

1 **“Collocate”** means to install, mount, maintain, modify, operate, or replace wireless facilities on or
2 adjacent to a wireless support structure or utility pole. “Collocation,” has a corresponding meaning.

3 **“Day”** means calendar day unless there is a time frame for the City to respond to a request and the last
4 day to respond ends on a weekend, holiday, or time when all but City emergency services are closed due to
5 weather or some unforeseen situation.

6 **“Fee”** means a one-time charge.

7 **“Person”** means an individual, corporation, limited liability company, partnership, association, trust,
8 or other entity or organization that can sue or be sued, including the City.

9 **“Rate”** means a recurring charge.

10 **“Rights-of-Way” or “ROW”** means that area on, below, or above a roadway, highway, street, sidewalk,
11 alley, utility easement, similar property, or property owned by the City, but not including a Federal
12 Interstate Highway, in the City.

13 **“Small Wireless Facility,”** means a wireless facility that meets both of the following qualifications: (i)
14 each Antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an
15 antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an
16 imaginary enclosure of not more than six (6) cubic-feet; and (ii) all other wireless equipment associated
17 with the facility is cumulatively no more than twenty-eight (28) cubic-feet in volume. The following types
18 of associated ancillary equipment are not included in the calculation of equipment volume: electric meter,
19 concealment elements, telecommunications demarcation box, ground-based enclosures, grounding
20 equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and
21 other services.

22 **“Utility Pole”** means a pole of similar structure that is used in whole or in part for the purpose of
23 carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or
24 for lighting, traffic control signage, or a similar function regardless of ownership, including City-owned
25 poles. Such term shall not include structures supporting only Wireless Facilities.

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

34 **“Wireless Services”** means any services, whether at a fixed location or mobile, provided it is using
35 Wireless Facilities.

1 **“Wireless Services Provider”** means a Person who provides Wireless Services or who builds or installs
2 wireless support structures.

3 **“Wireless Support Structure”** means a freestanding structure, such as: a monopole; tower, either
4 guyed, or self-supporting as determined by the City; billboard; or, other existing or proposed structure
5 designed to support or capable of supporting Wireless Facilities. Such term shall not include a utility pole.

6 **Section 2. Purpose and Scope.**

7 (a) The purpose of this ordinance is to provide policies and procedures for the placement of Small
8 Wireless Facilities in rights-of-way within the jurisdiction of the City of Little Rock, Arkansas, which will
9 provide a public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of
10 the City rights-of-way and the City as a whole.

11 (b) It is the intent of this Ordinance to establish uniform standards, which will be included in indi-
12 vidual franchises and leases issued pursuant to a Master Lease for Small Wireless Facilities, to address
13 issues presented by Small Wireless Facilities including, but not limited to:

14 (i) Prevention of interference with the use of streets, sidewalks, alleys, parkways, traffic
15 light poles or other light poles, and other public ways and places; and,

16 (ii) Prevention of the creation of visual and physical obstructions and other conditions that
17 are hazardous to vehicular and pedestrian traffic; and,

18 (iii) Prevention of interference with other facilities and operations of facilities lawfully
19 located in City rights-of-way or public property; and,

20 (iv) Protection against environmental damage, including damage to trees or shrubbery
21 including, but not limited, those items planted pursuant to City landscaping, zoning, tree
22 preservation, or other City policies;

23 (v) Preservation of the character of neighborhoods in which facilities are installed; and,

24 (vi) Preservation of the historical character of historic structures, or historic neighborhoods,
25 including but not limited to such structures or neighborhoods listed on the National
26 Register of Historic Places; and,

27 (vii) Facilitation of the rapid deployment of small cell facilities to provide the citizens with
28 the benefits of advanced wireless services.

29 **Section 3. Permitted Use: Application Process.**

30 (a) Collocation of a Small Wireless Facility or a new or modified utility pole or wireless support
31 structure for the collocation of a small cell facility shall be a permitted use subject to the restrictions in
32 Section 5.

33 (b) No person shall place a Small Wireless Facility in the right-of-way without first filing a Small
34 Wireless Facility application and obtaining a permit, except as otherwise provided in this ordinance.

1 (c) All Small Wireless Facility applications for permits filed pursuant to this Chapter shall be on a
2 form, paper or electronic, as required by the City. The Applicant may designate portions of its application
3 materials that it reasonably believes contain proprietary or confidential information as “proprietary” or
4 “confidential” by clearly marking each page of such materials accordingly. Materials marked in this
5 manner shall not be maintained by the City as a public record, provided that any access a needed by the
6 City is provided immediately upon request, not to exceed forty-eight (48) hours. Proprietary or confidential
7 information shall not include the location of Small Wireless Facilities.

8 (d) The Small Wireless Facility permit application shall be made by the Wireless Provider, or its
9 duly-authorized representative as noted in a notarized statement from a Person with the Wireless Provider
10 who represents authority to make such an authorization, and shall contain the following:

- 11 (i) The Applicant’s name, address, telephone number and e-mail address;
- 12 (ii) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if
13 any, acting on behalf of the Applicant with respect to the filing of the Application;
- 14 (iii) A general description of the proposed work and the purposes and intent of the Small
15 Wireless Facility. The scope and detail of such description shall be appropriate to the nature
16 and character of the work to be performed, with special emphasis on those matters,
17 including but not limited to subservice utilities, likely to be affected or impacted by the
18 work proposed;
- 19 (iv) Authorization for any consultant acting on behalf of the Applicant to speak with the
20 City, or a designee of the City, on the area of consultation for the Applicant even if the
21 Applicant cannot be available;
- 22 (v) Verification from an appropriate professional that the Small Wireless Facility shall
23 comply with all Applicable Codes.

24 (e) ***Routine Maintenance and Replacement.*** An application shall not be required for:

- 25 (i) routine maintenance; and,
- 26 (ii) the replacement of a Small Wireless Facility with another Small Wireless Facility that
27 is substantially similar or smaller in size, weight, and height;
- 28 (iii) Provided, however, on a location where the City or another provider has placed
29 equipment or facilities, any routine maintenance or replacement that is done shall not occur
30 until written authorization to proceed is provided to the City, which authorization shall not
31 be unreasonably withheld.

32 (f) ***Information Updates.*** Any amendment to information contained in a permit application shall
33 be submitted in writing to the City within thirty (30) days after the change necessitating the amendment,
34 provided that this thirty (30) day notice period does not preempt Section 3(E)(iii) as to notice of routine
35 maintenance and replacement.

1 **(g) Interference with Public Safety Equipment:** A Small Wireless Facility shall be operated and
2 maintained in a manner that does not interfere with public safety equipment.

3 **Section 4. Action on Permit Application.**

4 **(a) Review of Small Wireless Facility Applications.** The City shall review the application for a
5 Small Wireless Facility permit in light of its conformity with applicable regulations of this Ordinance, and
6 shall issue a permit on nondiscriminatory terms and conditions subject to the following requirements:

7 (i) Within ten (10) days of receiving an Application, the City shall determine and notify
8 the Applicant:

9 (A) Whether the Application is complete;

10 (B) If the Application is incomplete, what specific information is missing;

11 (b) The City shall make its final decision to approve or deny the Application within sixty (60) days
12 of the submission of a complete Application;

13 (c) The City shall notify the Applicant in writing of its final decision, and if the Application is
14 denied:

15 (i) Specify the basis for denial; and,

16 (ii) Cite specific code provisions from Federal, State, or local codes provisions as to why
17 the Application was denied.

18 (d) Notwithstanding the initial denial, the Applicant may cure any deficiencies identified by the
19 City within thirty (30) days of the denial without paying an additional application fee, provided the City
20 shall approve or deny the revised application within thirty (30) days of receipt of the amended application
21 which shall be limited to the deficiencies specified in the original notice of denial:

22 (i) If the City fails to act upon an application within the sixty (60) day review period, the
23 Applicant, after providing written notice to the City that the application period has lapsed,
24 shall receive a written approval notice.

25 (ii) An Applicant seeking to construct, modify or replace a network of Small Wireless
26 Facilities may, at the Applicant's discretion, file a consolidated Application for up to
27 twenty-five (25) Small Wireless Facilities and receive a single permit for multiple Small
28 Wireless Facilities.

29 **(e) Review of Eligible Facilities Requests.** Nothing in this ordinance is intended to supersede or
30 conflict with applications for eligible facilities requests according to the procedures established under 47
31 CFR 1.40001(c).

32 **Section 5. Requirements for Small Wireless Facilities in the Right-of-Way.**

33 **(a) Maximum Size of Permitted Use.** Small Wireless Facilities, and new or modified utility poles
34 and wireless support structures for the collocation of Small Wireless Facilities may be placed in the rights-
35 of-way as a permitted use subject to the following requirements:

1 (i) Each new or modified utility pole or wireless support structure installed in the rights-
2 of-way shall not exceed the greater of:

3 (A) Ten (10) feet above the tallest existing utility pole in the rights-of-way in place
4 as of the effective date of this ordinance located within 500 feet of the new pole;

5 or

6 (B) Fifty (50) feet above ground-level.

7 (ii) New Small Wireless Facilities in the rights-of-way shall not exceed the greater of:

8 (A) More than ten (10) feet above an existing utility pole or wireless support
9 structure in the rights-of-way in place as of the effective date of this ordinance; or,

10 (B) Above the height for a new utility pole or wireless support structure under
11 Section 5(A)(1).

12 (b) **Zoning.** Any wireless provider that seeks to construct or modify a utility pole, wireless support
13 structure or wireless facility that exceeds the height or size limits contained in this Section shall be subject
14 to applicable zoning requirements.

15 (c) **Undergrounding Provisions.** Applicant shall comply with nondiscriminatory
16 undergrounding requirements that prohibit electric utilities, telecommunications or cable providers from
17 installing structures in the rights-of-way without prior zoning approval in areas zoned for single-family
18 residential use, provided such requirements shall not prohibit the replacement of existing structures.

19 **Section 6. Effect of Permit.**

20 (a) **Authority Granted: No Property Right or Other Interest Created.** A permit from the City
21 authorizes an Applicant to undertake only certain activities in accordance with the ordinance, and does not
22 create a property right or grant any authority whatsoever to the Applicant to impinge upon the rights of
23 others who may already have an interest in the rights-of-way.

24 (b) **Duration.** Unless construction has actually begun and is diligently pursued to completion at
25 that point, no permit for construction issued under this ordinance shall be valid for a period longer than
26 twelve (12) months unless both City and Applicant agree to a reasonable extension and all required fees are
27 paid for the term regardless of construction.

28 **Section 7. Removal, Relocation or Modification of a Small Wireless Facility in the ROW.**

29 (a) **General Relocation Policy.** (i) In the interest of the public health, safety and welfare and consistent
30 with the City's ordinances and master plans, the City of Little Rock may make or cause to be made
31 improvements, repairs, or replacements of the public facilities located on public rights-of-way. Such
32 construction activity commonly requires adjustment or relocation of installations of public utilities, and
33 wireless service providers. The City deems the right of public utilities to use public rights-of-way to be
34 permissive and subordinate to the reasonable exercise of the City's police power. Thus, the cost of
35 relocating a public utility installation should not be borne by the City.

1 (ii) The policy of the City of Little Rock is to require a public utility or a wireless services
2 provider to promptly adjust its facilities in, upon, under or above any right-of-way administered by
3 the City of Little Rock and by Officials, Boards, Commissions, and Departments of the City of
4 Little Rock, to accommodate construction, improvements, alterations or maintenance of public
5 facilities when directed to do so by the Public Works Department Director or other Officials
6 authorized by the City Manager. Public utilities and wireless services providers shall make
7 adjustments at their own expense, except as otherwise provided by the City, in connection with any
8 public works projects approved and/or performed by the City regardless of the source of funds for
9 the project.

10 (iii) As a matter of policy the City will seek to minimize current and future installation
11 adjustment costs for utilities and wireless services providers by such measures as regular and
12 systematic consultation in public works planning, advance engineering to the extent feasible, and
13 careful consideration of public utility and wireless services provider needs and installations in both
14 planning and design.

15 (iv) The City will also reimburse a public utility or a wireless services provider for the direct
16 costs of required adjustments when the utility or wireless services provider can demonstrate that it
17 acquired the right-of-way or otherwise occupied it prior to the dedication of the right-of-way either
18 to the City of Little Rock or to any other unit of local government. Adjustment costs shall be
19 reimbursed, when appropriate, under an agreement between the City and the utility for the
20 particular project. Such agreement shall describe the scope of the utility's or wireless services
21 provider's adjustment work and allocate costs. The cost allocation shall not require the City to
22 reimburse for betterments which are only occasioned by the adjustments required.

23 (b) ***Emergency Removal or Relocation of Facilities.*** The City retains the right to cut or move any
24 Small Wireless Facility located within its rights-of-way as the City, in its sole discretion, may determine to
25 be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances
26 permit, the City shall notify the Wireless Provider and Wireless Infrastructure Provider an opportunity to
27 move its own facilities prior to the City cutting or removing a facility and the City shall notify the Wireless
28 Provider after cutting or removing a Small Wireless Facility.

29 (c) ***Abandonment of Facilities.*** Upon abandonment of a Small Wireless Facility within the City
30 rights-of-way, the Wireless Provider shall notify the City within ninety (90) days of such abandonment.
31 Following receipt of such notice the City may direct the Wireless Provider to remove all or any portion of
32 the Small Wireless Facility if the City, in its sole discretion, determines that such removal will be in the
33 best interests of the public health, safety, and welfare.

34 (d) ***Abandonment by Inaction.*** At any point where a Wireless Provider fails to pay any necessary
35 fee, or annual payment to the City, and fails to respond within sixty (60) days to a written inquiry from the

1 City as to whether the Wireless Provider intends to continue to operate pursuant to the City’s Master Lease
2 for Small Wireless Facilities, for whatever reason, the Small Wireless Facility shall be deemed abandoned
3 and the City may, at its sole option, remove all or any portion of the Small Wireless Facility, or take other
4 action as authorized by law.

5 **Section 8. Attachment to City-Owned Utility Poles in the ROW**

6 (a) **Cease Payment.** A wireless provider is authorized to remove its facilities at any time from a
7 City-owned pole in the rights-of-way and cease paying the annual rate to the City.

8 (b) **Make-Ready.** For City-owned utility poles in the rights-of-way, the City shall provide a good
9 faith estimate for any make-ready work necessary to enable the pole to support the requested Small Wireless
10 Facility, including pole replacement if necessary, within sixty (60) days after receipt of a completed request.
11 Make-ready work including any pole replacement shall be completed within sixty (60) days of written
12 acceptance of the good faith estimate by the wireless provider.

13 **Section 9. Change of Law.** A permit for the placement of facilities within the City rights-of-way may
14 include a provision on the obligations of the parties if there is a change of law at the Federal, State, or local
15 level.

16 **Section 10. Biannual Review.** The City may, in its sole discretion, requirement the Applicant to review
17 the terms and conditions of any lease or permit issued pursuant to this ordinance on a biannual basis to
18 determine if the terms and conditions for the use of City rights-of-way are still in the best interests of the
19 City pursuant to the law and regulations in effect at the time.

20 **Section 11. Fees and Rentals.** The following fee schedule establishes the fees and an annual payment
21 or lease of City rights-of-way for Small Wireless Facilities as follows:

22 (a) **Application Fees.** Unless otherwise provided by law, all applications for permits pursuant to
23 this Chapter shall be accompanied by a fee for actual, direct, and reasonable costs incurred by the City
24 related to processing the application, but shall not exceed One Hundred Dollars (\$100.00) each for up to
25 five (5) Small Wireless Facilities addressed in the application and Fifty Dollars (\$50.00) for each additional
26 Small Wireless Facility.

27 (b) **Annual Rate.** The rate to place a Small Wireless Facility on a City-owned pole in the right-
28 of-way shall be Twenty Dollars (\$20.00) per wooden pole, or Two Hundred Dollars (\$200.00) per year for
29 all other City-owned poles. Such compensation together with the application fee and the rights-of-way fee
30 specified in this ordinance shall be the sole compensation that the Wireless Provider shall be required to
31 pay the City; provided, if the Wireless Provider is also installing its own fiber optic technology to a
32 particular location and does not otherwise have a City franchise to do so, the Wireless Provider shall also
33 provide the City with four (4) dark pairs of fiber that the City may use for a public purpose.

1 (c) *Use of Right-of-Way City Property Rental Rates.* A wireless provider authorized to place
2 Small Wireless Facilities in the rights-of-way shall pay to the City compensation for use of the rights-of-
3 way in the amount of Twenty Dollars (\$20.00) annually per Small Wireless Facility.

4 (d) *Right of Wireless Provider to Cease Payment.* A wireless provider is authorized to remove its
5 facilities at any time from the rights-of-way and cease paying the City compensation for use of the rights-
6 of-way as of the next due date for payment following the removal.

7 **Section 13. Severability.** In the event any title, subtitle, section, subsection, subdivision, paragraph,
8 subparagraph, item, sentence, clause, phrase, or work of this ordinance is declared or adjudged to be invalid
9 or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the ordinance
10 which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitu-
11 tional was not originally a part of this ordinance.

12 **Section 14. Repealer.** All ordinances, resolutions, or parts of the same that are inconsistent with the
13 provisions of this ordinance are hereby repealed to the extent of such inconsistency.

14 **PASSED: June 6, 2017**

15 **ATTEST:**

APPROVED:

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17 _____
18 **Susan Langley, City Clerk**

17 _____
18 **Mark Stodola, Mayor**

19 **APPROVED AS TO LEGAL FORM:**

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21 _____
22 **Thomas M. Carpenter, City Attorney**

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