

ORDINANCE NO.19-813

AN ORDINANCE ADOPTING A SMALL WIRELESS COMMUNICATION FACILITY
REGULATION FOR THE CITY OF CLARKSVILLE, ARKANSAS

Small Wireless Communication Facility Regulation

of the

**City of Clarksville, Arkansas
("City")**

This Small Wireless Regulation (the "Regulation") dated April 8, 2019 ("Effective Date") is made by the City of Clarksville, Arkansas ("City"), a municipal corporation duly created, organized, and existing as a political subdivision of the State of Arkansas, owner and regulator of the Clarksville Light & Water (CLW) ("Utility"), supervisor and holder of public rights-of-way, and regulator of development within the City.

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RECITALS

WHEREAS, City encourages wireless infrastructure investment and wishes to provide a fair and predictable process for the deployment of Wireless Communication Facilities while promoting proper management of the public rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, City recognizes that Wireless Communication Facilities – including facilities commonly referred to as small cells and distributed antenna systems -- are capable of delivering wireless access to advanced technology, broadband, and 911 services to residences, businesses, and schools within the City; and

WHEREAS, City recognizes that Wireless Communication Facilities can often be effectively deployed in public rights-of-way; and,

WHEREAS, City intends to fully comply with State and Federal Law to the extent it may preempt local municipal control; and

WHEREAS, Utility operates a municipal utility within and about City performing the essential public service of distributing electric power and providing light and other important services; and

WHEREAS, Utility is responsible for safeguarding the integrity of its electric system and its employees, obtaining fair compensation for the use of its infrastructure through collection of fees and other charges, ensuring compliance with all applicable federal, state and local laws, rules and regulations, ordinances and standards and policies, and permitting fair and reasonable access to available Capacity on Utility's infrastructure; and

WHEREAS, certain Wireless Service Providers propose to occupy City's public rights-of-way in order to install and maintain Wireless Communication Facilities and associated equipment, Wireless Service Provider's Attachments, on Utility's Poles and/or Streetlights to provide Wireless Communication Services;

WHEREAS, Utility is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Wireless Communication Facilities on Utility's Poles and/or Streetlights; and

WHEREAS, City is willing to permit Wireless Service Providers to occupy City's public rights-of-way for the placement or installation of Wireless Support Structures and Wireless Attachments; and

WHEREAS, City is willing to negotiate the placement of Wireless Support Structures and Wireless Attachments on City structures; such as buildings, recreational field lighting, and the like; and

WHEREAS, City and Utility preserve their respective rights to own, operate, and manage property in a proprietary manner while fairly governing the conduct of business and access to public rights-of-way.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions set out below the parties agree as follows:

Article 1. Definitions

For the purposes of this Regulation, the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific Article or Section of this Regulation. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

1.1 **Affiliate**: when used in relation to a Wireless Service Provider, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with the Wireless Service Provider.

1.2 **Applicable Standards**: means all applicable engineering and safety standards governing the installation, maintenance, and operation of facilities and the performance of all work in or around electric Utility Facilities and includes the most current versions of National Electric Safety Code (“NEC”), the National Electrical Code (“NEC”), the American Public Power Association (“APPA”) Safety Manual, and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Regulation, and/or other reasonable safety and engineering requirements of Utility or other federal, state, or local authority with jurisdiction over Utility Facilities.

1.3 **Application**: means a request submitted by a Wireless Service Provider, or a Person acting on behalf of a Wireless Service Provider, to the Designated Office for a Permit to install Wireless Communication Facilities including approval for installation or modification of a Utility pole or Wireless Support Structure.

Standard Application: means an application that fully conforms to all design standards shown in Appendix B.

Non-Standard Application: means an Application that does not fully conform to all design standards shown in Appendix B.

1.4 **Attaching Entity**: means any public or private entity, including a Wireless Service Provider, that pursuant to an agreement with Utility or other authority, places one more Attachments on Utility’s Poles.

1.5 **Attachment(s)**: means both Wireless Communication Facilities and wireline communications wires of Wireless Service Providers and other Attaching Entities that are lawfully affixed to or installed within a Pole.

- 1.6 **Capacity:** means the ability of a Pole to accommodate the installation of an Attachment based on Applicable Standards, including space and loading considerations.
- 1.7 **City:** means the City of Clarksville, Arkansas, a municipal corporation duly created, organized, and existing as a political subdivision of the State of Arkansas.
- 1.8 **City Facilities:** means all personal property and real property owned or controlled by City, including those used for the provision of public services and those used for other purposes.
- 1.9 **Communications Service:** means the transmission or receipt of voice, video, data, broadband Internet, or other forms of digital or analog service.
- 1.10 **Communications Space:** means the space on a Pole designated for horizontal wireline communications attachments under the NESC and other Applicable Standards.
- 1.11 **Correct:** means to perform work to bring an Attachment into compliance with Applicable Standards in a workman like condition.
- 1.12 **Days:** means calendar days unless otherwise specifically stated.
- 1.13 **Designated Office:** means the Utility's Office of Engineering and Design, or such City office as may be designated by the Mayor, where Wireless Service Providers may submit an Application.
- 1.14 **Electric Supply Space:** means the upper portion of a Pole above the communications workers safety space dedicated to electric distribution facilities under the NESC and other Applicable Standards.
- 1.15 **Emergency:** means a situation exists which, in the reasonable discretion of a Wireless Service Provider, City or Utility, if not remedied immediately, poses an imminent threat to public health, life, or safety, damage to property or a service outage.
- 1.16 **Equipment Attachment:** means each power supply, amplifier, appliance or other single device or piece of equipment associated with Wireless Communication Facilities affixed to any Utility Pole.
- 1.17 **Historic District:** means a geographically defined area within City that is empowered by City ordinance to approve or disapprove development through the issuance of a certificate of appropriateness (COA).
- 1.18 **Make-Ready or Make-Ready Work:** means all work that City or Utility reasonably determines to be required to accommodate a Wireless Communication Facility and/or to comply with all Applicable Standards. Such work includes, but is not limited to, field survey work, rearrangement and/or transfer of Utility Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), pole replacement and construction, but does not include a Wireless Service Provider's routine maintenance.

- 1.19 **Occupancy**: means the use or reservation of space for Attachments on a Pole.
- 1.20 **Overhead**: means all organizational costs that are not directly related to the cost of performing a particular task, but incurred by the Utility as necessary operational expenses, including any specified payment in lieu of taxation or internal rate of return.
- 1.21 **Pedestals/Vaults/Enclosures**: means above- or below-ground housings that are not attached to Poles but are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices, and/or to provide a service connection point.
- 1.22 **Permit**: means written or electronic authorization executed by City and/or Utility for a Wireless Service Provider to install Wireless Communication Facilities on or within specified Poles pursuant to the requirements of this Regulation, as described within the authorization. Wireless Communication Facilities installed by a Wireless Service Provider prior to the Effective Date and previously authorized by written agreement with City and Utility (“Existing Attachments”) shall be deemed permitted hereunder.
- 1.23 **Person**: means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization that can sue or be sued, including the City.
- 1.24 **Pole**: means a Decorative Pole, Distribution Pole, Streetlight Pole, or Traffic Pole.
- Decorative Pole**: means a non-wooden pole owned or controlled by City or Utility that is specially designed to enhance the aesthetic appearance of the surrounding area. Decorative Poles are typically painted and constructed with ornamental design elements.
- Distribution Pole**: means a pole owned or controlled by Utility that is used to provide electricity and/or Communications Service
- Streetlight Pole**: means a non-Decorative Pole owned or controlled by City or Utility that is used to provide lighting or ancillary services.
- Traffic Pole**: means a pole that is owned or controlled by City and used to provide vertical support to traffic signals.
- 1.25 **Post-Installation Inspection**: means the inspection by Utility or, if permitted by Utility, inspection by Wireless Service Provider or some combination of the Utility and Wireless Service Provider to verify that Attachments have been made in accordance with Applicable Standards and the Permit.
- 1.26 **Pre-Construction Survey**: means all work or operations required by Applicable Standards and/or Utility to determine the Make-Ready Work necessary to accommodate Wireless Communication Facilities on a Pole. Such work includes, but is not limited to, field inspection and administrative processing.
- 1.27 **Reserved Capacity**: means capacity or space on a Pole that City or Utility has identified and reserved for its own future utility requirements at the time of the Permit grant pursuant to a

projected need for such use, including the installation of communications circuits for operation of Utility's electric system and/or lighting services.

1.28 **Riser**: means metallic or plastic encasement materials placed vertically on the Pole to guide and protect wires and cables.

1.29 **Tag**: means an identification label ("Tag") that is no smaller than 12 square inches and no larger than 64 square inches. Using font that is 12-point or larger, Tags will be permanently imprinted with the following minimum information:

1. Identity of Licensee
2. Licensee's phone number used to respond to emergencies or planned work on a 24-hour basis
3. Serial identifier that is unique to each Wireless Communication Facility.
4. Any required safety information

1.30 **Unauthorized Attachment**: means any Attachment placed on Utility's Poles without a permit as required by this Regulation, provided the Wireless Service Provider's previously authorized Attachments made pursuant to a prior written agreement between the parties shall not be considered Unauthorized Attachments.

1.31 **Utility**: means the Clarksville Light & Water (CLW).

1.32 **Utility Facilities**: means all personal property and real property owned or controlled by Utility, including Poles, wires, equipment, and related facilities.

1.33 **Wireless Communication Facilities**: means equipment at a fixed location that enables wireless communications between a retail user's equipment and a communication network, including: (i) equipment associated with wireless communication; (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and back-up power supplies, and comparable equipment, regardless of technological configuration. The term does not include Wireless Support Structures, wireline backhaul facilities, coaxial or fiber optic cable that is between Wireless Support Structures, ground wires, service drops or Utility Poles or coaxial or fiber optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.

1.34 **Wireless Services** means any services, whether at a fixed location or mobile, provided it is using Wireless Communication Facilities.

1.35 **Wireless Service Provider**: means a Person who sells and provides Wireless Services to the general public using Wireless Communication Facilities pursuant to one or more licenses properly issued by the FCC and other applicable authorities.

1.36 **Wireless Support Structure**: means a freestanding structure, such as: an equipment pedestal; a monopole; tower, either guyed, or self-supporting as determined by the City; billboard; or, other existing or proposed structure designed to support or capable of supporting Wireless Communication Facilities. Such term shall not include a City or Utility Pole.

Article 2. Purpose and Scope of Regulation

2.1. **Purpose:** The purpose of this Regulation is to provide policies and procedures for the placement of Wireless Communications Facilities in public rights-of-way within the jurisdiction of the City, and upon City and Utility Facilities, which will preserve the integrity, safe usage, and visual qualities of the City public rights-of-way and the City as a whole. This Regulation establishes uniform standards, to be used and included in individual permits, to address issues presented by Wireless Communication Facilities including, but not limited to:

2.1.1. Prevention of interference with the use of streets, sidewalks, alleys, parkways, Utility Poles, and other public ways and places;

2.1.2. Prevention of the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

2.1.3. Prevention of interference with other facilities and operations of facilities lawfully located in City public rights-of-way or public property;

2.1.4. Protection against environmental damage, including damage to trees or shrubbery including, but not limited, those items planted pursuant to City landscaping, zoning, tree preservation, or other City policies;

2.1.5. Preservation of the character of neighborhoods in which facilities are installed;

2.1.6. Preservation of the historical character of historic structures, or historic neighborhoods, including but not limited to such structures or neighborhoods listed on the National Register of Historic Places; and,

2.1.7. Facilitation of the rapid deployment of small cell facilities to provide the citizens with the benefits of advanced wireless services.

2.2. **Grant of Permits.**

2.2.1. City shall grant Wireless Service Providers a revocable, nonexclusive permit authorizing the installation and maintenance of Wireless Support Structures and Wireless Communication Facilities within the City's public rights-of-way, as provided in this Regulation. Applications to install Wireless Support Structures or Wireless Communication Facilities outside of the right-of-way will be processed according to City ordinances governing the zoning and development of property.

2.2.2. Utility shall grant Wireless Service Providers a revocable, nonexclusive permit authorizing the installation of Attachments to Utility's Poles; provided that: (i) the Utility has sufficient Capacity to accommodate the requested Attachment(s), (ii) the Wireless Service Provider meets all requirements set forth in this Regulation, and (iii) such Permit(s) comply with all Applicable Standards.

2.2.3. City may grant a Wireless Service Provider a revocable, nonexclusive permit authorizing the installation and maintenance of a Wireless Support Structure and Wireless Communication Facilities on City property, other than a Pole, upon such terms and conditions as may be approved in accordance with Arkansas law.

2.2.4. Permits issued pursuant to this regulation may be reviewed and revised by the City and/or Utility after eight (8) years from the date approved in order to advance a public concern identified in Section 2.1. Within one year of any such revision, Wireless Service Providers shall: (1) cause their Wireless Support Structures and Wireless Communication Facilities to conform to revised permit requirements; or (2) cause or allow their Wireless Support Structures and Wireless Communication Facilities to be removed at the expense of the Wireless Service Provider.

2.3. **General Restrictions for Wireless Support Structures.**

2.3.1. No Person shall install or maintain a Wireless Support Structure within the public right-of-way without a permit issued by the City, or in violation thereof.

2.3.2. No Person shall be issued a Permit to install or maintain a Wireless Support Structure within the public right-of-way unless that Person is a Wireless Service Provider, or an Affiliate duly authorized to act on behalf of a Wireless Service Provider.

2.3.3. No Person shall install a Wireless Support Structure within the public right-of-way when suitable Utility Poles or Wireless Support Structures are available for Attachments in the public right-of-way within one hundred feet (100') of the proposed location. Provided that a Utility Pole or Wireless Support Structure can structurally support the proposed Wireless Communication Facility, the suitability of a Utility Pole or Wireless Support Structure shall be determined pursuant to the operational constraints of equipment used by the Wireless Service Provider.

2.3.4. No Person shall install a Wireless Support Structure in the right-of-way that is taller than thirty-five feet (35') in height above ground.

2.3.5. No Person shall install a Wireless Support Structure in any location that impedes or prevents the provision of lighting, electric distribution, communication, or other existing services that are provided using a City or Utility Pole.

2.3.6. No Person shall install a Wireless Support Structure in any Historic District unless and until issued a certificate of appropriateness by the historic district commission.

2.3.8. All Wireless Support Structures shall conform to design standards of Appendix B and be designed for colocation, lighting, or other services that the City deems to be useful to the public.

2.3.9. No Person shall install a Wireless Support Structure within twenty-five (25) feet of the outer curbing of an intersection. This section shall not apply to City or Utility approved Street Light Poles, Traffic Poles, and other City and/or Utility Facilities that are modified or replaced to hold a Wireless Communication Facility.

2.4. **General Restrictions for Wireless Communications Facilities.**

2.4.1. No Person shall install or maintain a Wireless Communication Facility on any City or Utility Facility without a permit issued by the Utility, or in violation thereof.

- 2.4.2. No Person shall be issued a Permit to install or maintain a Wireless Communications Facility on any City or Utility Facility unless that Person is a Wireless Service Provider, or an Affiliate duly authorized to act on behalf of a Wireless Service Provider.
- 2.4.3. No Person shall install a Wireless Communications Facility on any City or Utility Facility that impedes or prevents the provision of light, electricity, or operation of electrical equipment or other existing services that are provided using the City or Utility Facility.
- 2.4.4. No Person shall install a Wireless Communication Facility on any City or Utility Pole that is inaccessible from a street with a bucket truck.
- 2.4.5. No Person shall energize a Wireless Communication Facility unless and until the Wireless Communication Facility has passed Post-Installation Inspection in accordance with Article 8.
- 2.5. **Decorative Poles Restrictions.** In addition to the General Restrictions in Article 2.4, no Person shall install a Wireless Communication Facility on or within a Decorative Pole unless the specific design of the Wireless Communication Facility has been approved by the City and Utility. Applications for Permits to install a Wireless Communication Facility on or within a Decorative Pole shall be treated as a Non-Standard Application.
- 2.6. **Distribution Poles.** In addition to the General Restrictions in Article 2.4, no Person other than Utility shall install any Attachments within or above the Electric Supply Space on any Distribution Pole.
- 2.7. **Streetlight or Traffic Poles.** In addition to the General Restrictions in Article 2.4, no Person shall install a Wireless Communication Facility on or within a Streetlight or Traffic Pole that, when combined with the existing lighting equipment and other existing City and Utility Facilities, shall require more electricity than can be safely provided by the existing service line, without sufficiently upgrading the existing service line.
- 2.8. **Reserved Capacity.** City and/or Utility may limit access to Poles when the City and/or Utility plan to use such Poles for future purposes. At the time of Permit issuance, Wireless Service Provider shall be notified if Capacity on particular Poles is being reserved for reasonably foreseeable future use. For Attachments made with notice of such a Reservation of Capacity, on giving Wireless Service Provider at least ninety (90) calendar days prior notice, City or Utility may reclaim such Reserved Capacity at any time following the installation of a Wireless Service Provider's Attachment if required for City's or Utility's use. If reclaimed, City or Utility may at such time also install associated facilities, including the attachment of communications lines for internal operational or governmental communications requirements. City or Utility shall give Wireless Service Provider the option to remove its Attachment(s) from the affected Poles or to pay for the cost of any Make-Ready Work needed to expand Capacity for City or Utility service requirements, so that Wireless Service Provider can maintain its Attachment on the affected Poles. The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 10. Wireless Service Provider shall not be required to bear any of the costs of rearranging