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NANCY EASTHAM

FAULKNER COUNTY CIRCUIT CLERK

BY: SHAWN MIX, D.C.

**ORDINANCE**

**City of Conway, Arkansas  
Ordinance No. O-22-130**

**AN ORDINANCE AMENDING ORDINANCE NO. O-19-85 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**, on or about August 30, 2019, the City adopted Ordinance No. O-19-85 establishing regulations to improve the procedures used to receive and evaluate small wireless facilities in accordance with the law.

**Whereas**, the City seeks to amend Ordinance No. O-19-85 to create design standards and an aesthetic corridor to provide consistency in the procedural and aesthetic standards of small wireless facilities throughout the City.

**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 Conway, attached as Exhibit "A" to Ordinance No. O-19-85 is hereby replaced in its entirety with the revised **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 13<sup>th</sup> day of December, 2022.

**Approved:**



**Mayor Bart Castleberry**

**Attest:**



**Michael O. Garrett**  
**City Clerk/Treasurer**



**CERTIFICATE**

**STATE OF ARKANSAS  
COUNTY OF FAULKNER  
CITY OF CONWAY**

I, Michael Garrett, the duly elected, qualified, and acting: Clerk-Treasurer of the City of Conway, Arkansas, do hereby certify that the attached and foregoing is a true and correct copy of an ordinance presented to the City Council of the City of Conway, Arkansas, at a meeting of that body held on the 13<sup>th</sup> day of December, 2022 same is duly recorded in the minutes of meeting of said Council.

Witness, my hand, and seal of the City of Conway, Arkansas this 27<sup>th</sup> day of December, 2022.

  
**CITY CLERK-TREASURER**

