



## Legislation Text

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### AN ORDINANCE TO ESTABLISH STANDARDS FOR SMALL WIRELESS FACILITIES TO BE PLACED IN CITY RIGHTS-OF-WAY IN THE CITY OF JONESBORO

WHEREAS, the City Council of the City of Jonesboro, Arkansas understands that advances in cellular technology require the installation of small cell wireless facilities in order to enhance the quality of communication services for the public; and

WHEREAS, the City Council of the City of Jonesboro further understands that small wireless facilities are often most effectively placed in public rights-of-way; and

WHEREAS, it is the desire of the City Council to regulate these small wireless facilities both for safety and so that they are as seamlessly integrated with their surroundings as possible to promote the beauty of the City.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS THAT:

#### Sec 1: Purpose and Intent

- 1) It is the purpose of this ordinance to provide policies and procedures for the placement of small wireless facilities in public rights-of-way within the jurisdiction of the City of Jonesboro, which will provide a public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole.
- 2) It is the intent of this ordinance to establish uniform standards, which will be included in individual franchises and permits issued to small wireless facilities, to address issues presented by small wireless facilities including, but not limited to:
  - a) Prevention of interference with the use of streets, sidewalks, alleys, parkways, city owned traffic light poles, other city owned poles, light and utility poles owned by parties other than the city, and other public ways and places.
  - b) Prevention of the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic.
  - c) Prevention of interference with other facilities and operations of facilities lawfully located in City rights-of-way or public property.
  - d) Protection against environmental damage, i.e. damage to trees or shrubbery, including, but not limited to, those items planted pursuant to City landscaping, zoning, tree preservation, or other City policies.
  - e) Preservation of the character of neighborhoods in which facilities are installed.
  - f) Preservation of the historical character of historic structures or historic neighborhoods.

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

## Sec.2 Definitions

- 1) “Collocate” means to locate two (2) or more transmission antennas or related equipment on the same structure.
- 2) “Small wireless facility” or “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.
- 3) “Stealth” or “stealth technology” means a non-tower wireless communication facility that has minimal visual and physical intrusion or impact on the land, property, buildings, and other facilities adjacent to and near it.

## Sec.3 Application Procedure

- 1) No person shall place a small wireless facility in the public right-of-way without first filing an application and obtaining a permit from the City Planning Department.
- 2) Before filing an application, a person desiring to construct or modify a small wireless facility in the public right of way shall notify the City Planning Department and may request a pre-application conference.
- 3) An applicant under this section shall make a good faith attempt to:
  - a) Locate and design the proposed small cell facility in the least intrusive manner practicable given the available technology; and
  - b) Locate a facility on existing utility easements and within existing right-of-way easements; and
  - c) If the small wireless 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; and
  - d) Locate the facility on an existing non-tower support structure pursuant to separate written agreement with the owner of the support structure setting forth the terms and conditions of use of such structure.
- 4) An applicant shall pay all fees as established by Section 9 of this ordinance.
- 5) An applicant may file an application that includes up to five (5) individual small wireless facilities of a substantially similar design every seven (7) calendar days.
- 6) The City may require the applicant to file a separate application for any small wireless facility

that is not of a substantially similar design to the others included in the application.

- 7) The application shall be made by the wireless provider or its duly-authorized representative. Said representative must provide a notarized statement from a person with the wireless provider who represents authority to make such an authorization.
- 8) The application shall contain the following:
  - a) The applicant's name, address, telephone number, and email address;
  - b) A general description of the proposed work and the purposes and intent of the small wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed and shall include drawings and descriptions of the proposed facilities;
  - c) Maps with specific locations;
  - d) Geographic coordinates of the locations;
  - e) Digital files of the geographic coordinates in a format approved by the City Planning Department;
  - f) A letter of agreement for use between the owner of the facility and the owner of the non-tower support structure;
  - g) A surveyed site plan;
  - h) A description of any requests for variances or waivers from the requirements of this chapter;
  - i) A digital picture showing what the design and appearance of the facility/tower will be, once constructed.
  - j) Authorization for any consultant acting on behalf of the applicant to speak with the City, or a designee of the City, on the area of consultation for the applicant, even if the applicant cannot be available;
  - k) Verification from an appropriate professional that the small wireless facility shall comply with all local, state and federal laws.
- 9) An incomplete application may be denied by the City Planning Department, if not made complete in a timely manner.
- 10) An application shall not be required for routine maintenance or the replacement of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height. However, written notice shall be provided to the City Planning Department of any planned maintenance or replacement that is being done on an existing facility.

#### Sec. 4 Review of Applications, Variances, and Appeals

- 1) The City Planning Department may approve an application that complies with all provisions

of this ordinance and law or has been granted the appropriate variance.

- 2) The City Planning Department shall notify an applicant if the application is complete within ten (10) days of receiving the application. If the application is incomplete, the City will advise the applicant as to what information is missing.
- 3) The City Planning Department shall consider the totality of the circumstances in reviewing an application including, but not limited to the following:
  - a) Location of proposed placement of the small wireless facility;
  - b) Impact on the affected area;
  - c) Physical and service limitations of available technology;
  - d) Attempts by the applicant to minimize the impact of the facility on the surrounding area;
  - e) Conformity of the application with all local, state and federal laws and regulations; and
  - f) Impact on other utilities.
- 4) The City Planning Department shall make its final decision and shall notify the applicant in writing within sixty (60) days of the submission of a completed application.
- 5) An applicant may request a variance from the requirements of this code as a condition of approval.
  - a) The Board of Zoning Adjustments may consider a request for a variance from the design requirements of this code if there is an easily identifiable site-specific hardship or a technological challenge, and the requirement from which it is requested to vary is:
    - (i) Not necessary or desirable for the protection of the surrounding property, public health, public safety, or general welfare; or
    - (ii) Unreasonable as applied to the particular application.
- 6) If an application is denied by the City Planning Department, the City shall notify the applicant in writing of the denial and include the specific basis for the denial, including any code provisions from federal, state or local laws or regulations that were the basis for the denial.
- 7) Following a denial of an application, an applicant may cure any deficiencies identified by the City within thirty (30) days of the denial and may resubmit the application without paying an additional application fee.
- 8) An applicant may appeal a decision of the City Planning Department to deny an application to the Metropolitan Area Planning Commission by filing a notice of appeal with the City Planning Department within ten (10) days of the receipt of the denial of the application.
  - a) The MAPC shall hear the appeal at the next scheduled meeting which does not fall within ten (10) days of the date the notice of appeal was filed.
  - b) An appeal of any part of the application shall be reviewed by the MAPC as if it were an

appeal of the whole application.

- c) The MAPC may approve or deny the application and may grant or deny variances based upon the criteria also used by the Board of Zoning Adjustments for reviewing variance applications.
- 9) 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 of plan by filing a request to amend the approved application with the City Planning Department. 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. 5 Prohibitions and Requirements

- 1) A small wireless facility shall meet all requirements of applicable state and federal law.
- 2) All small wireless facilities shall have a tag attached that identifies the owner of the facility.
- 3) The owner of the small wireless facility shall immediately remove all graffiti on the facility and repair or replace any damaged equipment.
- 4) Facilities located in the public right-of-way shall not visually obstruct traffic signals or signage or interfere with other utilities located in the public right-of-way.
- 5) 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.
- 6) A small wireless facility shall be operated and maintained in a manner that does not interfere with public safety equipment or communication systems or area television or radio broadcasts or other utilities.
- 7) The owner of a small wireless facility that is not in service or use for more than six (6) months shall disassemble and remove the facility. A yearly inventory audit of all facilities in the city shall be produced by the owner and provided to the city.
- 8) A small wireless facility owner placing a facility in the public right-of-way shall allow the city access to and use of said tower/facility for placement of city owned cameras or devices, including, but not limited to traffic cameras, so long as said device does not interfere with the functioning of the small wireless facility/tower.
- 9) If a small wireless facility owner/provider is installing its own fiber optic technology to a particular location, the wireless provider shall also provide the city with four (4) dark pairs of fiber that may be used by the city for a public purpose.

## Sec. 6 Location and Design Standards

- 1) 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.

- 2) Poles. If the support structure for the small wireless facility is a new pole to be installed by the owner of the wireless facility, it shall be made of metal in a design approved by the City Planning Department. If the support structure for the wireless facility is a modified existing pole, it shall not be required to be metal, but shall otherwise meet the requirements of this section.
- 3) Signage. A small wireless 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. Such signage shall not exceed one (1) square foot in area.
- 4) Illumination. A small wireless facility shall not have lights on the facility unless the lights are required by other laws and consistent with the requirements of said law.
- 5) Fencing. A small wireless facility shall not be fenced.
- 6) Design. A small wireless facility shall be installed using stealth technology to the greatest extent practicable including without limitation the following:
  - a) 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; and
  - b) 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 wireless facilities extend above the height of the vegetation immediately surrounding it, they shall be painted in a non-reflective black matte finish.
- 7) Height. Except as provided in subsection 8 of this section, all small wireless 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;

- 8) If the provisions of subsection 7 conflict with federal law, the federal law shall control.
- 9) 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.
- 10) Setbacks. A small wireless 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 wireless facility is located. In addition the following setbacks shall be observed:
  - a) Street-pole-attached and new non-tower support structures shall adhere to roadway clear zone guidelines when constructed within the public right-of-way;
  - b) Underground vaults or above-ground structures shall comply with the setback requirements of the underlying zoning district; and
  - c) Freestanding small wireless 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.
- 11) Inside right-of-way. No more than one (1) small wireless facility shall be erected at each corner of an intersection.
  - a) A small wireless facility in the right-of-way shall be at least twenty (20) feet away from other poles in the right-of-way.
- 12) Traffic signals. A small wireless facility shall not be attached to a traffic signal or its equipment.
- 13) A small wireless facility/tower shall not be located within fifty (50) feet of an existing pole or tower.

## Sec. 7 Removal, Relocation, or Modification of Facilities in the Right-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 Jonesboro 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 to use public rights-of-way to be permissive and subordinate to the reasonable exercise of the City’s police power. Thus, except as otherwise provided by the City, the cost of relocating a public utility installation should not be borne by the City.
  - b) The policy of the City 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 to accommodate construction, improvements, alterations, or maintenance of public facilities when directed to do so by the City. 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 and give them 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.
- 3) **Abandonment of Facilities.** Upon abandonment of a small wireless facility within the City rights-of-way, the wireless provider shall notify the City within ninety (90) days of such abandonment. Following receipt of such notice, the City may direct the wireless provider to remove all or any portion of the small wireless facility if the City, in its sole discretion, determines that such removal will be in the best interests of the public health, safety, and welfare.
- 4) **Abandonment by Inaction.** At any point where a wireless provider fails to pay any necessary fee, or annual payment to the City, and fails to respond within sixty (60) days to a written inquiry from the City as to whether the wireless provider intends to continue to operate, for whatever reason, the small wireless facility shall be deemed abandoned and the City may, at its sole option, remove all or any portion of the small wireless facility, or take other action as authorized by law.

## Sec. 8 Biannual Review

The City may, in its sole discretion, require the applicant to review the terms and conditions of any permit issued pursuant to this ordinance on a biannual basis to determine if the terms and conditions for the use of City rights-of-way are still in the best interests of the City pursuant to the laws and regulations in effect at the time.

**Sec. 9 Fees and Rentals.** The following fee schedule establishes the fees and an annual payment for City rights-of-way for small wireless facilities. These fees are in addition to any franchise fees which may be owed to the City.

- 1) **Application Fees.** Unless otherwise provided by law, all applications for permits pursuant to this Chapter shall be accompanied by an application fee in the amount of \$500.00.
- 2) **Annual Rate.** The rate to place a small wireless facility in a City right-of-way shall be \$270.00 annually per small wireless facility.
- 3) **Right of Wireless Provider to Cease Payment.** A wireless provider is authorized to remove its facilities at any time from the rights-of-way and cease paying the City compensation for use of the rights-of-way as of the next due date for payment following the removal.

**Sec. 10 Severability.** In the event any portion of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the 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.

Sec. 11 Repealer. All ordinances, resolutions, or parts of the same that are inconsistent with the provision of this ordinance are hereby repealed to the extent of such inconsistency.