

ORDINANCE NO. 19- 44

AN ORDINANCE AMENDING VARIOUS SECTIONS OF CHAPTER 50 OF THE CITY OF ROGERS CODE OF ORDINANCES AND AMENDING APPENDIX B - FEE SCHEDULE OF THE CITY OF ROGERS CODE OF ORDINANCES TO FOLLOW THE SAME; PROVIDING FOR THE EMERGENCY CLAUSE; AND FOR OTHER PURPOSES.

WHEREAS, the Arkansas General Assembly amended Arkansas Code Title 23, Chapter 17 to add new language establishing the State of Arkansas's "Small Wireless Facility Deployment Act";

WHEREAS, the Small Wireless Facility Development Act will go into effect on September 1, 2019;

WHEREAS, there are currently several pending applications for small cell facilities awaiting approval;

WHEREAS, the City of Rogers City Council finds it to be in the best interests of the City to proactively establish fees and rates in accordance with the Small Wireless Facility Deployment Act; and

WHEREAS, the City Council also finds it necessary to enact provisions governing relocation of small wireless facilities to minimize delay and disruption of City of Rogers projects.

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

Section 1: Chapter 50, Article III, Section 50-41(b)(1)(A) of the City of Rogers Code of Ordinances is amended to delete the word "and" from the end of the subsection, and to read as shown in attached Exhibit "A";

Section 2: Chapter 50, Article III, Section 50-41(b)(1)(B) of the City of Rogers Code of Ordinances is amended delete the period at the end of the subsection and to add a semicolon and the word "and", and to read as shown in attached Exhibit "A";

Section 3: Chapter 50, Article III, Section 50-41(b)(1) of the City of Rogers Code of Ordinances is amended to add subsection (C), and to read as shown in attached Exhibit "A";

Section 4: Chapter 50, Article III, Section 50-42 of the City of Rogers Code of Ordinances is amended to add subsection (i), and to read as shown in attached Exhibit "A";

Section 5: Appendix B – Fee Schedule, Section 50-40(b)(1)(B) of the City of Rogers Code of Ordinances is corrected to Section 50-41(b)(1)(B), and amended to read as shown in attached Exhibit "A";

Section 6: Appendix B – Fee Schedule, Section 50-41(b)(1)(C) of the City of Rogers Code of Ordinances is created and adopted to read as shown in attached Exhibit “A”;

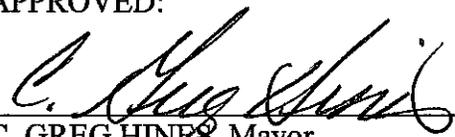
Section 7 - Emergency Clause: That the need to amend Chapter 50 and Appendix B - Fee Schedule of the City of Rogers Code of Ordinances is immediate and in order to protect the public peace, health, safety, and welfare an emergency is hereby declared to exist and this Ordinance shall be in full force and effect from the date of its passage and approval;

Section 8 - Severability Provision: In the event that any section, paragraph, subdivision, clause, phrase, or other provision or portion of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional, and the remaining provisions of this Ordinance shall be construed as if such invalid, unenforceable, or unconstitutional provision or provisions had never been contained herein; and

Section 9 - Repeal of Conflicting Ordinances and Resolutions: All Ordinances, Resolutions, or orders of the City Council, or parts of Ordinances, Resolutions, or orders of the City Council in conflict herewith are hereby repealed to the extent of such conflict.

PASSED this 25th day of June, 2019.

APPROVED:


C. GREG HINES, Mayor

Attest: 
PEGGY DAVID, City Clerk 

Requested by: Bonnie Bridges, Staff Attorney
Prepared by: Bonnie Bridges, Staff Attorney
Reviewed by: Bonnie Bridges, Staff Attorney
For Consideration by:

EXHIBIT "A"

Sec. 50-41(b)(1) An entity or company that proposes to modify, install, or collocate on a small cell facility shall:

- (A) Submit an application under this section to the department of community development;
- (B) Pay the fee established in appendix B to this City Code of Ordinances; and
- (C) Pay the recurring annual rates established in appendix B to this City Code of Ordinances.

Sec. 50-42. – Prohibitions and Requirements

- (i) A wireless service provider's use of the Public Right-of-Way or Public Easement shall be subject to the reasonable public health, safety, and welfare requirements and regulations of the City. A wireless service provider's use of the Public Right-of-Way or Public Easement shall be subordinate to the City's use or occupation of said Right-of-Way or Easement.
 - 1. The wireless service provider shall repair all damage to the Public Right-of-Way or Public Easement directly caused by the activities of the provider and return the Public Right-of-Way or Public Easement to its functional and aesthetic equivalence before the damage under the reasonable requirements and specifications of the City. If the provider fails to make the repairs required by the City, within a reasonable time of not less than 120 days after written notice, the City may make those repairs and charge the wireless service provider the actual documented cost of the repairs.
 - 2. The wireless service provider shall be responsible for its own costs incurred in removing or relocating its facility when required by the City as part of a public project or improvement, approved or performed by the City regardless of the source of funds for the project or improvement. Removal or relocation of the facility shall be performed within 90 days, or within a reasonable time frame agreed upon by the provider and the City, upon written notice by the City. If the provider wishes to challenge that a project is a public project or improvement, it shall relocate its facilities in accordance with the City of Rogers Code of Ordinances and shall resolve any questions as to whether the project is a public project or improvement at a later time.

3. The City retains the right to cut or move any small wireless facility, located within its right-of-way or easement, 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 service provider and give it an opportunity to move its own facilities prior to the City cutting or removing a facility. The City shall notify the wireless service provider after cutting or removing a small wireless facility.

Appendix B – Fee Schedule

Sec. 50-41(b)(1)(B), Small wireless facility application fee.

Application fees for a permit shall not collectively exceed the following:

\$100.00 for each small wireless facility, or;

\$250.00 for the installation, modification, or replacement of a pole together with the collocation of an associated small wireless facility in the right-of-way or easement.

Sec. 50-41(b)(1)(C), Small wireless facility annual rates.

\$30.00 annual rate per small wireless facility, and

\$240.00 annual rate for collocation of small wireless facilities on authority poles for each authority pole.