

**ORDINANCE NO. 21-\_\_\_\_\_**

AN ORDINANCE CREATING SECTIONS 20-5-501 THROUGH 20-5-509, ARTICLE 20-5, CHAPTER 20, SMALL CELL WIRELESS FACILITIES PERMIT, LAWTON CITY CODE, 2015; BY CREATING THE ARTICLE, CREATING REGULATIONS FOR SMALL CELL WIRELESS FACILITIES, CREATING SUBMITTAL REQUIREMENTS AND WHO ADMINISTERS THE REVOCABLE PERMIT FOR COUNCIL CONSIDERATION, CREATING REQUIREMENTS FOR CONSTRUCTION AND MAINTENANCE OF THE FACILITIES, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

*BE IT ORDAINED* by the Council of the City of Lawton, Oklahoma, that:

Section 1. The title of Article 20-5 is hereby created to read as follows:

**Article 20-5 – SMALL CELL WIRELESS FACILITY PERMIT**

Section 2. Section 20-5-501 is hereby created to read as follows:

**20-5-501-Purpose - Definitions.**

- A. The purpose of this Article is to provide for the public health, safety and welfare by the orderly regulation and use of public ways by transmission facilities.
- B. As used herein, the following terms shall have the meanings ascribed to them in this Section:
  1. An “above-grade facility” means a transmission facility whose primary conduit, apparatus and equipment for transmission is located as or a part of a vertical, above-grade structure. Typically, an above-grade facility would include but not be limited to a small wireless facility.
  2. A “below-grade facility” means a transmission facility whose primary conduit, apparatus and equipment for transmission is located or buried underground or otherwise below the surface grade. Typically, a below-grade facility would include, but not be limited to a wire, cable, fiber optic, pipeline or similar facility.
  3. A “public way” means any public lands, rights-of-way and easements owned or controlled by the City of Lawton.
  4. A “small cell wireless facility” means small cell systems and distributed antenna systems (DAS). Small cell systems are low-powered wireless base stations that function like traditional cell sites in a mobile wireless network. DAS uses numerous antennas similar in size to small cell systems that are connected to and controlled by a central hub.
  5. A “transmission facility” means the facilities for any communications system and for any type of water, gas or other pipeline system.

Section 3. Section 20-5-502 is hereby created to read as follows:

**20-5-502 –Requirements of permits, exceptions –Applicability of permits.**

- A. Construction or placement of any type of transmission facility shall not be placed upon, over, in or under any public ways under the control of the City without a revocable transmission facility permit as authorized by the City Council. Public ways shall include all public land, right-of-way and easements.
- B. The provisions of Subsections A of this Section shall not apply to any person, organization or entity that has a valid franchise with the City nor apply to the installation, construction or operation of television cable system.
- C. Communications facilities, small cell wireless facilities and telecommunication towers that are located on private property shall comply with Article 6-8 of the Lawton City Code.

Section 4. Section 20-5-503 is hereby created to read as follows:

**20-5-503 - Application and plan submittal requirements –Procedural process.**

- A. An application shall be submitted to the Community Services Director, or his/her designee, for a revocable small cell wireless facility permit, as required in Section 20-5-502, on forms prepared by the City Planning Division. The application shall contain the following general information:
  - 1. Full name of organization, corporation or individual, address and telephone information of the applicant;
  - 2. A written explanation of the proposed project;
  - 3. Plans showing the proposed location of all small cell wireless facilities and related components, identification of the public ways to be utilized, location of all existing above-grade and below-grade utilities in the area of the proposed construction and other related information to provide the City with sufficient information to objectively evaluate the merits of the proposed project;
  - 4. All plans shall be submitted on a drawing made to scale and sealed by an Oklahoma licensed surveyor or engineer; and
  - 5. Any other additional information requested by the Community Services Director or his/her designee, related to the project necessary to provide the proper recommendation to the City Council.
- B. Plans for above-grade facilities shall include the following information:
  - 1. Plans for above-grade attachment/co-location to existing poles/structures are not required to be sealed by an Oklahoma licensed surveyor or engineer for location purposes.
  - 2. Plans for above-grade attachment/co-location on existing poles/structures shall include the location on the public way, written approval from the utility company that the communication equipment is to be located on, information demonstrating the ability of the pole to support the extra weight and capacity and the location of any new power supply.
  - 3. Plans for new above-grade small cell wireless facilities and components shall include the height of the pole, information demonstrating the ability of the pole to support the equipment and location of all utilities in the area of the proposed location.
- C. Submission and review of the application
  - 1. After submission of the complete application, as required by Subsection A of this Section, the Community Services Director, or his/her designee, shall initiate and

- coordinate with the appropriate departments and utility companies for review of the application and formulate a recommendation for City Council's consideration.
2. The application shall be submitted for review and consideration by City Council within sixty (60) days of the submission date.
  3. The Community Services Director, or his/her designee, shall prepare an appropriate small cell wireless facility permit on forms acceptable to the City Council which are not in conflict with the provisions of this Article, and which will protect the interest of the citizens of Lawton.
  4. The City Council will consider the issuance of a small cell wireless facility permit(s) for the installation and construction of all small cell wireless facilities on public ways. The City Council may approve, modify, or deny the permit. Following action by the City Council on the application, notice shall be sent to the applicant within ten (10) calendar days.

Section 5. Section 20-5-504 is hereby created to read as follows:

**20-5-504 - Fee requirements and expiration date of small cell wireless facility permit.**

- A. An application fee as set out in Appendix A, Fees and Charges, shall be paid at the time of filing the application for the small cell wireless facility permit.
- B. A review and inspection fee as set out in Appendix A, Fees and Charges, shall be paid for each location of above-grade small cell wireless facilities installed in the City's public ways prior to any construction/installation of any facilities as authorized by the small cell wireless facility permit. No construction/installation shall commence before the effective date of the small cell wireless facility permit. All electrical or other required trade inspections as required by the currently adopted building and electrical codes shall require separate fees as set out in Appendix A, Fees and Charges, Chapter A-6.
- C. The permittee shall pay an annual use fee beginning the second year following application and each subsequent year thereafter for the small cell wireless facility permit. The annual use fee shall be as set out in Appendix A, Fees and Charges, for each location for above-grade facilities installed in the City's public ways as described in the permit. The annual use fee shall be due on the anniversary date of the permit's effective date as approved by the City Council.
- D. The small cell wireless facility permit will automatically renew upon receipt of the annual use fee, unless otherwise revoked by the City Council. The annual use fee shall be payable to the City of Lawton and shall be submitted to the Community Services Director.

Section 6. Section 20-5-505 is hereby created to read as follows:

**20-5-505 - Inspections required – Authorized Adjustments.**

After issuance of the revocable transmission facility permit by the City Council, the City Engineer, or his/her designee, shall inspect the construction of the facilities for compliance with the applicable provisions of the City Code and for any additional requirements or conditions for the issued permit. The permittee shall coordinate with the City Engineer or his/her designee, in writing regarding the start date and the schedule of the project prior to construction. All electrical or other required trade inspections are considered separate from the engineering inspections.

Section 7. Section 20-5-506 is hereby created to read as follows:

**20-5-506 – Requirements for location and maintenance for small cell wireless facilities within a public right-of-way.**

A. General requirements for small cell wireless facilities:

1. The adjacent property owner shall provide written permission for the facility to be located adjacent to the property.
2. No facility shall be located on an arterial street as defined by Chapter 18 of this Code.
3. All facilities shall harmonize with the area in which they are located and shall be monopoles.
4. All facilities shall be located no closer than ten (10) feet to a public sanitary sewer main and shall be located on the opposite side of the roadway or other public way from any public water main.
5. All facilities shall be located to be a minimum of four (4) feet from back of curb on streets that have a speed limit of no more than twenty-five (25) miles per hour, minimum of six (6) feet from back of curb on streets that have a speed limit of between twenty-five (25) and thirty-five (35) miles per hour and a minimum of eight (8) feet from back of curb on streets with a speed limit above thirty-five (35) miles per hour.
6. No facility shall overhang or impede the existing and proposed public sidewalks.
7. All facilities shall be a minimum of one (1) foot from the existing sidewalk and a minimum of two (2) feet from the ADA pathway.
8. All above-grade facilities shall be attached/co-located onto an existing pole or other appropriate structure when such is within three hundred (300) feet of a requested location, except as otherwise approved by the City Council.
9. All facilities shall be no higher than fifty (50) feet above-grade.
10. All facilities shall be designed to withstand a wind speed of one hundred and thirty (130) miles per hour.
11. In addition to the requirements elsewhere provided in this code, all above-grade small wireless facilities shall be located inside an enclosure of not more than six (6) cubic feet in volume or, in the case of an antenna that requires exposed elements, the antenna and the exposed elements shall fit within an imaginary enclosure of not more than six (6) cubic feet in volume. All facilities shall be maintained in a good, structural manner. Failure to maintain the structural integrity of the facility may cause revocation by the City Council and may result in the abatement of the offending facilities. The permittee shall periodically inspect the facilities to ensure that they are maintained in a sound and aesthetic manner.
12. Upon notification by the City that any facility appears to be in need of maintenance or repair, the permittee shall inspect the facility and notify the City with a timeline of repair work within forty-eight (48) hours.
13. If, in the City's opinion, a damaged or unmaintained facility poses an imminent threat to the public or otherwise constitutes a public nuisance, it may be removed by the City and the permittee shall be responsible for paying all costs of said removal.
14. Permittee shall obtain general liability insurance covering property damage and bodily injury in amounts not less than the limits of liability set forth in the Oklahoma Governmental Tort Claims Act and shall provide proof thereof annually to the Community Services Director.

15. Permittee, its successors and assigns will indemnify and hold the city, its employees and officials harmless against any and all claims and damages including but not limited to personal injuries, deaths or property damages arising from the construction, installation, repair, maintenance or operation of its transmissions facility.
- B. City Council may grant exceptions to the requirements in this Section. Such exceptions may include, but are not limited to the following:
1. An exception for the attachment/co-location on an existing pole may be granted provided that the applicant submits written documentation showing that the attachment/co-location to an existing pole is not feasible or does not meet the service requirements of the facility, or that the aesthetic and safety impact of the new above-grade structure will be mitigated by incorporating it with a new street light or other facility that provides a public benefit.
  2. An exception to the maximum height requirement may be granted provided that the applicant submits written documentation that the height limitation is not feasible or the height does not meet the service purpose of the facility. An exception of up to seventy-five (75) feet total height may be granted.
  3. An exception to locating the facility on the opposite side of the public way from the public water main may be granted provided that the applicant submits documentation that locating the facility on the opposite side of the public way from the public water main is not feasible. An exception may be granted to allow the facility to be located on the same side of the street, but can be no closer than ten (10) feet to the public water main.
  4. An exception to the required exposed elements to fit in an enclosure of six (6) cubic feet may be granted provided that the applicant submits documentation that the antenna and/or the required exposed elements will not fit in said enclosure. An exception may be granted to allow said enclosure to be no more than nine (9) cubic feet in total size.
- C. If, after the City Council has issued a small cell wireless facility permit, the requested location becomes not feasible, the Director of Public Utilities, or his/her designee, may allow for minor revisions to the location. If the Director of Public Utilities determines that the change in location is not a minor revision, the permittee shall submit an amended application to the City Council for the new location and pay the fee as set out in Appendix A, Fees and Charges.

Section 8. Section 20-5-507 is hereby created to read as follows:

**20-5-507 –Revocation for failure to pay annual use fee.**

- A. Failure of the permittee to pay the annual use fee as set forth in Section 20-4-404, and as recited in the permit, may cause the permit to be revoked and a penalty to be assessed. If the permittee fails to pay the annual use fee within thirty (30) calendar days of any due date, there shall be a penalty of ten percent (10%) assessed upon the balance due and owing for each thirty (30) calendar days that it remains unpaid. If the balance remains unpaid after sixty (60) calendar days, notice of revocation shall be sent to the permittee by certified mail by the Community Services Director. The notice will give the permittee thirty (30) additional calendar days to pay and be considered a renewal. Thirty (30) calendar days after the notice of revocation is sent, an agenda item commentary will be drafted for City Council consideration of revocation of the small cell wireless facility

permit. At that time, notice of the meeting date for City Council consideration of revocation shall be sent to the permittee.

- B. If the permit is revoked, the permittee will have ninety (90) calendar days from the date of revocation to remove all equipment from all public ways. The permittee shall restore the grounds and all remaining infrastructure to their preexisting conditions and to City Code standards.
- C. If the permittee wishes to reapply for a small cell wireless facility permit, all fees attributable to a new application shall be required. However, plan submittal requirements will be waived for in-place equipment.
- D. A permittee's failure to adhere to the requirements for removing equipment from all public ways shall be grounds for the City to seek damages from the District Court of Comanche County, Oklahoma. Damages shall include the cost of removal of the offending facilities plus costs and attorney fees and any other monetary amount as deemed appropriate by the court.

Section 9. Section 20-5-508 is hereby created to read as follows:

**20-5-508 – Revocation for cause or convenience.**

- A. A small cell wireless facility permit issued under this article grants unto the permittee, its successors and assigns, the privilege of using certain public ways for its permitted facilities. A small cell wireless facility permit may be revoked as provided in this Section.
- B. Except for permittee's failure to pay the annual use fee, City Council may revoke the permit in whole or in part by providing ninety (90) days written notice to the permittee. Where the revocation is based on the permittee's failure to comply with the provisions of the permit or other provisions of other federal, state or local laws, the revocation notice shall list the reasons for revocation and provide a reasonable amount of time to cure.
- C. The permittee shall remove all permitted facilities located in the permitted areas within ninety (90) days after the expiration or revocation of the permit. The permittee shall restore the grounds and all remaining infrastructure to their preexisting conditions and restore to City Code standards.
- D. In addition to the requirements as set forth in this Article, the City may require other reasonable terms and conditions in the permit on a site specific and/or a case by case basis as necessary for the public safety and welfare of the citizens of Lawton.
- E. In the event the City finds it necessary and convenient to relocate any such small cell wireless facility for any reason, to include but not be limited to any construction or reconstruction or widening of any city road, public easement or other city improvement, then in such event, such relocation shall be accomplished and done at the sole expense of the permittee. The City shall give written notice to the permittee not less than ninety (90) days of the requirement to relocate the small cell wireless facilities. The City shall coordinate as necessary with the permittee to find a suitable replacement location for those small cell wireless facilities. The permittee shall apply for an amended permit to include possible suitable replacement relocations without having to pay the application fee as set forth in Appendix A, Fees and Charges of this code.
- F. In the event the City undertakes an emergency repair or replacement of a public sanitary sewer or public water main to protect public health and safety, the City may remove any of the permitted facilities interfering with such repair or replacement. The permittee will

be responsible for the re-installation of the encroachment at the permittee's sole cost and expense once the emergency repair or replacement has been completed and public health and safety are no longer a concern.

Section 10. Section 20-5-509 is hereby created to read as follows:

**20-5-509 – Liability for failure to timely remove small cell wireless facilities.**

A permittee shall be liable to the City for its failure to remove the permitted small cell wireless facilities from public ways as required by this Article. Damages shall include the City's cost of removal of the offending facilities. Damages shall further include all litigation costs incurred by the City in its enforcing the requirements of this Article, to include but not limited to court costs, attorney fees and any other monetary amount as deemed appropriate by the court.

Section 11. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion of this ordinance.

Section 12. Effective Date. The provisions of this ordinance shall become effective thirty days after passing of the ordinance.

**ADOPTED and APPROVED** by the Council of the City of Lawton, Oklahoma this 12<sup>th</sup> day of October, 2021.

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STANLEY BOOKER, MAYOR

ATTEST:

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TRACI L. HUSHBECK, CITY CLERK

**APPROVED** as to form and legality this \_\_\_\_ day of \_\_\_\_\_, 2021.

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JOHN RATLIFF, CITY ATTORNEY

**ORDINANCE NO. 21-\_\_\_\_\_**

AN ORDINANCE CREATING SECTIONS 20-5-501 THROUGH 20-5-509, ARTICLE 20-5, CHAPTER 20, SMALL CELL WIRELESS FACILITIES PERMIT, LAWTON CITY CODE, 2015; BY CREATING THE ARTICLE, CREATING REGULATIONS FOR SMALL CELL WIRELESS FACILITIES, CREATING SUBMITTAL REQUIREMENTS AND WHO ADMINISTERS THE REVOCABLE PERMIT FOR COUNCIL CONSIDERATION, CREATING REQUIREMENTS FOR CONSTRUCTION AND MAINTENANCE OF THE FACILITIES, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

**BRIEF GIST**

This ordinance creates the permit process, and regulations for construction and maintenance for small cell wireless facilities to be located within the City of Lawton.

**ADOPTED and APPROVED** by the Council of the City of Lawton, Oklahoma this 12<sup>th</sup> day of October, 2021.

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STANLEY BOOKER, MAYOR

ATTEST:

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TRACI L. HUSHBECK, CITY CLERK

(Published in the Lawton Constitution this \_\_\_\_ day of \_\_\_\_\_, 2021.)