

including all equipment, fixtures, and utility structures, fencing, or support systems that may be placed on, within, or around Utility Facilities to protect fully against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.

Notwithstanding the forgoing, Wireless Service Provider may, in its sole discretion, self insure any of the required insurance under the same terms as required by this Regulation. In the event Wireless Service Provider elects to self-insure its obligation under this Regulation to include City and Utility as an additional insured, the following conditions apply: (i) City and Utility shall promptly and no later than thirty (30) days after notice thereof provide Wireless Service Provider with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Wireless Service Provider with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) City or Utility shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Wireless Service Provider; and (iii) City and Utility shall fully cooperate with Wireless Service Provider in the defense of the claim, demand, lawsuit, or the like.

25.2. **Qualification; Priority; Contractors' Coverage.** The insurer must be eligible to do business under the laws of the state of Arkansas and have an "A minus" or better rating in Best's Guide. Such required insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of a Wireless Service Provider shall carry, in full force and effect, workers' compensation and employers' liability, commercial general liability, and automobile liability insurance coverages of the type that Wireless Service Providers are required to obtain under this Article 25 with reasonable and prudent limits.

25.3. **Certificate of Insurance; Other Requirements.** As a condition of every permit, Wireless Service Providers will furnish Utility with a certificate of insurance ("Certificate"). The Certificate shall reference this Regulation and workers' compensation and property insurance waivers of subrogation required by this Regulation. Utility and City shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of required insurance if not replaced during the term of this Regulation. Utility and City, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be included as Additional Insureds under all of the required auto and general liability policies, except workers' compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles or self-insured retentions. Upon request, Wireless Service Providers shall obtain Certificates from its agents, contractors, and their subcontractors working hereunder and provide a copy of such Certificates to Utility.

25.4. **Limits.** The limits of liability set out in this Article 25 may be increased or decreased by consent, which consent will not be unreasonably withheld by either Utility or any Wireless Service Provider, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal, or other governmental compensation plans, or laws that would materially increase or decrease a Wireless Service Provider's exposure to risk.

25.5. **Prohibited Exclusions.** No policies of insurance required to be obtained by a Wireless Service Provider or its contractors or subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this Regulation with City or Utility except as to infringement of patents or copyrights or for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage for injuries to City's or Utility's employees or agents, or (4) exclude coverage of liability for injuries or damages caused by the Wireless Service Provider's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

25.6. **Deductible/Self-insurance Retention Amounts.** Wireless Service Providers shall be fully responsible for any deductible or self-insured retention amounts contained in their insurance or for any deficiencies in the amounts of insurance maintained.

Article 26. Assignment

26.1. **Limitations on Assignment.** Wireless Service Providers shall not assign any permits granted under this Regulation, nor any part of such permits, without the prior written consent of Utility and City, which consent shall not be unreasonably withheld; provided, however, Wireless Service Provider may assign its rights and obligations to an Affiliate without consent upon prior written notice. Permits may only be assigned to a properly licensed and authorized Wireless Service Provider, or an Affiliate duly authorized to act on behalf of a properly licensed and authorized Wireless Service Provider.

26.2. **Obligations of Assignee/Transferee and Permittee.** No assignment or transfer under this Article 26 shall be allowed until the assignee or transferee becomes a signatory to the permit issued under this Regulation and assumes all associated obligations arising under this Regulation. Wireless Service Providers who seek to assign or transfer a permit shall furnish Utility or City with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee.

26.3. **Sub-permitting.** Wireless Service Providers shall not sub-permit, sub-license, lease, or otherwise allow any third parties to place Attachments on Utility's Facilities. Any such action shall constitute a violation of this Regulation and any permit held by such Wireless Service Provider. The authorized use of Wireless Communication Facilities by third parties that involves no additional Attachment is not subject to this Article 26.3.

Article 27. Failure to Enforce

Failure of City, Utility or a Wireless Service Provider to take action to enforce compliance with any of the terms or conditions of this Regulation or to give notice or declare this Regulation or any permit granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Regulation, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Regulation.

Article 28. Receivership, Foreclosure or Act of Bankruptcy.

As a condition to every permit, Wireless Service Providers shall consent to termination by Utility and/or City of any and every permit one hundred twenty (120) days after the filing of bankruptcy or the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the Wireless Service Provider whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Regulation granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all violations and deficiencies under this Regulation.

Article 29. Removal of Attachments.

Wireless Service Providers may at any time remove their Attachments from any Facility of City or Utility, but any such removal must be done with prior written notice and in coordination with Utility to disconnect a power supply. No refund of any fee will be due on account of such removal.

Article 30. Performance Bond.

As a condition to permitting, Wireless Service Providers shall furnish a performance bond executed by a surety company reasonably acceptable to City and Utility which is duly authorized to do business in the state of Arkansas in the amount of fifty thousand dollars (\$50,000.00) for the duration of this Regulation as security for the faithful performance of this Regulation and for the payment of all persons performing labor and furnishing materials in connection with this Regulation.

Article 31. Severability.

If any provision or portion thereof of this Regulation is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Regulation to either party, such provision shall not render unenforceable this entire Regulation. Rather, the parties intend that the remaining provisions shall be administered as if the Regulation did not include the invalid provision.

Article 32 Governing Law

As a condition of each permit, Wireless Service Providers shall consent that all actions or proceedings arising directly or indirectly from this Regulation shall be commenced and litigated only in the Circuit Court of Johnson County, Arkansas or the District of Arkansas federal court with jurisdiction over Clarksville, Arkansas, and consent to the jurisdiction over the above-listed courts, in all actions or proceeding arising directly or indirectly from this Regulation with all disputes based on Arkansas law.

In the event that any legislative, regulatory, judicial, or other action (“New Law”) affects the rights or obligations of the Parties, or establishes rates, terms or conditions for the construction, operation, maintenance, repair or replacement of Attachments on Utility Poles or in the public right-of-way, that differ, in any material respect from the terms of this Regulation, then either

Party may, upon thirty (30) days' written notice, require that the terms of this Regulation be amended to conform to the New Law on a going forward basis for all existing and new Attachments, unless the New Law requires retroactive application. In the event that the Parties are unable to agree upon such new terms within 90 days after such notice, then any rates contained in the New Law shall apply from the 90th day forward until the negotiations are completed or a Party obtains a ruling regarding the appropriate conforming terms from a commission or court of competent jurisdiction. Except as provided in the proceeding, all terms in the existing Regulation shall remain in effect while the Parties are negotiating.

Article 33. Incorporation of Recitals and Appendices.

The recitals stated above and all appendices to this Regulation are incorporated into and constitute part of this Regulation.

Article 34. Force Majeure.

If City, Utility, or any Wireless Service Provider is prevented or delayed from fulfilling any term or provision of this Regulation by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Regulation, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected party shall endeavor to remove or overcome such inability as soon as reasonably possible.

Article 35. Casualty.

Wireless Service Provider may at any time remove Attachments or Wireless Communications Facilities from Utility Poles in the event of a casualty, fire or other harm affecting any Utility Poles ("Casualty Event"). City or Utility will provide notice to Wireless Service Provider of any Casualty Event as soon as reasonably possible thereafter. In the event of damage by a Casualty Event to a Utility Pole that cannot reasonably be expected to be repaired within forty-five (45) days following such Casualty Event or which City or Utility elects not to repair, or if such Casualty Event is reasonably expected to disrupt Wireless Service Provider's operations on the Utility Pole for more than forty-five (45) days, then Wireless Service Provider may, at any time following such casualty or harm; (i) terminate the applicable Permit upon fifteen (15) days' written notice to City or Utility; (ii) place a temporary facility, if feasible, at a location equivalent to Wireless Service Provider's current use of the Utility Pole until such time as the Utility Pole is fully restored to accommodate Wireless Service Provider's Attachment or Wireless Communications Facility; or (iii) permit Wireless Service Provider to submit a new Application for Permit for an alternate location equivalent to Wireless Service Provider's current use of the Utility Pole, and City or Utility shall waive the application fee and transfer all remaining rights to the new Utility Pole so long as such relocation was due to a Casualty Event not directly caused by Wireless Service Provider. Any such notice of termination shall cause the applicable Permit to expire with the same force and effect as though the date set forth in such notice were the date

originally set as the expiration date of the applicable Permit. The Attachment Fees shall abate during the period of repair following such Casualty Event in proportion to the degree to which Wireless Service Provider's use of the Utility Pole is impaired. Wireless Service Provider will be entitled to collect all insurance proceeds payable to Wireless Service Provider on account thereof and to be reimbursed for any prepaid Attachment Fees on a pro rata basis.

APPENDIX A – FEES

Standard Application Fee \$ 1,000.00

This fee applies to each Wireless Communication Facility or Wireless Support Structure proposed in an Application that complies with design standards set forth in Appendix B. This fee ensures that the City and Utility recover costs associated with administrative processing, design review, make-ready estimates, and initial Post-Installation Inspection.

Non-Standard Application Fee \$ 2,000.00

This fee applies to each Wireless Communication Facility or Wireless Support Structure proposed in an Application that does not comply with design standards set forth in Appendix B. This fee ensures that the City and Utility recover costs associated with administrative processing, design review, make-ready estimates, and initial Post-Installation Inspection.

ROW Fee..... \$ 25.00/year

This fee applies per year to each Wireless Communication Facility or Wireless Support Structure installed in the right-of-way. This fee ensures that the City and Utility recover costs associated with administering and maintaining the public right-of-way.

Attachment Fee \$ 200.00/year

This fee applies per year to each Wireless Communication Facility attached to a City or Utility Facility. This fee ensures that the City and Utility recover costs associated with administering and maintaining their Facilities.

Reinspection Fee \$ 150.00

This fee applies to each Wireless Communication Facility or Wireless Support Structure that does not pass an initial inspection and requires re-inspection. This fee ensures that the City and Utility recover costs associated with administering and conducting reinspections.

Unauthorized Attachment Fee \$ 400.00/year

This fee applies per year to each Wireless Communication Facility attached to a City or Utility Facility without proper authority. It is in addition to any penalty that may be assigned or adjudicated for violation of a City ordinance. This fee ensures that the City and Utility recover costs associated with locating and remediating Unauthorized Attachments.

Continuing Violation Fee \$ 10.00/day

This fee applies per day to each Wireless Communication Facility attached to a City or Utility Facility in violation of the Permit or Applicable Standards for more than thirty (30) days after notice of the violation. It is in addition to any penalty that may be assigned or adjudicated for violation of a City ordinance. This fee ensures that the City and Utility recover costs associated with locating and remediating specific permit violations.

APPENDIX B – DESIGN STANDARDS

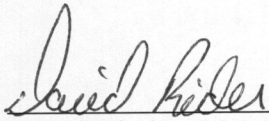
B-1: Distribution Pole Attachment Design

EMERGENCY CLAUSE:

This ordinance being necessary for the public peace, health and safety of the citizens of Clarksville, Arkansas, an emergency is declared and this Ordinance shall become effective immediately upon its passage and approval.

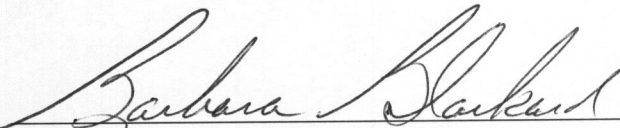
Adopted this 8th day of April, 2019

APPROVED:



David Rieder, Mayor

ATTEST:



Barbara Blackard, City Clerk/Treasurer

City Clerk Treasurer
City of
Clarksville
Arkansas
Johnson County