



**City of Conway, Arkansas
Ordinance No. 0-19-85**

AN ORDINANCE AMENDING ORDINANCE NO. O-18-80 GOVERNING THE CONSTRUCTION, INSTALLATION, MAINTENANCE AND REMOVAL OF SMALL WIRELESS COMMUNICATION FACILITIES IN THE RIGHT-OF-WAY IN COMPLIANCE WITH CERTAIN ORDERS OF THE FCC AND ACT 999 OF 2019; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to Arkansas law, the City Council of Conway, Arkansas ("City") is authorized to adopt regulations by reference (Ark. Code Ann. §14-55-207); and

WHEREAS, certain Wireless Service Providers are occupying public rights-of-way owned, held in trust, and maintained by the City, in order to install and maintain small wireless communication facilities that will enhance data connectivity through wireless communication services; and

WHEREAS, the City recognizes the economic and social value of data connectivity and desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless communication facilities within the public rights-of-way in a manner that is: (1) safe; (2) compatible with and complementary to the provision of services by the City and others lawfully using the rights-of-way; and (3) consistent with the aesthetic standards of the City; and

WHEREAS, on or about August 14, 2018, the City adopted Ordinance No. O-18-80 establishing regulations to govern the installation, maintenance and removal of small wireless facilities in the right-of-way; and

WHEREAS, in August and September of 2018, the Federal Communication Commission ("FCC") issued orders dramatically restricting the authority of local governments to regulate small wireless facilities in the right-of-way ("small cell orders"); and

WHEREAS, the City has disputed, and continues to dispute the authority of the FCC regarding the small cell orders but intends to adhere to the orders until such time that the orders may be vacated or amended; and

WHEREAS, the Arkansas legislature recently adopted Act 999 of 1999 that restricted the authority of local government to regulate small wireless facilities, including many of the restrictions imposed by the FCC's small cell order; and

WHEREAS, the City seeks to amend Ordinance No. O-18-80 to comply with the FCC's small cell orders, to comply with Act 999 of 2019, and to improve the procedures used to receive and evaluate small wireless facilities in accordance with the law.

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

SECTION 1: That the Small Wireless Communication Facility Regulation of the City of North Little Rock, attached as Exhibit "A" to Ordinance No. O-18-80 is hereby replaced in its entirety with the **Small Wireless Communication Facility Regulation of the City of Conway**, attached as Exhibit "A" to this ordinance and incorporated herein by reference. Small wireless facility designs that previously received aesthetic approval from the City shall continue to be authorized and may be administratively added to Appendix B in the attached regulation.

SECTION 2: That three (3) copies of this ordinance shall be filed with the Office of the City Clerk and on the City web site for inspection and view by the public prior to adoption.

SECTION 3: That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 4: That the provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall be declared or held invalid, such invalidity shall not affect the remainder of the sections, phrases or provisions.

SECTION 5: That any person who violates this ordinance shall be subject to a fine of no less than \$100 nor more than \$1,000 per offense, except that when an offense is, in its nature, continuous in respect to time, the person in violation shall be subject to a fine of no less than \$50 nor more than \$500 per day.

SECTION 6: It is hereby found and determined that improved data connectivity would improve the Conway economy and enhance the ability of Conway citizens to share information and that adoption of a new regulation governing the installation, maintenance, and removal of small wireless communication facilities in the City's rights-of-way is necessary to achieve these benefits in a manner that is consistent with broad City interests including the proper and orderly growth of the City of Conway, Arkansas, and being necessary for the immediate preservation of the public health, safety and welfare; THEREFORE, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage and approval.

PASSED this ___ day of August, 2019.

Approved:

Mayor Bart Castleberry

Attest:

Michael O. Garrett
City Clerk/Treasurer