

ORDINANCE NO. 61-19**AN ORDINANCE TO ESTABLISH THE STANDARDS FOR SMALL WIRELESS FACILITIES TO BE PLACED IN CITY RIGHTS-OF-WAY IN THE CITY OF FORT SMITH, ARKANSAS; AND FOR OTHER PURPOSES**

WHEREAS, the City of Fort Smith (“City”) encourages wireless infrastructure investment and wishes to provide a fair and predictable process for the deployment of Small Wireless Facilities while enabling the City to promote management of the rights-of-way in the overall interests of the public health, safety and welfare; and,

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

WHEREAS, the City recognizes that Small Wireless Facilities are often most effectively deployed in public rights-of-way; and,

WHEREAS, Fort Smith has been delegated the authority to adopt ordinances and regulations governing the use, construction, development, and appearance of public and private property within its jurisdiction; and,

WHEREAS, Fort Smith recognizes the deployment of Small Wireless Facilities within the public rights-of-way should be accomplished in a manner that is:

- (A) safe;
- (B) compatible with and complementary to the provision of services by Fort Smith and others lawfully using the rights-of-way; and,
- (C) consistent with the aesthetic standards of the City.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF

DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: Definitions:

(A) “Small Wireless Facilities” – including facilities commonly referred to as small cells and distributed antenna systems – shall have the definition attributed to that term by A.C.A. § 23-17-503, a provision of the Small Wireless Facility Deployment Act, hereinafter referred to as the “2019 Act.”

(B) The word “Authority” as used in the 2019 Act shall, for the purposes of this Ordinance, refer to the City of Fort Smith, Arkansas.

(C) All other words and terms used in this Ordinance shall have the definition attributed to the word or term in the 2019 Act.

SECTION 2: Franchise Permits:

(A) Consistent with other of the City’s public right-of-way franchises, any person or entity proposing the placement or operation of a Small Wireless Facility in Fort Smith’s rights-of-way shall first apply for and obtain a franchise permit for that purpose.

(B) The City Administrator shall cause the preparation of the required franchise permit application form and shall designate the office and employees who are charged with administering the permit process.

(C) The permit procedure shall conform to the provisions of A.C.A. § 23-17-510.

(D) The application fee for a franchise permit for the installation, modification, or replacement of a pole together with the co-location of an associated Small Wireless Facility in the right-of-way shall be \$100.00.

(E) All wireless providers obtaining a franchise permit (1) shall indemnify and hold harmless the City, its officers, agents and employees, as provided in A.C.A. § 23-17-516(b)(1), (2) shall obtain insurance coverage and submit to the City proof of coverage (or self

insurance if eligible) as required by A.C.A. § 23-17-516(c) in the minimum amount of \$5 million per occurrence, and (3) shall post with the City a bond in the amount of \$1,000.00 per wireless facility (up to a total of \$10,000.00) for the purposes stated in and pursuant to A.C.A. § 23-17-516(d).

(F) The installation and operation of a Small Wireless Facility for which a franchise permit is issued shall conform to the standards of A.C.A. § 23-17-505(b) (non obstruction of right-of-way); the height, zoning regulations and historic district provisions of A.C.A. § 23-17-506; the damage, repair, replacement, abandonment and removal provisions of A.C.A. § 23-17-507; the aesthetic standards set forth in A.C.A. § 23-17-508 and subsection F below; and the provisions regarding colocation of a Small Wireless Facility on City owned poles as set forth in A.C.A. § 23-17-509.

(G) In addition to the aesthetic standards of A.C.A. § 23-17-508,

(1) No franchise permit shall be issued for non-steel poles in right-of-way in the Phoenix Avenue Overlay Zone, along Phoenix Avenue from State Line Road east to Old Greenwood Road, in the Massard Overlay Zone and along Massard Road – south of Zero Street extending to I-549;

(2) No franchise permit shall be issued for a Small Wireless Facility requiring an above ground pole in any Chaffee Crossing location where the design standards of the FCRA require underground utilities;

(3) No franchise permit shall be issued for a new pole to be located less than three hundred feet (300') of an existing small wireless facility;

(4) A franchise permit for use of a decorative pole in the Central Business Improvement District (CBID) shall require approval of the governing body of the CBID; and,

(5) A franchise permit for use of a decorative pole in the Fort Smith

Historic District shall require approval of the Fort Smith Historic District Commission.

SECTION 3: Section 6. Effect of Permit.

(A) Authority Granted: No Property Right or Other Interest Created. A franchise permit from the City authorizes the permittee to undertake only permitted activities in accordance with this Ordinance and does not create a property right or grant any authority whatsoever to the permittee to impinge upon the rights of others who may already have an interest in the rights-of-way.

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

(C) Removal, Relocation or Modification of a Small Wireless Facility in public rights-of-way.

(1) General Relocation Policy.

(a) In the interest of the public health, safety and welfare and consistent with the City's ordinances and master plans, the City of Fort Smith may make or cause to be made improvements, repairs, or replacements of the public facilities located on public rights-of-way. Such construction activity commonly requires adjustment or relocation of installations of public utilities and wireless service providers. The City deems the right of public utilities and wireless service providers to use public rights-of-way to be subordinate to the reasonable exercise of the City's police power. Thus, the cost of relocation a public utility or wireless service provider installation should not be borne by the City.

(b) The policy of the City of Fort Smith is to require a public utility or a wireless services provider to promptly adjust its facilities in, upon, under or

above any right-of-way administered by the City of Fort Smith to accommodate construction, improvements, alterations or maintenance of public facilities when directed to do so by officials authorized by the City Administrator. Public utilities and wireless services providers shall make adjustments at their own expense, except as otherwise provided by the City, in connection with any public works projects approved and/or performed by the City regardless of the source of funds for the project.

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

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

SECTION 4: Severability. In the event any title, subtitle, section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or word of this Ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this Ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this Ordinance.

SECTION 5: Conflict. In the event of any conflict in the provisions of this Ordinance

with provisions of the 2019 Act after September 1, 2019, the provisions of the 2019 Act shall be controlling.

SECTION 6: Codification. The codifier of the Fort Smith Code shall codify the provisions of this Ordinance in Chapter 13 of the Code within the reserved Sections (13-153 – 13-170) of Article VI.

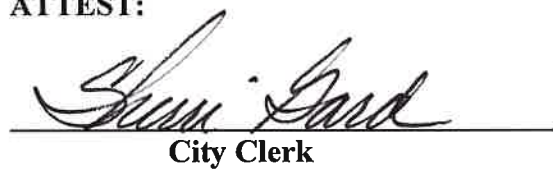
PASSED AND APPROVED THIS 6th DAY OF AUGUST, 2019.

APPROVED:



Mayor

ATTEST:



City Clerk

Approved as to form:



City Attorney
Publish 1 time