

**CITY OF CONOVER  
ORDINANCE \_\_\_-19**

**AN ORDINANCE AMENDING APPENDIX A: ZONING  
OF THE CONOVER CITY CODE  
REGULATION OF SMALL WIRELESS FACILITIES**

Whereas, the regulations set forth in this ordinance were first published by the City upon the consideration by the Conover Planning Board on April 2, 2019; and

Whereas, Cities may regulate small wireless facilities; and,

NOW, THEREFORE:

Section 1: The Conover Code of Ordinances, Appendix A, Zoning is hereby amended as follows:

The City does hereby adopt and ordain a new Section 22.18 and entitled “Regulation of Small Wireless Facilities” as follows:

**SECTION 22.18 REGULATION OF SMALL WIRELESS FACILITIES**

**Section 22.18.1 Purpose:**

- (a) Minimize the impacts of small wireless facilities on surrounding areas by establishing standards for location, structural integrity and compatibility;
- (b) Encourage the location and collocation of small wireless facilities equipment on existing structures thereby minimizing new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures;
- (c) Encourage coordination between suppliers of small wireless facilities in the City of Conover and its planning jurisdiction;
- (d) Accommodate the growing demand for wireless services and the resulting need for small wireless facilities;
- (e) Regulate in accordance with all applicable federal and state laws;
- (f) Establish review procedures to ensure that applications for small wireless facilities are reviewed and acted upon within a reasonable period of time or any specific period of time required by law;
- (g) Protect the unique aesthetics of the City while meeting the needs of its citizens and businesses to enjoy the benefits of wireless communications services; and
- (h) Encourage the use of existing buildings and structures as locations for small wireless facilities infrastructure as a method to minimize the aesthetic impact of related infrastructure.

It is not the purpose or intent of this section to prohibit, have the effect of prohibiting, or materially limit or inhibit wireless communications services; unreasonably discriminate among providers of functionally equivalent wireless communication services; regulate the placement, construction or modification of wireless communications facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the small wireless facility does or will comply with applicable FCC regulations; or prohibit or effectively prohibit collocations or modification that the city must approve under state or federal law. The provisions of this Section 22.18 are in addition to, and do not replace, any obligations an applicant may have under any franchises, licenses, encroachments, or other permits issued by the City.

**Section 22.18.2 Definitions:**

The following terms shall be defined as follows:

ACCESSORY EQUIPMENT means any equipment installed and owned by a third party used to deliver a service (other than a communications service) to a telecommunications facility, such as an electric meter.

ANTENNA has the same meaning as the term “antenna” defined in G.S. Chapter 160A, Article 19, Part 3E.

APPLICABLE CODES have the same meaning as the term “applicable codes” defined in G.S. Chapter 160A, Article 19, Part 3E.

BASE STATION means a structure or equipment at a fixed location that enables Federal Communications Commission licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a wireless support structure or any equipment associated with such structure. The term includes wireless facilities.

1. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

2. The term includes, but is not limited to, radio transceivers, antennae, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small wireless facilities).

3. The term includes any structure other than a wireless support structure that, at the time the relevant application is filed with the City under this section, supports or houses equipment described in paragraphs (1) through (2) above that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

4. The term does not include any structure that, at the time the relevant application is filed with the City under this ordinance, does not support or house equipment described in paragraphs (1)-(2) above.

CITY UTILITY POLE has the same meaning as the term “city utility pole” as defined in G.S. Chapter 160A, Article 19, Part 3E.

COLLOCATION has the same meaning as the term “collocation” as defined in G.S. Chapter 160A, Article 19, Part 3E.

**CONCEALED WIRELESS FACILITY, CONCEALED WIRELESS SUPPORT STRUCTURE, or CONCEALED ANTENNA** means a stealth wireless facility, stealth wireless support structure, or stealth antenna.

**CONCEALMENT ELEMENT** means any design feature, including but not limited to painting, shielding requirements, shrouds, and restrictions on location or height in relation to the surrounding area that are intended to make a telecommunications facility less visible to the casual observer. The design elements of a concealed (stealth) telecommunications facility are concealment elements.

**ELIGIBLE FACILITIES REQUEST** means any request for modification of an existing wireless support structure or base station that does not substantially change the physical dimensions of such telecommunications tower or base station, as defined in either 47 C.F.R. 1.40001(b) or G.S. Article 19, Part 3E.

**MONOPOLE** means a single, self-supporting, freestanding pole-type structure built for the sole purpose of supporting one or more antennae. For the purposes of this Section 22.18, a utility pole is not a monopole.

**QUALIFYING CITY UTILITY POLE** means a modified or replacement city utility pole that does not exceed fifty (50) feet above ground level and that is associated with a new small wireless facility that does not extend more than ten (10) feet above such city utility pole.

**QUALIFYING SMALL WIRELESS FACILITY** means a new small wireless facility that does not extend more than ten (10) feet above the utility pole, city utility pole, or wireless support structure on which it is collocated and is located either (i) in the City right-of-way or (ii) outside of City right-of-way on property other than single family residential property.

**QUALIFYING UTILITY POLE** means a new utility pole or a modified or replacement utility pole that does not exceed fifty (50) feet above ground level and that is associated with a new small wireless facility that does not extend more than ten (10) feet above such utility pole.

**SHROUD** means a box or other container that contains and is designed to camouflage or conceal the presence of, a telecommunications facility, antenna, or accessory equipment.

**SMALL WIRELESS FACILITY** has the same meaning as the term “small wireless facility” as defined in G.S. Article 19, Part 3E.

**STEALTH WIRELESS FACILITY, STEALTH WIRELESS SUPPORT STRUCTURE, or STEALTH ANTENNA** means any telecommunications facility, wireless support structure, or antenna that is integrated as an architectural feature of a structure or that is designed to camouflage or conceal the presence of the telecommunications facility, wireless support structure, or antenna so that the purpose of the telecommunications facility, wireless support structure, or antenna is not readily apparent to a casual observer.

**SUBSTANTIAL CHANGE** has the same meaning as the term “substantial change” as defined by Federal Communications Commission regulations, 47 CFR 1.40001(b)(7).

**SUBSTANTIAL MODIFICATION** has the same meaning as the term “substantial modification” as defined in G.S. Article 19, Part 3E.

**TELECOMMUNICATIONS FACILITY** means a facility consisting of a base station and accessory equipment, and the utility pole, city utility pole, or wireless support structure, if any, associated with the facility.

**UTILITY POLE** has the same meaning as the term “utility pole” as defined in G.S. Chapter 160A, Article 19, Part 3E.

**WIRELESS FACILITY** has the same meaning as the term “wireless facility” as defined in G.S. Article 19, Part 3E. The term includes small wireless facilities.

WIRELESS SUPPORT STRUCTURE has the same meaning as the term “wireless support structure” as defined in G.S. Article 19, Part 3E. A utility pole or city utility pole is not a wireless support structure.

### **Section 22.18.3 Siting:**

To protect the unique aesthetics of the City, to minimize new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures, the City prefers that small wireless facilities be located outside the public right-of-way; collocated on existing utility poles or wireless support structures; concealed; and have their accessory equipment mounted on the utility pole or wireless support structure. These preferences are intended as guidance for development of an application for small wireless facilities.

### **Section 22.18.4 Applicability; Compliance with Law; Exemptions**

(a) The standards established herein shall apply only to qualifying small wireless facilities, qualifying utility poles, and qualifying city utility poles, as defined herein. Nothing in this ordinance shall be interpreted to excuse compliance with, or to be in lieu of, any other requirement of state or local law, except as specifically provided herein. Without limitation, the provisions of this ordinance do not permit placement of small wireless facilities on privately-owned utility poles or wireless support structures, or on private property, without the consent of the property owner or any person who has an interest in the property.

(b) Unless expressly set forth herein, the following categories of small wireless facilities are exempt from the requirements in Section 18.2, provided they meet the location and design requirements set forth below:

1. Any telecommunications facility below sixty-five (65) feet when measured from ground level which is owned and operated by an amateur radio operator licensed by the Federal Communications Commission and used exclusively for amateur radio operations.

2. Over the air reception devices covered under 47 C.F.R. § 1.4000, that is a small satellite dish antenna, one meter in diameter or less not located within the public right of way.

3. Collocation and eligible facilities requests, as defined in G.S. 160A-400.51 or 47 U.S.C.1455, shall be processed in accordance with G.S. 160A-400.52, 160A-400.53, and/or federal laws and regulations as appropriate. In approving any eligible facilities request, the City solely intends to comply with a requirement of federal law or state law and not to grant any property rights or interests except as compelled by federal or state law. Without limitation, approval does not exempt applicant from, or prevent City from, opposing a proposed modification that is subject to complaint under the National Historic Preservation Act or the National Environmental Policy Act. Collocations are only permitted as provided in Section 22.18.6 or Section 22.18.7.

4. Routine maintenance of small wireless facilities; the replacement of small wireless facilities with small wireless facilities that are the same size or smaller; or installation, placement, maintenance, or replacement of micro wireless facilities (as defined in G.S. Article

19, Part 3E) that are suspended on cables strung between existing utility poles or city utility poles in compliance with all applicable laws or regulations by or for a communications service provider authorized to occupy the City rights-of-way and who is remitting taxes under G.S. 105-164.4(a)(4c) or (a)(6).

5. A temporary small wireless facility, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the City of Conover; except that such facility must comply with all federal and state requirements and must be removed at the conclusion of the emergency.

6. Public safety facilities or installations required for public safety on public or private property, including transmitters, repeaters, and remote cameras so long as the facilities are designed to match the supporting structure.

7. A small wireless facility located in an interior structure or upon the site of any stadium or athletic facility, provided that the small wireless facility complies with applicable codes.

### **Section 22.18.5 Collocation of Small Wireless Facilities**

Collocation of small wireless facilities on land used as single-family residential property or vacant land that is zoned for single-family development, and any small wireless facility that extends more than ten (10) feet above the utility pole, city utility pole, or wireless support structure on which it is collocated, are subject to Section 18.21. Notwithstanding the foregoing, replacement of an existing streetlight for which the City's financially responsible with a streetlight capable of including a collocated, concealed small wireless facility is permitted on land used as single-family residential property or vacant land that is zoned for single-family development, pursuant to the requirements of Section 18.6.

Collocations of qualifying small wireless facilities in City right-of-way or outside of City right-of-way on land that is in a non-residential zoning district or land that is used for non-single-family residential property, are subject to the following requirements:

(a) **Application.** Applicants must complete an application as specified in form and content by the City. The application shall include the requirement of survey for the purposes of determining the new small wireless facility is located in city right of way or on private property. If an application is deemed incomplete by the City, the applicant must resubmit within ten (10) days of the date of the Notice of Incompleteness. Any resubmittal received by the City more than ten (10) days after the date of the Notice of Incompleteness will be treated as a new application. The Planning Director may grant an extension of this time limit, for good cause shown, upon receiving a request from the applicant before the expiration of the time limit.

(b) **Height.** Each new small wireless facility shall not extend more than ten (10) feet above the utility pole, city utility pole, or wireless support structure on which it is collocated.

(c) **Public Safety.** In order to protect public safety:

(1) Small wireless facilities shall cause no signal or frequency interference with public safety facilities or traffic control devices and shall not physically interfere with other attachments that may be located on the existing pole or structure.

(2) A structural engineering report prepared by an engineer licensed by the State of North Carolina shall be submitted by the applicant, certifying that the host structure is structurally and mechanically capable of supporting the proposed additional antenna or

configuration of antennae and other equipment, extensions, and appurtenances associated with the installation.

(3) A traffic and pedestrian management plan must be submitted for any installation that requires work in the public right-of-way.

(4) No portion of a small wireless facility may be placed in the public right-of-way in a manner that:

i. Obstructs pedestrians or vehicular or bicycle access, obstructs sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference; or

ii. Involves placement of pole-mounted equipment (other than cabling) whose lowest point is lower than eight (8) feet above ground level.

(5) An abandoned small wireless facility shall be removed within one hundred eighty (180) days of abandonment.

**(d) Objective Design Standards.**

(1) No signs are permitted on small wireless facilities except for official or public notice or warning signs required by a valid and applicable federal, state, or local law, regulation or chapter; by a public utility company; or by order of a court of competent jurisdiction.

(2) Small wireless facilities shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable federal or state regulations. Small wireless facilities shall be located, designed, and/or screened to blend in with the existing natural or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.

**(e) Stealth and Concealment.**

(1) All small wireless facilities shall be stealth facilities. Antenna and accessory equipment must be shrouded or otherwise concealed. Small wireless facilities shall blend with or match the structure to which they are attached.

(2) Small wireless facilities to be collocated with a streetlight must be designed such that all cabling is inside the streetlight pole.

**(f) Screening, Landscaping, and Spacing Requirements for Ground Equipment.**

(1) Ground equipment shall be screened, to the extent possible, with evergreen plantings or other acceptable alternatives approved by the Planning Director.

**(g) Reserved.**

**(h) Applicable Codes.**

Small wireless facilities must meet applicable codes.

**Section 22.18.6 Utility Poles and City Utility Poles Associated with Small Wireless Facilities**

The placement of new utility poles is prohibited in single family residential property where all utilities are underground. Modification or replacement of qualifying utility poles and qualifying city utility poles existing as of May 6, 2019, is not prohibited; however, the maintenance, modification, operation, or replacement of qualifying utility poles and qualifying

city utility poles associated with small wireless facilities are subject to the following requirements:

**(a) Application.**

Applicants must complete an application as specified in form and content by the City. The application shall include the requirement of survey for the purposes of determining the new small wireless facility is located in city right of way or on private property. If an application is deemed incomplete by the City, the applicant must resubmit within ten (10) days of the date of the Notice of Incompleteness. Any resubmittal received by the City more than ten (10) days after the date of the Notice of Incompleteness will be treated as a new application. The Planning Director may grant an extension of this time limit, for good cause shown, upon receiving a request from the applicant before the expiration of the time limit.

**(b) Height.**

Each modified or replacement utility pole or city utility pole shall not exceed (i) forty (40) feet above ground level on property zoned for or used as single- family residential property, or in the right-of-way adjacent to such property, where existing utilities are installed underground, or (ii) fifty (50) feet above ground level on all other property. Each new small wireless facility shall not extend more than ten (10) feet above the associated utility pole, city utility pole, or wireless support structure on which it is collocated.

**(c) Small Wireless Facilities.**

All requirements of Section 18.5 apply to small wireless facilities located on a utility pole, city utility pole, or wireless support structure.

**(d) Public Safety.**

In order to protect public safety:

(1) No replacement utility poles or city utility poles associated with a small wireless facility are permitted in the clear zone as defined in the City of Conover Standard Specifications & Details Manual or if none such similar clear zone defined by North Carolina Department of Transportation regulations unless such replacement pole is breakaway rated.

(2) No portion of a utility pole or city utility pole associated with a small wireless facility may be placed in the public right-of-way in a manner that:

i. Obstructs pedestrians or vehicular or bicycle access, obstructs sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference; or

ii. Involves placement of pole-mounted equipment (other than cabling) whose lowest point is lower than eight (8) feet above ground level.

**(e) Objective Design Standards.**

(1) No signs are permitted on utility poles or city utility poles except for official or public notice or warning signs required by a valid and applicable federal, state, or local law, regulation or chapter; by a public utility company; or by order of a court of competent jurisdiction.

(2) Utility poles or city utility poles associated with a small wireless facility shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable federal or state regulations. Utility poles or city utility poles associated with a small wireless facility shall be located, designed, and/or screened to blend in with the existing natural or built

surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.

**(f) Stealth and Concealment.**

(1) All antenna and accessory equipment must be shrouded or otherwise concealed and shall blend with or match the pole to which they are attached.

(2) Small wireless facilities to be collocated with a streetlight must be designed such that all cabling is inside the streetlight pole.

**(g) Reserved.**

**(h) Applicable Codes.**

(1) Utility poles and city utility poles associated with a small wireless facility must meet applicable codes.

**Section 22.18.7 Standard Conditions**

(a) Applicant must obtain all other required permits, authorizations, approvals, agreements, and declarations that may be required for installation, modification, and/or operation of the proposed facility under federal, state, or local law, rules, or regulations, including but not limited to encroachment agreements and FCC approvals. An approval issued under this Section 22.18 is not in lieu of any other permit required under the Zoning Ordinance or City Code, nor is it a franchise, license, or other authorization to occupy the public right-of-way, or a license, lease, or agreement authorizing occupancy of any other public or private property. It does not create a vested right in occupying any particular location, and an applicant may be required to move and remove facilities at its expense consistent with other provisions of applicable law. An approval issued in error, based on incomplete or false information submitted by an applicant or that conflicts with the provisions of the Zoning Ordinance, is not valid. No person may maintain a small wireless facility in place unless required state or federal authorization remain in force.

(b) All small wireless facilities and related equipment, including but not limited to fences, cabinets, poles, and landscaping, shall be maintained in good working condition over the life of the use. This shall include keeping the structures maintained to the visual standards established at the time of approval. The small wireless facility shall remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than thirty (30) calendar days from the date of notification by the City. In public rights-of-way, damaged or deteriorated components must be corrected within five (5) business days of notification.

(c) The property owner(s) or applicant shall submit a certification letter from a North Carolina certified land surveyor or licensed engineer which verifies that structure height complies with the approved development plan.

(d) The applicant or owner shall maintain onsite at the facility contact information for all parties responsible for maintenance of the facility.

(e) Small wireless facilities, whether operating alone or in conjunction with other facilities, shall not generate radio frequency emissions in excess of the standards established by the Federal Communications Commission.

(f) After written notice to the applicant and/or owner, the City may require the relocation, at the applicant/owner's expense, of any small wireless facility, and the associated utility pole, city utility pole, or wireless support structure on which it is collocated, located in the public right-of-way, as necessary for maintenance or reconfiguration of the right-of-way or for other

public projects, or take any other action or combination of actions necessary to protect the health and welfare of the City.

(g) Collocation or modification of small wireless facilities on an existing non-conforming wireless support structure or base station shall not be construed as an expansion, enlargement, or increase in intensity of a non-conforming structure and/or use, provided that the collocation or modification constitute an eligible facilities request.

(h) Collocation of small wireless facilities shall commence within six (6) months of approval and each small wireless facility shall be activated for use no later than one (1) year from the date of approval. These time limits shall be extended if delay is caused by a lack of commercial power to the small wireless facility. The Planning Director may grant an extension of these time limits, for good cause shown, upon receiving a request from the applicant before the expiration of the applicable time limit.

Section 2. Effective Date.

This ordinance shall be effective upon adoption.

Adopted this 6th day of May 2019.

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Lee E. Moritz, Jr., Mayor

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Cara C. (Chris) Reed, City Clerk