

ORDINANCE NO. 18- 22**AN ORDINANCE AMENDING CHAPTER 14, CHAPTER 50, AND APPENDIX B OF THE CODE OF ORDINANCES, CITY OF ROGERS, ARKANSAS; PROVIDING FOR THE INSTALLATION AND REGULATION OF SMALL CELL WIRELESS FACILITIES; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.**

WHEREAS, advances in cellular technology require the installation of small cell wireless facilities in order to enhance the quality of communication services for the public;

WHEREAS, as the City develops, it continues its efforts to enhance the beauty of Rogers by minimizing the visual impact of utilities by burying them underground whenever possible;

WHEREAS, the technology of small cell wireless facilities poses a unique long-term challenge to preserving the beauty of the City, because the facilities must be erected above ground and in the areas of the City that are the most highly travelled and utilized by the public; and

WHEREAS, these facilities must be regulated to require the structures to be safe and encourage them to be integrated seamlessly with their surroundings.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROGERS, ARKANSAS THAT:

Section 1: Chapter 50 of the Code of Ordinances, City of Rogers, Arkansas is amended to add additional sections 50-1 and 50-2, to read as shown in the attached Exhibit "A";

Section 2: Chapter 50, Sections 3 through 18 of the Code of Ordinances, City of Rogers, Arkansas remain reserved;

Section 3: Chapter 50, Section 19 of the Code of Ordinances, City of Rogers, Arkansas is repealed and reserved;

Section 4: Chapter 50, Sections 27 through 39 of the Code of Ordinances, City of Rogers, Arkansas are reserved;

Section 5: Chapter 50 of the Code of Ordinances, City of Rogers, Arkansas is amended to add an additional article, "Article III. – Small Cell Facilities.", to read as shown in the attached Exhibit "B";

Section 6: Appendix B to the Code of Ordinances, City of Rogers, Arkansas is amended to reflect an additional fee as shown in the attached Exhibit "C", and the additional fee is authorized;

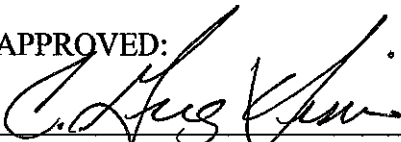
Section 7 – Emergency Clause: Due to the speed of development, the quickly evolving infrastructure needs of the City, and the requirements of federal laws, the need to amend the

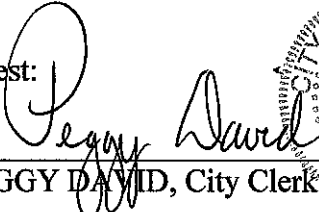
Code of Ordinances, City of Rogers, Arkansas is immediate and in order to protect the public peace, health, safety and welfare an emergency is hereby declared to exist and this Ordinance shall be in full force and effect from the date of its passage and approval;


Section 8 - Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance shall continue in effect as if such invalid portion never existed; and

Section 9 - Repeal of Conflicting Provisions: All ordinances, resolutions, or orders of the City Council, or parts of the same, in conflict with this Ordinance are repealed to the extent of such conflict.

PASSED this 10th day of April, 2018.

APPROVED:

C. GREG HINES, Mayor

Attest:

PEGGY DAVID, City Clerk



Requested by: John McCurdy, Director of the Department of Community Development
Prepared by: Jennifer A. Waymack, Senior Staff Attorney

Exhibit "A"

Sec. 50-1. Purpose and intent.

The purpose and intent of this Chapter is to:

- (1) Provide reasonable standards and procedures for the development of wireless communications facilities that will serve citizens, the traveling public, and others within the City;
- (2) Preserve and protect the public safety;
- (3) Preserve and protect property values;
- (4) Preserve the character and aesthetics of areas in close proximity to wireless communications facilities;
- (5) Minimize the visual, aesthetic, and safety impacts of wireless communications facilities through design, placement, and screening;
- (6) Preserve compatibility with the allowed uses of the underlying district;
- (7) Facilitate the City's permitting process to encourage fair and meaningful competition;
- (8) Extend high quality wireless communication services to the City;
- (9) Encourage collocation and clustering of antenna sites; and
- (10) Limit the number of wireless communications facilities and structures whenever practical.

Sec. 50-2. Jurisdiction and application.

(a) This Chapter applies to all lands within the corporate limits of the City of Rogers and the surrounding areas designated on the most recent Territorial Jurisdiction Map recommended by the Planning Commission and adopted by the City Council.

(b) If any provision of this Chapter conflicts with a provision of federal law, the provision of federal law shall control.

Exhibit "B"

Article III. – Small Cell Facilities.

50-40. Definitions.

As used in this article:

- (1) "Collocate" means to locate two (2) or more transmission antennas or related equipment on the same structure;
- (2) "Small cell facility" means a non-tower wireless communications facility that houses an antenna and equipment designed for the purpose of wireless communications, and is utilized to boost wireless communications capacity for a limited area.
 - (B) "Small cell facility" does not include cellular telephone towers provided for under Chapter 50, Article II; and
- (3) "Stealth" or "stealth technology" means a facility that has minimal visual and physical intrusion or impact on the land, property, buildings, and other facilities adjacent to and near it.

Sec. 50-41. Procedure - Application, approval, and variances.

(a)(1) Before filing his or her application, a person who wishes to construct or modify a small cell facility:

- (A) Shall notify the Department of Community Development; and
- (B) May request a pre-application conference with the Department of Community Development.

(2) An applicant under this section shall make good faith attempts to:

- (A) Locate and design the proposed small cell facility in the least intrusive manner practicable given the available technology;
- (B) Locate a facility on existing utility easements and within existing right-of-way easements; and
- (C) If the small cell facility is proposed to be erected in the right-of-way, locate the facility in a manner that gives preference to the following locations in the following order:

- (i) The location where two (2) rear property lines meet;
- (ii) The location where any two (2) property lines meet; or
- (iii) At an intersection.

(b)(1) An entity or company that proposes to modify, install, or collocate on a small cell facility shall:

- (A) Submit an application under this section to the Department of Community Development; and
- (B) Pay the fee established in Appendix B to this City of Rogers, Code of Ordinances.

(2) The applicant may file a consolidated application that includes up to ten (10) individual small cell facilities of a substantially similar design every seven (7) calendar days.

(3) The City may require the applicant to file a separate application for any small cell facility that is not of a substantially similar design to the others included in the application.

(4) The application shall include:

- (A) Drawings and descriptions of the proposed facilities, non-tower support structures, and accessory equipment;
- (B) Maps with the specific locations;
- (C) Geographic coordinates of the locations;
- (D) Digital files of the geographic coordinates in a format approved by the Department of Community Development;
- (E) A letter of agreement for use between the owner of the facility and non-tower support structure;
- (F) A description of any requests for new non-tower support structure;
- (G) A surveyed site plan; and
- (H) A description of any requests for variances or waivers from the requirements of this Article III.

(5) An applicant shall provide proof of compliance with state and federal laws upon request of the Department of Community Development.

(6) An incomplete application may be denied by the Department of Community Development if not timely completed.

(c)(1) The Department of Community Development may approve an application that:

- (A) Complies with all provisions of law; or
- (B) Has been granted the appropriate variance.

(2) In determining whether to approve or deny an application, the Department of Community Development shall consider the totality of the circumstances concerning the:

- (A) Location of proposed placement of the small cell facility;
- (B) Impact on the affected area;
- (C) Physical and service limitations of available technology; and
- (D) Attempts by the applicant to minimize the impact of the facility on the surrounding area.

(d)(1) An applicant may request a variance from a requirement of Section 50-43 of this Code as a condition of approval.

(2) The Board of Adjustments may upon request of the applicant consider a variance:

- (A) From the provisions of Section 50-43 of this section; or
- (B) That was denied by the Department of Community Development.

(3) A variance from a provision of Section 50-43 may be granted by the Director of the Department of Community Development if it is warranted due to an easily identifiable site-specific hardship or a technological challenge, and the requirement from which it is requested to vary is:

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

(e)(1) If the Department of Community Development denies an application under this section, the Department shall notify the applicant in writing of the Department's final decision, and include a summary of the reasons for the decision.

(2) An applicant may appeal the decision of the Department of Community Development to deny an application by filing notice of appeal with the Department of

Community Development and the City Clerk-Treasurer within ten (10) business days after receipt of the notice of denial.

(3) The Planning Commission shall hear the appeal at the next scheduled meeting but no sooner than ten (10) days after notice of the appeal is filed.

(4) An appeal of any part of the application shall be reviewed by the Planning Commission as if it were an appeal of the whole application.

(5) The Planning Commission may:

(A) Approve or deny the application; and

(B) Grant or deny variances from the provisions of Section 50-43 of this Code of Ordinances to the application.

(f)(1) If after approval of an application and beginning of construction but before construction is complete, circumstances unforeseen at the time of application and hearing arise which make continued construction as approved unsafe or impracticable, the applicant may request an amendment to the application or plan by filing a request to amend the approved application with the Department of Community Development. 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.

Sec. 50-42. Prohibitions and requirements

(a) A small cell facility shall meet all requirements of applicable state and federal law.

(b) The owner of the small cell facility shall promptly:

(1) Remove all graffiti on the facility at his or her expense;

(2) Repair or replace any damaged equipment.

(c) Facilities located in the public right-of-way shall not visually obstruct traffic signals or signage.

(d) A variance to a height requirement of a small cell facility shall not allow more than an additional ten (10) feet to the underlying height requirement, and shall only be granted if the additional height is necessary for improved functionality or safety.

(e) A small cell facility shall not interfere with:

(1) City and public safety communication systems; or

(2) Area television or radio broadcast.

(f) 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.

(g) A small cell facility shall not be attached to a light pole that is owned and maintained by the City.

(h) The owner of a small cell facility that is not in service or use for more than six (6) months shall disassemble and remove the facility.

Sec. 50-43. – Location and design standards for small cell facilities.

(a) *Equipment enclosures.* 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 or below grade.

(b)(1) *Poles.* Except as provided in subdivision (b)(2), if the support structure for the small cell facility is a pole, it shall be made of metal or fiberglass.

(2) If the small cell facility is being erected as a modification of an existing structure for which the support structure is not metal or fiberglass, the existing support structure may be made of the same material that existed before the modification.

(c)(1) *Signage.* A small cell facility shall not display a sign unless the sign displays emergency information, owner contact information, warning instructions, safety instructions, or is otherwise required by a federal, state, or local agency.

(2) A sign on a small cell facility shall not exceed one (1) square foot in area.

(d) *Illumination.* A small cell facility shall not have lights on the facility unless the lights are required by other laws and consistent with the requirements of law.

(e) *Fencing.* A small cell facility shall not be fenced.

(f) *Design.* A small cell facility shall be installed using stealth technology to the greatest extent practicable including without limitation the following:

(1) Antenna arrays, cables, and other accessory facilities used for providing the wireless service shall not be obtrusive or noticeably visible from adjacent properties or adjacent rights-of-way;

(2) The color of the facility shall be compatible with that of the non-tower support structure. All facilities located on buildings, roofs, or structures shall be painted or constructed of materials to match the color of the structure directly behind them to reduce the visibility of the small cell facility. To the extent any small cell facilities extend above the height of the vegetation 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; and

(3) Accessory facilities mounted onto a non-tower support structure shall not project greater than three (3) foot, as measured horizontally, from the surface of the non-tower support structure and shall be painted or screened with materials that are a complementary color as the non-tower support structure. Cables shall travel along the exterior of a non-tower support structure.

(g)(1) *Height.* Except as provided in subdivision (g)(2) of this section, all small cell facilities must adhere to the following height requirements:

(A) Facilities mounted to an existing structure may not extend higher than five (5) feet above the existing structure;

(B) Facilities mounted on a roof shall be stepped back from the front façade to the extent technically feasible in order to limit their impact on the building's silhouette. Screening panels, if used, shall not exceed five (5) feet in height above the existing building's roofline;

(C) Facilities which are side-mounted on buildings shall be reasonably camouflaged and shall not extend above the roof line or extend more than two (2) feet from the façade of the building;

(D) Facilities placed by the provider in public rights-of-way shall not be more than:

(i) Thirty (30) feet above grade for residential and local streets;

(ii) Forty (40) feet above grade for collector streets; or

(iii) Fifty (50) feet above grade for arterial streets; and

(E) A support structure outside of the public right-of-way that is not a building or a house shall not be taller than thirty-five (35) feet. The support structure must meet the setback requirements of the corresponding zoning district.

(g)(2) If the provisions of this subsection (g) conflict with federal law, the federal law shall control.

(h) *Fall Zone.* The minimum distance from the base of any facility to any building or house shall be the height of the facility or required setback, whichever is greater. This setback is

considered a “fall zone”. In the event that an existing facility is proposed as a mount for the provider’s equipment, a fall zone is not required.

(i) *Setbacks*. A small cell facility that is not in the public right-of-way shall comply with the building setback provisions of the zoning district in which the small cell facility is located. In addition, the following setbacks shall be observed:

- (1) Street-pole-attached and new non-tower support structures shall adhere to roadway clear zone guidelines when constructed within the public right-of-way;
- (2) Underground vaults or above-ground structures shall comply with the setback requirements of the underlying zoning district; and
- (3) Freestanding small cell facilities or equipment enclosures shall not be located between the face of a structure and a public or private street, bikeway, park, or residential development.

(j)(1) *Inside right-of-way*. No more than one (1) small cell facility shall be erected at each corner of an intersection.

(2) A small cell facility in the right-of-way shall be at least twenty (20) feet away from other poles in the right-of-way.

(k) *Traffic signals*. A small cell facility shall not be attached to a traffic signal or its equipment.

Exhibit "C"

50-40(b)(1)(B). Small cell wireless application fee:

If the application is for a single facility, two hundred fifty dollars (\$250.00).

If the application is for multiple facilities, two hundred fifty dollars (\$250.00) for the first facility, and twenty five dollars (\$25.00) for each additional facility.