

ORDINANCE NO. ~~2021-18-2009~~

AN ORDINANCE TO AMEND CHAPTER 10, ARTICLE IV OF THE CODE OF ORDINANCES OF THE CITY OF FOLEY REGARDING THE ADOPT REGULATIONS OF FOR SMALL CELL TECHNOLOGY FACILITIES IN THE CITY OF FOLEY, ALABAMA

~~WHEREAS, on May 29, 2018, the City Council of the City of Foley, Alabama, passed Ordinance 2018-2009, adopting certain regulations for the deployment of Small Cell Facilities in the City of Foley, Alabama; and seeks to facilitate the availability of reliable, personal wireless communication services for its citizens and the public by permitting the placement of Small Cell Technology Facilities and associated structures on or along the Right of Way and on private properties in the City; and~~

WHEREAS, the installation, expansion, and maintenance of Small Cell Technology Facilities and associated structures on or along the Right of Way and on private properties might have significant impact upon: (1) the aesthetic values and historic character of the City; (2) safe use and passage on or along the Rights of Way by the public; and (3) properties and property values in the City in areas where such structures are placed; and

WHEREAS, the Federal Telecommunications Act of 1996 (the "Act") and regulations promulgated with respect to the Act by the Federal Communications Commission ("FCC") authorize local governments to enact reasonable regulations for the placement, expansion, height, and maintenance of Small Cell Technologies Facilities and associated structures; and

~~WHEREAS, on February 19, 2021, the State of Alabama passed Act #2021-5, which limited the power of municipalities to regulate Small Cell Facilities and established a uniform procedure for the approval of Applications for Small Cell Facilities on public property; and~~

~~WHEREAS, the City now seeks to Amend its prior Ordinance to bring it into compliance with the provisions of Act #2021-5, as provided in this ordinance and as permitted by Federal and State Law, the City seeks to mandate, where feasible, the collocation of Small Cell Technology Facilities on existing poles and other Support Structures as opposed to installation of new support structures; and~~

~~WHEREAS, the above noted collocation and other provisions of this ordinance are intended to be consistent with the Act and its associated regulations; and~~

~~WHEREAS, the adoption of the regulations, procedures and requirements in this ordinance will permit Applicants and Providers to enhance the provision of personal wireless service and protect the public welfare, health, safety and interests of the City's citizens.~~

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Foley, Alabama, as follows:

The provision of A new Chapter 10, Article IV, shall be Amended as follows which reads as follows, is hereby adopted and shall be inserted in the Foley Municipal Code:

Chapter 10 – Article IV – Small Cell Technology Facilities

Section 1 - Definitions - The terms below have the following meanings for purposes of this ordinance:

a. "Abandonment" or "Abandon(s)" means that, following the placement of Small Cell Technologies Facilities (and associated Accessory Equipment) or Support Structures in the City pursuant to a permit issued to a Provider or an Applicant, any of the following has occurred:

(a) for any reason, excluding disasters or declared emergencies, the Facilities cease to be used to transmit signals, data or messages or otherwise be used for their intended purposes for a continuous period of ninety (90) days;

(b) the City revokes the permit for placement and use of those Facilities due to nonpayment of applicable fees, the failure of the Provider or Applicant to comply with conditions in the permit or in this ordinance concerning them, or other valid reason; or

(c) the Provider or Applicant fails to perform any of its responsibilities, obligations and requirements in this ordinance or in a permit that relate to the installation, construction, maintenance, use or operation of the Facilities, Accessory Equipment or Support Structures, and that breach remains uncured for a continuous period of sixty (60) days after the City provides written notice of the breach to the Provider or Applicant.

b. "Accessory Equipment" means any equipment other than an antenna that is used in conjunction with Small Cell Technology Facility arrangements. This equipment may be attached to or detached from a Small Cell Technology Wireless Support Structure, and includes, but is not limited to, cabinets, optical converters, power amplifiers, radios, DWDM and CWDM multiplexers, microcells, radio units, fiber optic and coaxial cables, wires, meters, pedestals, power switches, and related equipment on or in the immediate vicinity of a Support Structure.

c. "Antenna" means an apparatus designed for the purpose of emitting radio frequency, to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of wireless service. For purposes of this subdivision, the term does not include an unintentional radiator, mobile station, or device authorized under 47 C.F.R. Part 15. ~~means communications equipment that transmits and receives electromagnetic radio signals, is attached to a Small Cell Technology Wireless Support Structure and is used to communicate wireless service.~~

d. "Antenna Equipment" means equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with an antenna, located at the same fixed locations as the antenna, and, when collocated on a structure, mounted or installed at the same time as the antenna.

e. "Antenna Facility" means an antenna and associated equipment.

ef. "Applicant", whether singular or plural, means a personal wireless service provider, an entity that is authorized by a personal wireless service provider to apply for or receive a permit to install, construct, modify or maintain a Small Cell Technology Facility, Antenna, Antenna Equipment, an Antenna Facility and related Accessory Equipment or Support Structure in the City, or an entity certificated by the Alabama Public Service Commission to provide telecommunication service.

eg. "Application" means a formal request by a wireless provider to collocate, mount, or install a Small Cell Technology Facility, Antenna, Antenna Equipment, an Antenna Facility and related Accessory Equipment or Support Structure submitted to the City for a permit to install construct, or modify a Small Cell Technology Facility and related Accessory Equipment or Support Structure.

hf. "Approving Authority" means the individual employed by the City and tasked with approving applications submitted to the City pursuant to this Chapter.

ig. "City" means the City of Foley, Alabama including, but not limited to, the Board of Adjustments and Appeals for the City, the Zoning Board for the City. For the purposes of this Ordinance, the definition of "City" does not include the Utilities Board (Riviera Utilities).

hj. "City Council" means the City Council of the City of Foley, Alabama.

ki. "Collocation" means the placement or installation of a new Small Cell Wireless Technology Facility or related Accessory Equipment on an existing pole or other Support Structure that is owned, controlled or leased by a utility, the City, or other person or entity or modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

j. "Communications Facility" means the set of equipment and network components, including wires, cables, and associated facilities, used by a communications service provider.

k. "Communications Service" means any of the following: Cable service, as defined in 47 U.S.C. §522; information service, as defined 47 U.S.C. § 153; telecommunications service, as defined in 47 U.S.C. § 153; and wireless service.

l. "Communications Service Provider" means a provider of communications services.

m. "Micro Wireless Facility" means a small wireless facility that meets both of the following qualifications:

1) It is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height.

2) Any exterior antenna is no longer than 11 inches.

n. "Network Interface Device" means the telecommunications demarcation device and cross-connect point adjacent to the wireless facility or the support structure and demarcating the boundary with any wireline backhaul facility.

o. "Pole" means any pole in the right-of-way that is or may be used in whole or in part by or for wireless communications, lighting, traffic control, signage, or a similar function, or for the collocation of small cell wireless facilities. The terms does not include a building, billboard, monopole, tower (either guyed or self-supporting), or an electric distribution or transmission structure. Poles owned by an electric provider are excluded from this definition.

jp. "Personal Wireless Service Provider" or "Provider" means an entity that provides personal wireless communication services to the public or citizens of the City on a commercial basis and is authorized by the FCC to provide those services.

kq. "Private Property" means real property located in the City that does not lie within the Right Of Way.

lr. "Right of Way", whether singular or plural, means the surface and space in, upon, above, along, across, over and below any public streets, avenues, highways, roads, courts, lanes, alleys, boulevards, ways, sidewalks, and bicycle lanes, as the same now or may hereafter exist, that are within the City's corporate boundaries and under the jurisdiction of the City. This term shall not include county, state or federal rights of way or any property owned by any person or entity other than the City.

ms. "Small Cell ~~Technology~~ Facility" or "Facilities", whether singular or plural, means a facility that meets each of the following conditions:

- 1) The facilities are any of the following:
 - i) Mounted on support structures 50 feet or less in height, including the antennas.
 - ii) Mounted on support structures no more than 10 percent taller than other adjacent structures.
 - iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.
- 2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.
- 3) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.
- 4) The facilities do not require antenna structure registration under 47 C.F.R. Part 17.
- 5) The facilities are not located on tribal lands, as defined under 36 C.F.R. § 800.16.
- 6) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. §1.1307(b).
and includes the following types of structures: (a) antenna; and (b) associated Accessory Equipment.

¶. "Small Cell ~~Facility~~~~Technology~~—Wireless Support Structure" or "Support Structure", whether singular or plural, means a freestanding structure designed or used to support, or capable of supporting, Small Cell ~~Technology~~ Facilities, including, but not limited to, utility poles, street light poles, traffic signal structures, rooftops, attics, or other enclosed or open areas of a building or accessory structure, a sign, or a flag pole, located solely in the Right of Way and owned by the City or with the written permission of the support structure owner. These terms do not include the City's decorative and architecturally significant street light poles as those decorative lights are inappropriate for use as a Support Structure and further do not include any structure located in the Right of Way and owned by an entity other than the City without the written permission of the owner of the structure.

¶. "Stealth Technology" means a method(s) of concealing or minimizing the visual impact of a Small Cell Technology Facility (and associated Accessory Equipment) and Support Structure by incorporating features or design elements which either totally or partially conceal such Facilities or equipment. The use of these design elements is intended to produce the result of having said Facilities and associated structures blend into the surrounding environment and/or disguise, shield, hide or create the appearance that the Facilities are an architectural component of the support structure.

v. "Wireless Facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including both of the following: Equipment associated with wireless communications; and radio transceivers, antennas, coaxial, metallic, or fiber-optic cable located on, in, or under a pole or wireless support structure, or otherwise adjacent to such structures, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes Small Wireless Facilities. The terms do not include any of the following: the structure or improvements on, under, or within which the equipment is collocated; wireline backhaul facilities; or coaxial, metallic or fiber-optic cable that is between structures or that is otherwise not adjacent to a particular antenna or the structure supporting the antenna.

w. "Wireless Infrastructure Provider" means any person, including a person authorized to provide telecommunications service in the state, that builds or installs facilities for the provision of wireless service, but that is not either a wireless service provider or an electric provider.

x. "Wireless Provider" means a wireless infrastructure provider or a wireless service provider.

y. "Wireless Service" means any service(s) using licensed or unlicensed radio spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public. The term does not include services provided by an electric provider using wireless devices, facilities, or equipment in support of services of the electric provider.

z. "Wireless Service Provider" means a person who provides wireless service.

aa. “Wireline Backhaul Facility” means an above-ground or underground wireline facility used to transport communications data or other electronic communications data or other electronic communications from a wireless facility network interface device to a communications network.

Section 2 - Permit Required to Place Small Cell Technology Facilities in Right-of-Way –

a. A Provider or Applicant must obtain a permit from the City before placing, installing, or constructing any Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located on the Right of Way, or substantially modifying the position or characteristics of any such existing Facility thereon.

b. The Approving Authority will review and administratively process any Application within the time limits set forth in Section (3)(d) below and will approve any completed Application to either (1) collocate, mount, or install a Small Cell Facility on or adjacent to existing, new or replacement poles in the right-of-way; or (2) install, modify, or replace its own poles, or, with the permission of the owner, a third-party’s poles, associated with a Small Cell Facility, along, across, upon, and under the right-of-way controlled by the City, provided the following conditions are met:

1. The Application is not in conflict with any of the requirements of Act 2021- 5;

2. The Application is not in conflict with any existing FCC order or regulation;

3. The Facility proposed in the Application will not obstruct or hinder the usual travel and public safety on the right-of-way and adjacent roads and bridges or obstruct the legal use of the right-of-way by utilities; and

4. The Facility proposed by the Application does not exceed the greater of:

i) ten feet in height above the tallest existing pole in place as of July 1, 2021, located within 500 feet of the new pole in the same right-of-way; or

ii) fifty feet above ground level.

~~request for a permit to determine whether, in the exercise of the Approving Authority's reasonable discretion, it should be issued for the location and in the manner requested by the Applicant. In this process, the burden is on the Provider or Applicant to demonstrate that the placement of the proposed Small Cell Technology Facility and associated Accessory Equipment or Support Structure on the Right of Way is the minimal physical installation which will achieve the goal of enhancing the provision of personal wireless services when considering all pertinent factors discussed in the provision immediately below. Except as set forth in this section, †This permitting process will be administrative and not require public hearings or the approval of any City Council or City employee other than the Approving Authority.~~

~~e. The factors, requirements and guidelines that the Approving Authority may consider and will apply when determining whether to issue a permit for placement of new Support Structures or Facilities and associated structures on the Right of Way include, but are not limited to, the following:~~

- ~~i. the demonstrated need for placing the structures at the requested location and geographic area in order to deliver or enhance personal wireless service;~~
- ~~ii. the visual impact of placing the Support Structures or Facilities in the subject area;~~
- ~~iii. the character of the area in which the structures are requested, including surrounding buildings, properties and uses;~~
- ~~iv. whether the appearance and placement of the requested structures is aesthetically consistent with the immediate area;~~
- ~~v. whether the structures are consistent with the historic nature and characteristics of the requested location;~~
- ~~vi. the Applicant's or Provider's network coverage objective and whether the Applicant or Provider should use available or previously unconsidered alternative locations to place the Support Structures or Facilities;~~
- ~~vii. whether the proposed installation could cause harm to the public or pose any undue risk to public safety;~~
- ~~viii. whether the proposed installation may interfere with vehicular traffic, sight distance, passage of pedestrians, or other use of the Right of Way by the public; and~~
- ~~ix. if the proposed installation will disturb conditions on the Right of Way, whether the Applicant can demonstrate its ability and financial resources to restore the subject area to its pre-existing condition following installation.~~

~~etc.~~ To the extent practical, all Facilities and associated Accessory Equipment that are placed in the City shall be attached to a pre-existing Support Structure that is owned, controlled or leased by a utility, franchisee, the City or other entity. However, nothing in this Ordinance shall be interpreted to permit the Applicant to locate a Facility or Accessory Equipment on structures owned by entities other than the City without the permission of said owner of the structure. If the Applicant demonstrates that no Colocation opportunities exist in the area where a technologically documented need for a facility exists, the Applicant may request that a new pole or other Support Structure be installed in that area for purposes of constructing the Facilities. Before any new Support Structure is permitted, each of the following must occur:

- i. the Applicant must have provided the City written evidence that no practical Colocation opportunity exists. This evidence shall include, but

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not be limited to, affidavits, correspondence, or other written information that demonstrates that the Applicant has taken all commercially reasonable actions to achieve colocation in the requested location or area, that the Applicant has pursued but been denied access to all potential collocation sites in the subject area (and the reasons for any such denial(s)), and otherwise show that the Applicant is unable to Collocate on an existing Support Structure;

- ii. the ~~Approving Authority City~~ must recommend the placement of a new Support Structure in the Right of Way.

~~e. If a Facility is attached to a utility pole or other Support Structure in the Right of Way, no antenna or other part of the Facility shall extend more than five (5) feet above the height of that structure; provided that, in the event that the Applicant demonstrates that National Electric Safety Code regulations or other factors create an undue hardship in complying with this height requirement, the Approving Authority may permit a facility to extend up to ten (10) feet above the height of such Support Structure. The Approving Authority may grant a variance or waiver for good cause shown.~~

~~f.~~ The Accessory Equipment shall, if reasonably possible, be placed at least 10 feet above the ground. The color of the Antenna and Accessory Equipment shall be compatible with that of the Support Structure. The Facility (including the Accessory Equipment) shall not be illuminated.

Section 3 - Application Process

- a. At a minimum, each application for a permit shall contain all of the following:
 - i. engineering drawings and photo-sims depicting the type of Facilities, Support Structure, and means and points at which such Facilities and associated Accessory Equipment will be attached to a Support Structure for each individual Facility;
 - ii. details of the antenna and radio makes and models as well as frequencies used and the weights of each piece of equipment.
 - ii. map(s) designating with specificity the location(s) of the requested Facilities;
 - iii. the geographic coordinates of all antenna and other proposed Facilities;
 - iv. if the Facilities will be located on a Support Structure on the Right of Way that is owned by any entity other than the City or the Applicant, a copy of any license, lease, agreement or other documentation evidencing that the owner of that Support Structure authorizes the Facilities to be attached

thereto or agrees in principle to authorize that attachment; provided that, if a representation is made to the City that the attachment has been authorized in principle by the owner of the Support Structure but the Applicant subsequently fails to furnish the City documentation that finalizes any such agreement, the City may refuse to issue the requested permit until that documentation is provided, or, if the City issues the requested permit before receiving such final documentation, the subject permit may be revoked and any license to use that part of the Right of Way be rescinded;

- v. if the Applicant requests permission to place Facilities on a new Support Structure, the substantiation therefor required by Section 2(d) in this Ordinance;
- b. Each proposed Facility must conform to the following minimum standards:
- i. any cables must be covered by a metal U-Guard painted to match the Support Structure. No exposed cables of any kind are permitted;
 - ii. no service loops;
 - iii. minimal coax jumpers;
 - iv. any service boxes must be accessible from the side of the Facility facing away from any public streets;
 - v. for Facilities to be attached to a new Support Structure, any antennas for the Facility may only extend to a maximum point that is 35 feet above ground level;
 - vi. for Facilities to be attached to an existing Support Structure, any antennas for the Facility may extend to a maximum point that is 10 feet above the height of the Support Structure to which the Facility is to be affixed;
 - vii. must conform generally to the aesthetics and standards of the City.

~~The approval or disapproval of any application for a permit for a Facility shall, at all times, be at the sole discretion of the Approving Authority.~~ The Approving Authority shall have the right to disapprove any application for a permit for a Facility that, ~~in its sole discretion,~~ does not conform to the requirements of this Ordinance, or to the requirements of any other Ordinance of the City.

c. An application shall not be deemed complete until the Applicant has submitted all documents, information, forms and fees specifically enumerated in this Ordinance that pertain to the location, construction, or configuration of the Facilities or Support Structures at the requested location(s).

d. Within ~~ten (10) thirty (30) calendar~~ days after an application for permit is submitted, the City shall notify the Applicant in writing whether the application is complete. If the City determines the application is incomplete, the City shall clearly and specifically delineate~~ing~~ all missing documents or information and specify the requirements that create the obligation to submit the missing documents or information in the written notice., ~~if any additional information is needed to complete that application or supplemental information is required to process the request. Upon supplemental submission, the City shall have ten (10) days to identify in writing anything missing from initial notice. Second or subsequent notices of incomplete information may not specify missing documents or information that were not delineated in the original notice. If the City does not notify the applicant in writing that the application is incomplete within thirty (30) days following its receipt, the application is deemed complete. If the written notice of incompleteness is provided within 10 days of receiving the application, the processing deadlines in subsection (e) (below) shall restart at zero on the date the Applicant submits all the documents and information identified by the City to render the Application complete.~~

e. Unless another date is specified in a written agreement between the City and the Applicant, the City will have the following time periods to make its final decision to approve or disapprove an application for a permit contemplated in this ordinance and advise the Applicant in writing of that determination:

- i. sixty (60) calendar days from the date an application for a permit is filed with respect to a request to Collocate Facilities on an existing Support Structure; and
- ii. ninety (90) calendar days from the date an application for a permit is filed with respect to a request to attach Facilities to a new Support Structure.

f. To the extent additional information is required to complete the Application after it is filed, the applicable calendar day review period set forth in Section 3(d) shall be tolled and not continue to run until the Applicant has provided any missing or requested supplemental information; provided that tolling shall not occur if the City does not advise the Applicant in writing of the incompleteness of a submitted application within ~~ten (10) thirty (30)~~ days after that submission.

~~g. If the City fails to act on an Application within the review period provided for in the subsection, the Applicant may provide the City, by certified mail, a formal notice stating that unless the City approves or denies the Application within twenty (20) days from the receipt of the notice, the Application and all associated permits will be deemed granted by operation of law on the 21st day from receipt of the notice.~~

~~gh. An Applicant may, at the Applicant's discretion, file a consolidated Application and receive a single permit for a geographic area no more than two (2) miles in diameter. The approval of a consolidated Application shall apply to the collocation, mounting, or installation of the multiple small wireless facilities or associated poles. The denial of one or more small~~

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wireless facilities or associated poles that are part of a consolidated Application may not constitute a reason for denying the remaining Small Cell Facilities or associated poles included in the consolidated Application. A consolidated Application that includes a request to install, modify, or replace a pole shall be processed in accordance with the procedures and shall be subject to the 90-day review period set forth in Section 3(e)(ii). up to twenty (20) Facilities; provided that all such Facilities are located in the same Zoning classification.

i. The City does not require an application or any other approval or charge any fees or rates for any of the following activities:

1. Routine maintenance conducted on Small Cell Facilities by the holder of an approved application for the Small Wireless Facilities, provided that such work does not interfere with the use of the right-of-way or adjacent roadways and provided that the right-of-way is restored to the pre-maintenance condition;

2. The replacement of Small Cell Facilities that are operated by the holder of an approved application for the Small Cell Facilities, are substantially similar or the same size or smaller, and still qualify as a Small Cell Facility;

3. The deployment, installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables that are strung between existing poles by an entity with a franchise agreement or other valid authorization with the City.

j. Notwithstanding subsection (i)(3), the deployment of a micro wireless facility that requires the installation, placement, or replacement of any ground-mounted facilities in the right-of-way shall be subject to any applicable permitting process of the City.

k. Notwithstanding subsection (i), the City requires a permit for work that requires excavation or the closure of sidewalks or vehicular lanes or that otherwise hinders the usual travel or public safety on the right-of-way or adjacent roads and bridges or obstructs the legal use of the right-of-way.

l. In the event of any work under subsections (i) – (k), the right-of-way and adjacent roadways shall be restored to the condition prior to the work being conducted.

m. Any Small Cell Facility approved by the City must be operational within 360 days after the date of the last permit being issued, subject to the availability of wireline backhaul, electric power, or other matters beyond the control of the Applicant. If the Small Cell Facility is not operational within this time, then the City may give the Applicant twenty (20) days written notice and opportunity to cure. If the Applicant fails to cure the matter in the time proscribed, then the City may (1) cancel the approval of the Small Cell Facility and any associated Support Structure; and (2) remove any existing Small Cell Facility or associated Support Structure at the Applicant's sole expense.

Section 4 - Reconsideration/Appeal

a. Any Applicant that desires reconsideration of an administrative decision by the Approving Authority to deny a request for a permit to place a Facility or Support Structure on the Right of Way may seek review, modification or reversal of that decision by the City Council by submitting a request for reconsideration with the City Clerk within twenty-one (21) calendar days following the Approving Authority's decision. That request for reconsideration will be considered by the City Council at a regular Council meeting that will be conducted as soon as practical after the request for reconsideration is made. If no request for reconsideration is submitted, the decision of the Approving Authority will be final.

b. Additionally, the Applicant, within thirty (30) days following a decision by the City Council to either (i) deny a request for reconsideration or (ii) to not approve the placement of a new Support Structure on the Right of Way, may appeal either of those decisions by the City Council to the Circuit Court of Baldwin County, Alabama or other court with jurisdiction. If no appeal of those decisions of the City Council is made, those will be deemed final.

Section 5 - Additional Requirements - Any Provider or Applicant to whom a permit is issued and that places Facilities and associated Support Structures on the Right of Way also shall comply with the following requirements as long as those Facilities and Support Structures are on or under the Right of Way:

a. Prior to installing the Facilities or Support Structures, the Applicant shall provide the City a certificate(s) of insurance evidencing that it has obtained and will maintain the following types of insurance in connection with its operations on or use of the Right of Way: (1) General Liability coverage insuring the risk of claims for damages to persons or property arising from or related to the installation, construction, maintenance, operation or any use of Facility or Support Structure placed on or along the Right of Way by the Applicant (or any of their contractors) with limits of ~~two~~ million dollars (\$~~2,000,000.00~~) per occurrence and in the aggregate; and (2) Workers Compensation Insurance as required by Alabama state law. The General Liability coverage shall list the City as an additional insured, and may be provided through a combination of a primary and umbrella policies. All insurance policies shall be furnished by insurers rated at least A-VII by AM Best and eligible to transact business in the State of Alabama. On an annual basis following initial installation, the Applicant also shall furnish the City a Certificate indicating that the above-noted coverage remains and will remain in effect. Alternatively, an Applicant with a net worth of at least two hundred fifty million dollars (\$250,000,000.00), may self-insure any or all of the insurance required in this provision under the same terms and conditions as specified herein.

b. All Facilities and associated Support Structures shall be installed, erected, maintained and operated in compliance with applicable federal, state, and local laws and regulations, including, but not limited to, regulations of the FCC.

c. Following the installation of any Facilities and associated Support Structures, the Provider or Applicant, upon reasonable request and for good cause, shall furnish the Approving Authority a written certification from a licensed professional engineer in the State of Alabama stating that those structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to

the transmission of wireless communication signals. For purposes of this provision, "good cause" shall mean circumstances have arisen that indicate the Facilities and associated Support Structures have been damaged, are not functioning in compliance with applicable laws and regulations, or otherwise pose a hazard to the public. If those Support Structures should fail at any time to comply with applicable laws and regulations, the Provider or Applicant, at either of their expense, shall begin to cause those structures to be brought into compliance with said laws and regulations within fifteen (15) days of the date of any written notice to them from the Approving Authority of non-compliance, or cease all personal wireless service operations related to those structures until the Applicant or Provider comes into full compliance with said laws and regulations.

d. The Facilities and associated Support Structures must at all times be maintained in good and safe condition. Not more often than every five (5) years, the Approving Authority may request that the Provider or Applicant, at either of their expense, furnish certification from an engineer that the Facilities and Support Structures are in sound condition. Should that engineer deem those structures unsound, the Provider or Applicant shall furnish to the Approving Authority a plan to remedy any unsafe conditions or structural defect(s) and take that remedial action at the Provider or Applicant's expense, as directed by the Approving Authority.

e. Each Applicant or Provider that applies for a permit to place Facilities (including the Accessory Equipment) and Support Structures on the Right of Way and installs and utilizes those structures shall defend, indemnify and hold the City and its employees or officials, harmless from all demands, losses, expenses (including attorney's fees and court costs), claims for personal injury or property damage, judgments or liabilities of any type that may be asserted or claimed against the City (or its employees or officials) by any third person, firm or entity that arise out of or relate in any manner to the following: (1) the installation, construction, maintenance, use or operation of the permitted Facilities, Accessory Equipment or any Support Structure on or about the Right of Way; and (2) the failure of the Provider or Applicant to perform any of their respective responsibilities, obligations and permit requirements in this ordinance. Notwithstanding the foregoing, the Provider or Applicant shall not be obligated to indemnify the City for City claims resulting from the sole negligence or willful acts of the City (or its representatives).

Section 6 - Permit and License Fees - The Applicant for a permit to place Facilities and associated Support Structures on the Right of Way shall pay the following fees:

- a. a non-recurring permit application and review fee of \$500.00 for a single Application with up to five Small Cell Facilities, with an additional \$100.00 for each Small Cell Facility beyond five in a consolidated Application. ~~\$200.00 to be paid when an application is submitted;~~
- b. a non-recurring ~~a~~ permit issuance fee of \$250.00 ~~100.00 for the modification or replacement of~~ ~~per~~ each Support Structure on the Right of Way together with the mounting or installation of an associated Small Cell Facility- contemplated for attachment; ~~and~~

c. ~~a non-recurring \$1000.00 for each new Support Structure together with the mounting or installation of an associated Small Cell facility in the right-of-way; and~~

d. ~~an annual access fee license fee of \$100.00500.00 per each Small Cell FacilitySupport Structure on the Right of Way~~ pertaining to the ongoing use of public property.

Section 7 - Franchise Agreements for Other Uses of Right of Way - This Section ___ regulates the placement of Small Cell Technology Facilities (and associated Accessory Equipment) on or in the immediate vicinity of Support Structures that are located or proposed to be located on or along the Right of Way. No provision in this Section ___ or elsewhere in this Ordinance is intended to permit, regulate or authorize the placement by a Provider or Applicant of fiber optic lines, coaxial cable, switches, pedestals or networking equipment of any type that is used to transport telecommunication signals, data or messages between Support Structures or between any other points on or along the Right of Way. In the event any such Provider or Applicant desires to place telecommunications equipment or Facilities along the Right of Way at points not regulated by this Ordinance, the City may enter into franchise or similar agreement that authorizes, governs and applies to such use of other locations on or along the Right of Way.

Section 8 - Placement of Small Cell Technology Facilities on Private Property

a. A Provider or Applicant must obtain a permit from the City, and any other commission or agency responsible for regulating the placement of structures on private property (such as the Historical Commission or Board of Adjustments and Appeals) before placing, installing, or constructing any Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located on private property, or substantially modifying the position or characteristics of any such existing facility thereon.

b. The Approving Authority will review and administratively process any request for a permit to determine whether, in the exercise of the Approving Authority's reasonable discretion, it should be issued for the location and in the manner requested. In this process, the burden is on the Applicant to demonstrate that the placement of the proposed Small Cell Technology Facility and associated Accessory Equipment or Support Structure on private property is the minimal physical installation which will achieve the technological goal of enhancing the provision of personal wireless services. Except as set forth in this section, this permitting process will not require the approval of any City Council or City employee other than the Approving Authority.

c. The factors, guidelines and requirements that the Approving Authority may consider and will apply when determining whether to issue a permit for placement of Facilities and any associated Accessory Equipment or Support Structure on private property include, but are not limited to the factors and requirements set forth in Section 2.

d. The guidelines in Section 2 to utilize existing poles and Support Structures for the placement of Facilities and Accessory Equipment are also applicable when considering whether to permit the installation of those Facilities and Support Structures on private property, provided

that City Council approval is not required before a permit is issued to place a new pole or other Support Structure on private property if that action is appropriate.

e. The Provider or Applicant shall use Stealth Technology when installing the Facilities and associated Accessory Equipment on any building or accessory to that building that is located on private property. Further, Stealth Technology should be used when placing Facilities on other types of Support Structures on private property unless the Applicant can reasonably demonstrate that, given the nature of the requested application, the use of such Technology is (a) unnecessary; or (b) impractical.

f. If Facilities are placed on an existing or new building or accessory to that building, the following dimensional regulations shall apply:

- i. Facade-mounted antennas shall not extend above the face of any wall or exterior surface of the building.
- ii. Roof-mounted antennas and Accessory Equipment may be permitted on buildings in accordance with the following table:

Height of Building	Maximum Height of Facility Above Highest Point of Roof	Required Setback from Edge of Roof of Building
Up to 15 feet	8 feet, including antenna	1 foot for every foot of height of equipment
15-35 feet	10 feet, including antenna	1 foot for every foot of height of equipment
More than 35 feet	12 feet, including antenna	1 foot for every foot of height of equipment

- iii. The antenna component of the Facilities shall be limited to a maximum height of three (3) feet and a maximum width of two (2) feet; provided that authorization to install antenna up to six (6) feet in height may be permitted if a showing of the technological need for such equipment is made and other requirements of this Section are met.

g. Accessory Equipment must be located in an equipment cabinet, equipment room in an existing building or in an unmanned equipment building. If the equipment building is freestanding, it shall conform with respect to building setbacks, size, and location. Further, if an equipment building or cabinet is located in a residential zone, or the nearest adjoining property is in a residential zone, that building or cabinet shall be surrounded by landscaping to provide a screen of the same height as the building or cabinet.

h. Except as provided in subsections (h)(i) and (h)(ii) immediately below, the same application process that is set forth in Section 3 will be utilized when processing any request for a permit to place Facilities or Support Structures on private property, except that:

- i. City Council approval to install a new Support Structure on private property is not a condition for a permit to place Facilities thereon; and
- ii. if the Facilities are located on private property that is not owned or exclusively used by the Applicant, instead of providing the documentation contemplated in Section 3, the Applicant shall present a license, lease, agreement or other documentation indicating that owner of said property authorizes the Applicant the rights to place the Facilities thereon and access thereto, or that such owner agrees in principle to grant the Applicant those rights; provided that, if a representation is made to the City that the owner of private property has agreed in principle to grant those rights but the Applicant subsequently fails to furnish the City documentation that finalizes any such agreement, the City may refuse to issue the requested permit until that documentation is provided, or, if the City issues the requested permit before receiving such final documentation, the subject permit and license may be revoked.

i. All Facilities and Support Structures shall be installed, erected, and maintained in compliance with applicable federal, state, and local laws and regulations, including, but not limited to, regulations of the FCC. At least triennially following the installation of the Facilities or associated Support Structures, upon reasonable request and for good cause, the applicant shall furnish the Approving Authority a written certification from a professional engineer licensed in the State of Alabama indicating that those structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals. For purposes of this provision, "good cause" shall mean circumstances have arisen that indicate the Facilities and associated Support Structures have been damaged, are not functioning in compliance with applicable laws and regulations, or otherwise pose a hazard to the public. If those structures fail at any time to comply with said laws and regulations, the Provider or Applicant shall begin to cause those structures to be brought into compliance with said laws and regulations within fifteen (15) days of the date of any written notice to either of them of such non-compliance, or cease all personal wireless communications operations related to those structures until the Provider or Applicant comes into full compliance with applicable laws and regulations. The Facilities and associated Support Structures on private property must at all times be maintained in good and safe condition.

j. Permit and License Fees. The provider or applicant for a permit to place Facilities and associated Support Structures on private property shall pay the following fees:

- i. a permit application and review fee of \$200.00 to be paid when an application is submitted; and,
- ii. a permit issuance fee of \$100.00 per each Support Structure on private property contemplated for attachment.

Section 9 - Abandonment of Facilities on Right of Way - If a Provider or Applicant abandons any Facility (including the Accessory Equipment) or an associated Support Structure (collectively "Facilities" for purposes of this Section) that is located on the Right of Way, the following rights and obligations shall exist. The City may require the Provider or Applicant, at their expense, to remove and reclaim the abandoned Facilities within sixty (60) days from the date of written notice of abandonment given by the City to them and to reasonably restore the condition of the property at which the Facilities are located to that existing before they were installed. If the Provider or Applicant fails to remove and reclaim its abandoned Facilities within such 60-day period and the Facilities are located on the Right of Way, the City shall have the rights to (a) remove them and charge its expense of any such removal operation to the account of the Provider or Applicant, (b) purchase all abandoned Facilities at the subject location from the Provider or Applicant in consideration for \$1.00, (c) at the City's discretion, either resell the abandoned Facilities to a third party or dispose and salvage them; provided that the proceeds of any resale of abandoned Facilities by the City to a third party shall be credited to the account of the Applicant or Provider that used those Facilities before the abandonment, and (d) charge any expense incurred by the City to restore the Right of Way to the account of the Provider or Applicant.

Section 10 – Collocation - To promote the public interest that is served by collocating Facilities and associated Accessory Equipment on existing Support Structures and thereby mitigating the installation of additional Support Structures throughout the City, no person or entity (including any Provider, Applicant, utility, or franchisee) that utilizes an existing Support Structure that is located on Right of Way or on private property in the City and has space available thereon may deny a Provider or Applicant the right to use or access an existing Support Structure for purposes of attaching Facilities permitted by this ordinance without sound operational, technological or other good reason.

Section 11 - Non-Applicability - The placement of an antenna(s), facilities or equipment related to the following types of wireless communication services are exempt from regulation under this ordinance: (a) amateur radio service that is licensed by the FCC if the facilities related thereto are not used or licensed for any commercial purpose; and (b) facilities used by any federal, state or local government or agency to provide safety or emergency services.

Section 12- Miscellaneous

a. All other provisions of the Code of Ordinances shall remain in full force and effect and shall not be affected by this ordinance.

b. If any part, provision, or section of this ordinance is declared to be unconstitutional or invalid by any court of competent jurisdiction, all other parts, provisions or sections of this ordinance not thereby affected shall remain in full force and effect.

c. Nothing in this Ordinance shall be deemed to allow the installation of Facilities in violation of any covenant or other restriction that is the result of the Facility being located in a Historic District within the City. The issuance of a permit under this Ordinance is not a waiver of any requirements that the Facility conform with the covenants or restrictions of any Historic

District, and any Facility installed pursuant to the issuance of a permit under this Ordinance must conform to any such requirements.

Section 13 – Effective Date - This ordinance shall become immediately effective upon its adoption by the City Council and approval by the Mayor or as otherwise becoming law.

ADOPTED this the ____ day of _____ 2021~~18~~.