

ORDINANCE NO. 2707

AN ORDINANCE OF THE CITY OF MCALESTER, OKLAHOMA; AMENDING MCALESTER CITY CODE CHAPTER 100, TELECOMMUNICATIONS, BY CREATING ARTICLE III, SMALL WIRELESS FACILITIES; AMENDING CHAPTER 48, FEES, CHARGES AND SERVICE RATES, CREATING ARTICLE III, SMALL WIRELESS FACILITIES; REPEALING ALL CONFLICTING ORDINANCES, AND PROVIDING FOR SEVERABILITY.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCALESTER, OKLAHOMA, that

SECTION 1. That Chapter 100, Telecommunications, of the McAlester City Code is hereby amended to create Article III, Small Wireless Facilities to read as follows:

Sec. 100-80. Purpose.

The intent of these provisions is to provide for the continued establishment of new wireless communication providers and the expansion of existing wireless communication services within the city, while simultaneously protecting neighborhoods, all through minimizing adverse visual and operational effects of facilities through careful design, sighting, screening, camouflage, and co-location.

Sec. 100-81. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes means uniform building, fire, electrical, plumbing, or International Building Codes adopted by the city, a recognized national code organization, local amendments to those codes, and applicable federal regulations.

Applicant means a person or entity who submits an application pursuant to this section.

Application means a request submitted by an applicant:

- (a) For a permit to construct a commercial communication tower or antenna;
- (b) For a permit to co-locate an antenna or a small wireless facility; or
- (c) To approve the installation or modification of a commercial communication tower, antenna, utility pole or wireless support structure.

City-owned pole means:

- (a) A utility pole owned or operated by the city in the right-of-way or easement, including light poles, traffic signals, and structure for signage; and
- (b) A pole or similar structure owned or operated by the city that supports only wireless facilities but does not include a commercial communication tower.

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

Commercial communications tower means a structure composed of a single spire erected and maintained by a public service corporation or a communications service provider that supports antennae used as part of a cellular mobile telephone communication system, and an accessory building not to exceed 400 square feet used to house equipment necessary for the operation of the cellular communication monopole and related facilities. Such term shall not include a utility pole or television and radio transmission towers.

Communications service provider means a cable operator as defined in 47 U.S.C., Section 522(5), a provider of information service as defined in 47 U.S.C., Section 153(24), a telecommunications carrier as defined in 47 U.S.C., Chapter 153(51) or a wireless provider.

Decorative pole means a pole specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than a small wireless facility, light fixtures, or specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed pursuant to city ordinances and policies.

Design district means an area that is zoned or otherwise designated by City ordinance for which unique design and aesthetic standards on a uniform and nondiscriminatory basis are maintained and enforced.

Electric distribution pole means a pole used to support an electric distribution system.

Historic district means a group of buildings, properties or sites that are zoned or otherwise deemed a historic district under municipal, state, or federal designation.

Right-of-way means the area within the jurisdiction of the city that is on, below, or above a public roadway, highway, street, sidewalk, alley or similar property or a public easement that authorizes the deployment sought by the wireless provider, but does not include a federal interstate highway.

Small communication tower means a tower, possibly guy-wired, and no more than 190 feet tall, where antennae and communications equipment are placed to serve residential properties with internet service.

Small wireless facility and small cell facility means a wireless facility that meets both of the following criteria:

- (a) Each antenna of the wireless provider could fit within an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, and all of its exposed elements could fit within an enclosure of no more than six cubic feet; and
- (b) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume.

Ancillary equipment such as: Electric meters, concealment elements, telecommunications demarcation box, ground based enclosures, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services are not included in the equipment volume calculation.

Television and radio transmission tower means a structure set up for the purpose of transmitting and receiving radio and television signals.

Utility pole means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control, signage, or a similar function regardless of ownership, including a city owned pole. Such term shall not include structures supporting only wireless facilities.

Wireless facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

- (a) Equipment associated with wireless communications; and
- (b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

The term includes small wireless facilities. The term does not include the structure or improvements on, under, or within which the equipment is collocated, or coaxial or fiber optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider means any person or entity, including a person or entity authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities or wireless support structures, but that is not a wireless services provider.

Wireless provider means a wireless infrastructure provider or a wireless services provider.

Wireless services means any services, whether at a fixed location or mobile, provided using wireless facilities.

Wireless services provider means a provider of wireless services.

Wireless support structure means a freestanding structure, such as a monopole; commercial communication tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. Such term shall not include a utility pole.

Sec. 100-82. Small cell facilities.

Co-location of a small wireless facility or a new or modified utility pole or wireless support structure for the co-location of a small cell facility shall be a permitted use in all zoning categories subject to the provisions of this section. However, any wireless provider that seeks to construct or modify a utility pole, wireless support structure or wireless facility that exceeds the height or size limits contained in this section, shall be subject to applicable zoning requirements and applicable codes.

Sec. 100-83. Permit required.

No person or entity shall place a small wireless facility in the right-of-way without first filing a small wireless facility siting application and obtaining all other applicable land-disturbing, utility construction, electrical, or building permits.

- (a) The siting application shall be made by the wireless provider or its duly authorized representative and shall include the following:
- (1) The applicant's name, address, telephone number, and email address;
 - (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
 - (3) A siting map depicting the location of proposed sites for small wireless facilities, the GPS coordinates of proposed sites, and related construction and engineering drawings for each location sufficient to demonstrate compliance with the provisions herein. Small cell facilities on existing poles, new poles, or modified poles shall not interfere with vehicular access to adjacent property; nor shall they be placed in a location that would interfere with an existing individual tree's canopy. For applications to collocate on an existing pole, the applicant should provide an engineering analysis that demonstrates conformance with applicable codes, construction drawings stamped by a professional engineer licensed in Oklahoma, and a description of any make-ready work required, including any modification or replacement of the pole. Up to 25 proposed small cell facilities can be covered by one application.
 - (4) If a small wireless facility is proposed to replace an existing pole, or be located on an existing pole, the application shall indicate the owner of said pole.
 - (5) A statement of compliance with all applicable codes from a licensed engineer.
 - (6) Payment of a permit application fee and all other fees required as set forth in Chapter 48 shall be paid.
- (b) Within 20 days of receiving an application, the code administrator will determine and notify the applicant in writing whether the application is complete. If an application is incomplete, the code administrator will specifically identify the missing information in its written communication to the applicant. The processing deadlines set forth herein will be tolled from the time the code administrator sends the notice of incompleteness to the time the applicant provides the missing information. The processing deadline may also be tolled by agreement of the applicant and the city.
- (c) 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, or for installation, placement, maintenance, operation or replacement of micro-wireless facilities that are strung on cables between existing utility poles in compliance with the National Electric Safety Code.
- (d) Review time for applications to collocate facilities: The code administrator will issue a written decision in response to an application to collocate small cell facilities within 60 days of receipt of the application. If the written decision is to deny the application, reasons for such denial shall be included in the written communication to the applicant. If the code administrator does not issue a written decision within the prescribed timeframe, the application shall be deemed approved.
- (e) Review time for applications for installation, modification or replacement of a utility pole and association collocation: The code administrator will issue a written decision in response to an application to install, modify or replace a utility pole and any associated collocation within 75 days of receipt of the application. If the written decision is to deny the application, reasons for such denials shall be included in the written communication to the applicant. If the code administrator does not issue a written decision within the prescribed timeframe, the application will be deemed approved.
- (f) Appeals from the denial of a siting application. Upon receipt of a notice of the code administrator's written decision to deny all or part of a siting application, the applicant may choose to cure the deficiencies in the application or may appeal the denial. If the applicant chooses to cure the deficiencies identified by the code administrator, the application must be resubmitted within 30 days of the denial and will not require payment of an additional application fee. Upon receipt of a revised application, the code administrator shall have an additional 30 days to approve or deny the revised application. Applicants may appeal the decision of the code administrator regarding a submitted siting application in accordance with chapter 62, the City of McAlester Land Development, Planning, and Subdivisions Ordinances.

Sec. 100-84. Permit time limits.

Upon issuance of a city permit, a small wireless communications provider shall install its facilities and commence operation within one (1) year, unless the City and applicant agree to extend this period.

Sec. 100-85. Height of small wireless facilities and associated poles and support structures.

- (a) Small wireless facilities, and new or modified utility poles and wireless support structures for the collocation of small wireless facilities may be placed in the right-of-way as a permitted use subject to the following requirements:
- (1) Each new or modified utility pole installed in the right-of-way shall not exceed the greater of ten feet above the tallest existing utility pole as of March _____, 2021, located within 500 feet of the new pole in the same right-of-way, or 50 feet above ground level.

- (2) Each new small wireless facility in the right-of-way shall not exceed ten feet above an existing utility pole in place as of March _____, 2021, or for small wireless facilities on a new utility pole, above the height permitted for a new utility pole under Section 100-85 (a)(1).
- (b) Small wireless facilities may be placed on property owned, leased, or otherwise controlled by the city only pursuant to a commercial lease approved by the city council.

Sec. 100-86. Small wireless facilities standards.

- (a) All small wireless facilities affixed to a utility pole which has exterior exposure shall be as close to the color of the utility pole as is commercially available to the wireless provider.
- (b) The design and maintenance of all small wireless facilities, cables, wires, appurtenances, and utility poles, shall include the use of materials, colors, textures, screening and landscaping that will blend the small wireless facilities, appurtenances and utility poles to the natural setting or the built environment of the primary use.
- (c) All small wireless facilities affixed to a decorative light pole must be installed in such a way that the cables, wires, appurtenances, and facilities are concealed within the pole to the maximum extent possible.
- (d) Placement of small wireless communication facilities, wireless support structures, or utility poles in designated historic districts or design districts shall be disclosed. Any request for installation in a historic district or design district must be accompanied with proposed concealment measures.
- (e) Spacing requirements. No small cell facility shall be approved for placement on a new pole if the new pole is proposed to be located within a 500-foot radius of an existing pole.

Sec. 100-87. Relocation or modification of small cell facilities.

Within 60 days following written notice issued from the city, a wireless provider shall, at its own expense, protect, support temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the right-of-way whenever the city has determined that such removal, relocation, change, or alteration is reasonably necessary for the construction, repair, maintenance, or installation of any city improvement in or upon, or the operations of the city in or upon, the right-of-way, or if the city has determined that the facility's signal is interfering with other signals for traffic control devices or emergency communications.

Sec. 100-88. Emergency removal or relocation of small cell facilities.

The city retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the city, as the city 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 provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider after cutting or removing a small wireless facility.

Sec. 100-89. Abandonment of facilities.

A small wireless facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of the facility must remove the small wireless facility within ninety (90) days after receipt of written notice from the city notifying the owner of the abandonment.

Sec. 100-90. Damage to the right-of-way.

A wireless provider shall repair all damage to the right-of-way directly caused by the activities of the wireless provider in the right-of-way and return the right-of-way to its functional equivalence before the damage. If the wireless provider fails to make the necessary repairs within two weeks of written notice, the city may make the repairs and charge the wireless provider the reasonable, documented cost of such affairs. A wireless provider shall be required to comply with right-of-way and vegetation management practices adopted by the city.

SECTION 2. That Chapter 48, Fees, Charges and Service Rates, of the McAlester City Code is hereby amended to create Chapter 100 Telecommunications, Article III, Small Wireless Facilities to read as follows:

<i>Code Section</i>	<i>Description</i>	<i>Amount</i>
Chapter 100. Telecommunications		
<i>Article III. Small Wireless Facilities</i>		
<u>100-83</u>	<u>Permit required, fees</u>	
	<u>Siting applications to collocate facilities, for the first five small wireless facilities on the same application</u>	<u>\$200.00</u>
	<u>For each additional small wireless facility on the same siting application.</u>	<u>\$100.00</u>

	<u>Siting applications for installation, modification or replacement of a utility pole and associated collocation, per pole on the same siting application.</u>	<u>\$350.00</u>
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SECTION 3. That all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any such conflict or inconsistency and all other ordinances not in conflict herewith shall remain in full force and effect.

SECTION 4. The provisions of this Ordinance are severable, and if any part or provision hereof shall be adjudged invalid by any court of competent jurisdiction, such adjudication shall not affect or impair any of the remaining parts or provisions hereof.

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF McALESTER, OKLAHOMA on THIS 23RD DAY OF MARCH, 2021.

CITY OF McALESTER, OKLAHOMA
A Municipal Corporation

ATTEST:

By: _____
John Browne, Mayor

Cora Middleton, City Clerk

Approved as to form and legality this _____ day of _____ 2021.

By: _____
William J. Ervin, City Attorney