

**E. Municipal property availability**

- (1) The City may actively market its own property as locations for new wireless communications facilities where appropriate and existing structures as suitable co-location sites.
- (2) The City may not require the applicant to give preferential or priority consideration. The City may not impose on the applicant a requirement of first examination to municipal owned locations or other locations as owned or controlled by public type entities (schools, hospitals, libraries) over privately owned properties or locations.
- (3) The City may consider as a factor: The appropriate leasing and use of City property to house wireless communication facilities may lessen the overall impact to the community at large by returning a tangible benefit to partially offset any real or perceived impact, and that this would benefit the community if the facility was located on private land.
  - (a) The lease amount for such facilities, either a co-location on an existing City owned structure, or a lease of City land that the applicant may build a new facility, should be charged per the fair market value of the location.
  - (b) As noted above, the review process is shortened and simplified when co-location on existing City or private structures is submitted by applicant.

**F. Abandoned antennas and towers.**

- (1) At such time that all licensed carriers abandon or discontinue operation from a wireless communication facility for a continuous period of one year, the wireless communications facility shall be considered abandoned upon such discontinuation of operations. Upon abandonment or discontinuation of use, the carrier shall obtain the appropriate permits from the City Building Official to physically remove the wireless communications facility within 90 days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:
  - (a) Removal of antenna, equipment shelters and security barriers from the subject property;

- (b) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations;
- (c) Restoring the location of the wireless communications facility to its natural condition, except that any landscaping, grading, and subsurface construction shall remain in the after-condition.

## 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 A.C.A. § 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 A.C.A. § 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:

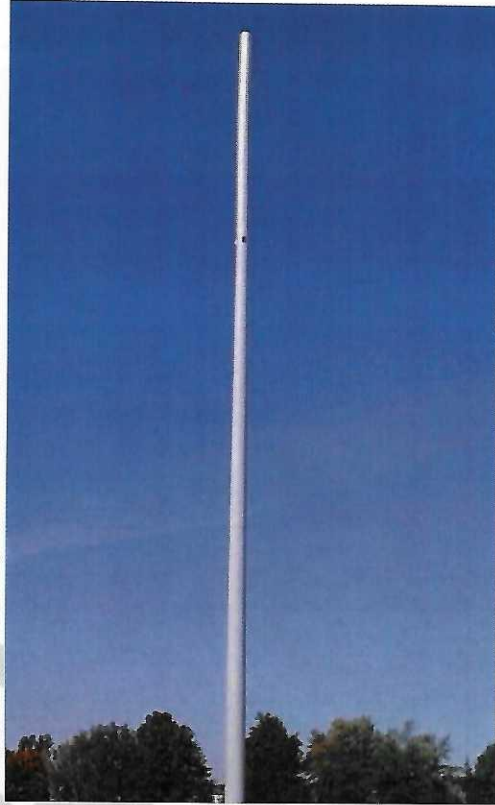
- (i) A monopole;
- (ii) A tower, either guyed or self-supporting;
- (iii) A billboard;
- (iv) A building; or
- (v) Any other existing or proposed structure designed to support or that is capable of supporting small wireless facilities, other than a structure designed solely for the collocation of small wireless facilities.

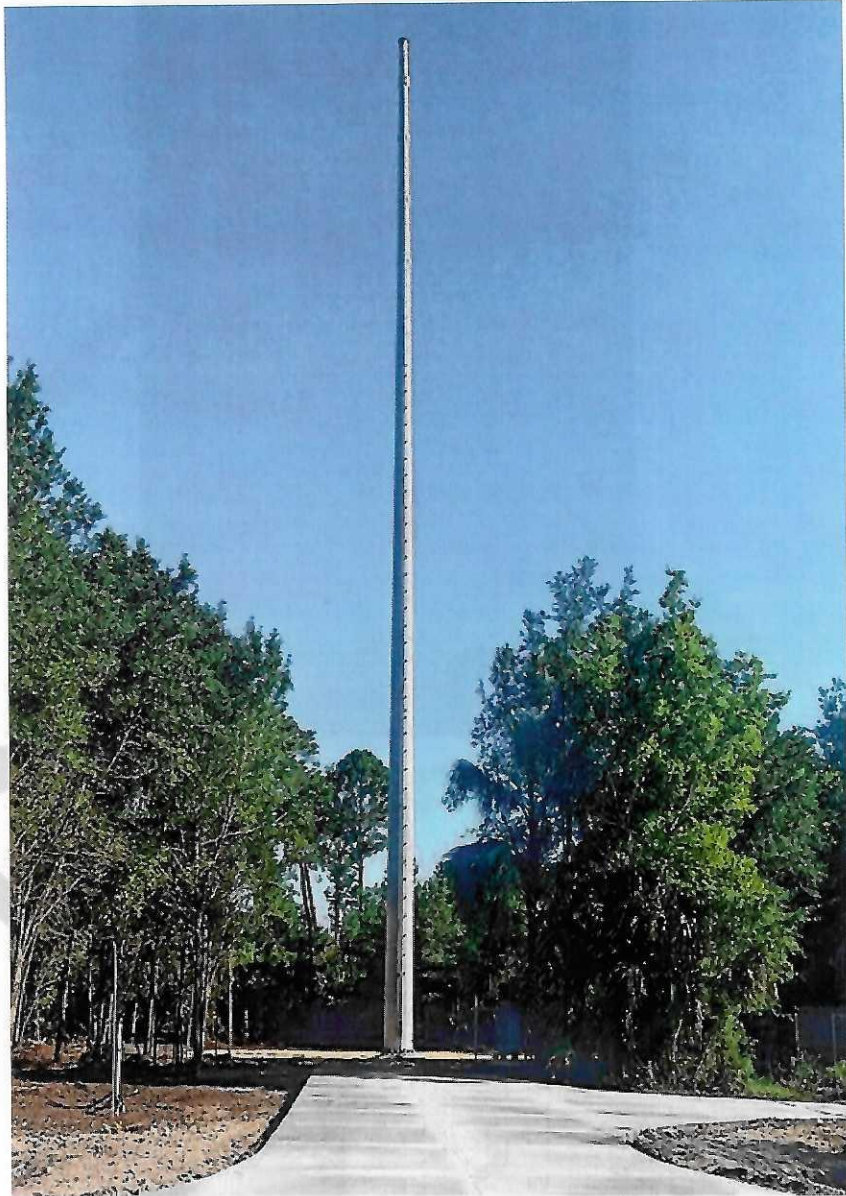
"Wireless support structure" does not include a pole

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

Exhibit A:

Examples of Monopole towers with internal antenna.







MEMORANDUM

TO: City Council

FROM: Justin Eichmann

DATE: October 19, 2021

RE: Federal Telecommunications Act of 1996 (the “TCA”)  
Wireless Communications Facility – Conditional Use Permit Application

This memorandum is to provide the City Council with background regarding the TCA and other relevant federal rule in order to highlight some relevant provisions for consideration to apply to permits for wireless communications facilities. Also included are the review guidelines for a conditional use permit (“CUP”) application for the City of Tontitown.

**Background:**

The TCA was adopted by Congress with the intention to foster competition among telecommunications providers to improve the quality of services and to “encourage the rollout of new technologies without delay.” *USCOC of Greater Iowa, Inc. v. Zoning Bd. of Adjustment of Des Moines*, 465 F.ed 817, 820 (8<sup>th</sup> Cir. 2006). “One of the means by which [Congress] sought to accomplish these goals was reduction of the impediments imposed by local governments upon the installation of facilities for wireless communications, such as antenna towers.” *City of Rancho Palos Verdes, Cal. v. Adams*, 544 U.S. 113, 115 (2005).

Despite of the emphasis on avoiding delay, Congress preserved the authority of “[s]tate and local government or instrumentality thereof over decision regarding the placement, construction, and modification of personal wireless service facilities. See 47 U.S.C. § 332(c)(7)(A). This authority is limited in that any denial of permission to construct a cellular tower must “be in writing and supported by substantial evidence contained in a written record.” See 47 U.S.C. § 332(c)(7)(B)(iii).

**Provisions:**

The following provisions are highlights from the TCA:

- 1) Preservation of Local Zoning Authority - General Authority (47 U.S.C. §332(7)(A))

“Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over

decisions regarding the placement, construction, and modification of personal wireless service facilities.”

2) Limitations (47 U.S.C. §332(7)(B)(i))

“The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof-

-shall not unreasonably discriminate among providers of functionally equivalent services; and

-shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

3) Time Limit on Requests (47 U.S.C. §332(7)(B)(ii))

A State or local government shall act on any request to place, construct, or modify personal wireless service facilities within “a reasonable period of time.”

4) Denying Requests (47 U.S.C. §332(7)(B)(iii))

If a State or local government denies a request to place, construct, or modify personal wireless service facilities the denial “shall be in writing and supported by substantial evidence contained in a written record.”

The written decision must contain a sufficient explanation of the permit denial to allow a reviewing court to evaluate the evidence in the records supporting those reasons

5) Limitations – Environmental Effects (47 U.S.C. §332(7)(B)(iv))

No State or local government “may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.”

6) Methods of Recourse from Adverse Decisions (47 U.S.C. §332(7)(B)(v))



- a. Action/Timing - If adversely affected by any final action or failure to act by a State or local government, a person may file an action in any court of competent jurisdiction within 30 days of the action or failure to act.
  - b. Expedited Process - The Court shall hear such an action on an expedited basis.
  - c. Relief - If the state or local government regulates the placement, construction, and modification of personal wireless services because of environmental effects, the person may petition the Commission for relief.
- 7) Middle Class Tax Relief and Job Creation Act – 47 U.S.C. §1455 Wireless Facilities Deployment
- a. Facility Modifications (47 U.S.C. §1455(a))

“[A] State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”
  - b. Eligible Facilities Request (47 U.S.C. §1455(a)(2))

“Eligible facilities request” means any request for modification of an existing wireless tower or base station that involves the collocation of new transmission equipment; the removal of transmission equipment; the replacement of transmission equipment.
- 8) FCC Declaratory Ruling - In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(b) to Ensure Timely Siting Review & to Preempt Under Section 253 State & Local Ordinances That Classify All Wireless Siting Proposals As Requiring A Variance (24 F.C.C. Rcd. 13994, 14012 (2009))
- a. Timing of Processing Permits

“We find 90 days to be a generally reasonable timeframe for processing collocation applications and 150 days to be a generally reasonable timeframe for processing applications other than collocations.”

\*Upheld by SCOTUS in *City of Arlington, Tex. v. F.C.C.*, 133 S.Ct. 1863 (2013).

**Conditional Use Permit - Review Guidelines:**

Section 153.121 of the Tontitown Municipal Code provides the review guidelines for a request for a conditional use permit ("CU"). These guidelines are as follows:

- (A) All development shall be designed in such a way as to minimize any potential negative impact on the surrounding area. Special attention shall be given to buffering commercial developments from adjacent single-family areas. Design of the internal traffic circulation system, ingress and egress, off-street parking, loading and pedestrian ways shall be sensitive to such conditions as safety, convenience, separation of vehicular and pedestrian traffic, general attractiveness, and the proper relationship of different land uses. Landscaped areas shall be provided to protect water quality, and reduce erosion, heat and glare. Such areas shall be maintained in an attractive condition. Existing trees on a development site shall be retained where possible. Screening, open space, or other buffer may be required to give adequate separation between uses which are marginally compatible, and shall also be provided for the beautification and enhancement of the property.
- (B) In carrying out the purpose of this section, the following development standards and design specifics shall be subject to review and approval. The appropriateness of these standards shall be determined for each specific conditional use location.
  - (1) The proposed use is within the provision of "conditional uses," as set out in these regulations.
  - (2) The proposed use conforms to all applicable provisions herein set out for the district in which it is to be located.
  - (3) The proposed use is so designated, located, and proposed to be operated, that the public health, safety and welfare will be protected.
  - (4) The proposed land use is compatible with and will not adversely affect other property in the area where it is proposed to be located.
  - (5) The size and shape of the site, including the size, shape and arrangement of proposed structures, as well as signage related thereto, is in keeping with the intent of these regulations.
  - (6) The proposed ingress and egress, internal circulation system, location and amount of off street parking, loading and pedestrian ways are sufficiently adequate, and not inconsistent with requirements of these regulations.
  - (7) The proposed landscaping and screening of the proposed use are in accordance with provisions of these regulations.
  - (8) Safeguards proposed to limit noxious or offensive emissions, including lighting, noise, glare, dust and odor are addressed.