

Recommended By: Council President William A. Parker

Submitted By: Council President William A. Parker

ORDINANCE NO. 20-68

AN ORDINANCE TO AMEND TITLE 12 OF THE GENERAL CODE OF THE CITY OF BIRMINGHAM, 1980, BY ADDING AND ENACTING A NEW CHAPTER 3.10, ESTABLISHING STANDARDS FOR SMALL CELL FACILITIES IN THE CITY OF BIRMINGHAM

SECTION I. BE IT ORDAINED by the Council of the City of Birmingham that Title 12 of The General Code of the City of Birmingham, 1980, as amended, is hereby amended to add the following as Chapter 3.10:

Section 1. Purpose and Scope.

a. The purpose of this chapter is to reasonably regulate, to the extent permitted under state and federal law, the installations, operations, collocations, modifications, replacements and removals of small cell facilities in the City of Birmingham, recognizing the benefits of wireless communications while reasonably protecting other important city interests, including the public health, safety and welfare, aesthetics and local property values. It is the intent of these regulations to promote the health, safety and general welfare of the citizens of the city by establishing an orderly process for regulating the siting of small cell facilities while balancing the need for adequate service levels. In furtherance of these purposes, the city shall give consideration to the comprehensive plan and framework plans, the city's zoning code maps, existing land uses, and environmental, residential, historic and other sensitive areas in approving the location and siting of small cell facilities.

b. It is the further intent of this chapter to address the aesthetic effect of small cell facilities on landscapes in the city, the visual impact of small cell facilities on surrounding property owners, citizens' demands for these services, and the needs of service providers to close coverage gaps in service and provide greater capacity by implementing the following objectives:

- (1) Prevent interference with use of streets, sidewalks, alleys, parkways, and other public ways and places;
- (2) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

- (3) Prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;
- (4) Protect against environmental damage, including damage to trees;
- (5) Preserve neighborhood harmony and preserve and protect the character of the neighborhoods in which small cell facilities are installed, as indicated in the comprehensive plan of the city;
- (6) Promote the siting of small cell facilities in a manner such that potential adverse effects to the city and its residents are minimal in order to ensure harmony and compatibility with surrounding land uses;
- (7) Promote the location of small cell facilities in areas where the adverse impact on the community is minimal;
- (8) Establish a fair and efficient process for review and approval of wireless communication facility applications on both public and private property to ensure that applications for small cell facilities are reviewed and acted upon within a reasonable period of time or any specific period of time required by law;
- (9) Facilitate an integrated, comprehensive review for deployment of small cell facilities to provide the benefits of advanced wireless services and to ensure the protection of the health, safety and welfare of the citizens of the city;
- (10) Encourage the location and collocation of small cell facilities on existing structures, thereby minimizing adverse new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures through appropriate design, screening and location standards; and
- (11) Facilitate rapid deployment of small cell small cell facilities to provide the benefits of advanced wireless services, which include a competitive array of options for consumers and businesses.

c. It is not the purpose or intent of this chapter to: prohibit or have the effect of prohibiting wireless communication services; unreasonably discriminate among providers of functionally equivalent wireless communication services; regulate the placement, construction or modification of small cell facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the wireless communications 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.

d. The provisions of this chapter 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. Nothing herein is intended or shall operate to waive or limit the city's right to enforce, or condition approval on, compliance with all generally applicable building, structural, electrical, and

safety codes and with other laws codifying objective standards reasonably related to health and safety.

Section 2. Definitions. The terms below have the following meanings for purposes of this chapter. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular. The word “shall” is always mandatory and not merely permissive. Terms not defined herein shall have the meaning given them elsewhere in the city code, other published rules or guidelines of the city, in Sections 1.6001 *et seq.* or 1.6100 *et seq.* of the FCC’s rules, or their common and ordinary meaning.

(1) “Abandonment” or “abandon(s)” means that, following the placement of small cell facilities (and associated accessory equipment) or support structures in the city pursuant to a permit issued to an applicant, any of the following has occurred: (a) for any reason the small cell facilities cease to be used to transmit signals, data or messages or otherwise be used for their intended purposes for a 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 applicant to comply with conditions in the permit or in this chapter concerning them, or other valid reason; or (c) the applicant fails to perform any of its responsibilities, obligations and requirements in this chapter or in a permit that relate to the installation, construction, maintenance, use or operation of the small cell facilities, accessory equipment or support structures, and that breach remains uncured for a period of sixty (60) days after the city provides written notice of the breach to the applicant.

(2) “Accessory equipment” or “equipment” means any equipment other than an antenna that is used in conjunction with small cell facilities. This equipment may be attached to or detached from a small cell support structure, and includes, but, is not limited to, cabinets, optical converters, power amplifiers, radios, DWDM and CWDM multiplexers, micro facilities, 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. The term does not include the attachments, equipment, or facilities of an electric utility that is regulated by the Alabama Public Service Commission (or such electric utility’s parents, affiliates, or subsidiaries).

(3) “Annual license fee” means the rental amount and annual rate described in section 4 of this chapter.

(4) “Antenna” means an apparatus, device, system of electrical conductors or other communications equipment that transmits and/or receives electromagnetic radio signals, electromagnetic waves, radio or other wireless signals used in the provision of personal wireless services, and is attached to a small cell support structure. Where the context permits, use of the term ‘antenna’ may also refer to the antenna concealment enclosure when such concealment enclosure is required by the applicable design standards. A concealment element otherwise will not count against the volumetric cap for an emitting device when determining if a facility qualifies as a “small cell facility” under this article.

(5) “Applicable codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes to the

extent not inconsistent with the terms in this chapter and to the extent such codes have been adopted by the city, including any amendments adopted by the city, or are otherwise applicable in the city. The term includes the regulations of the FCC and the Occupational Safety and Health Administration, as well as any local standards or regulations governing the use of rights-of-way.

(6) “Applicant”, whether singular or plural, means a wireless service provider, a wireless infrastructure provider such as an entity that is authorized by a wireless service provider to apply for or receive a permit to install, construct, modify or maintain a small cell facility and related accessory equipment or support structure in the city, an entity certificated by the Alabama Public Service Commission to provide telecommunication service or the applicant’s successors-in-interest and any person owning and maintaining the wireless facilities. For purposes of this chapter, “applicant” shall refer to those applying and the actions required upon issuance of a permit.

(7) “Application” means a request submitted by an applicant (i) for a permit to collocate small cell facilities and accessory equipment; or (ii) to approve the installation or modification of a utility pole or small cell support structure.

(8) “Application fee” means a permit application fee assessed pursuant to section 4 of this chapter for city staff review of a small cell site application.

(9) “Authority” means the city, county, state or any agency, district or subdivision thereof or any instrumentality of the same.

(10) “City” means the City of Birmingham, Alabama.

(11) “City code” means The General Code of the City of Birmingham Alabama, as currently in effect or hereafter amended.

(12) “City council” means the city council of the City of Birmingham, Alabama.

(13) “City-owned facility” or “city-owned structure” means any facility, structure or infrastructure to which the city holds title, easement, or a leasehold interest, including, but not limited to, communications facilities, utility poles, city-owned poles, towers, buildings, and communications infrastructure, regardless of whether located within or outside the rights-of-way.

(14) “*City-owned pole*” means (i) a utility pole owned or operated by the city in the right-of-way, including a utility pole that provides lighting or traffic control functions, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the city in the right-of-way that supports only wireless facilities.

(15) “*Collocation*” means the placement or installation of a new small cell wireless 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, including applicant; and/or the modification of such a structure for the purpose of such placement or installation.

- (16) “*Comprehensive plan*” means the long-range vision planning and master plan document for the city as now in effect or as hereafter amended.
- (17) “*Day*” means a calendar day.
- (18) “*Director*” means the director of the department of planning, engineering and permits, or any successor department, of the city.
- (19) “*Distributed antenna system*” or “*DAS*” means a network or facility that distributes radio frequency signals to provide personal wireless services, as defined in 47 U.S.C. 332, and consisting of: (1) remote antenna nodes deployed throughout a desired coverage area; (2) a high-capacity signal transport medium connected to a central hub site; and, (3) equipment located at the hub site to process or control the radio frequency signals through the antennas which meets the height and size characteristics of a small cell facility.
- (20) “*Eligible facilities request*” means any request for modification of an existing support structure that involves: collocation of new small cell facilities or wireless facilities, or the replacement of small cell facilities or wireless facilities, provided that such modification does not substantially change the physical dimensions of such tower or base station.
- (21) “*Emergency*” means a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause substantial damage to the right-of-way or to facilities in the right-of-way.
- (22) “*FCC*” means the Federal Communications Commission of the United States.
- (23) “*Framework plans*” are future planning documents adopted by the city council that provide direction on land use, new development, transportation, housing, parks, trails and open space, utilities and economic development and are used by elected officials and city staff as a guide for making short and long range policy and investment decisions regarding land use development, zoning, transportation improvements, parks, trail, housing issues, and economic development.
- (24) “*Make-ready work*” means work that an authority reasonably determines to be required to accommodate a wireless provider’s installation on a city-owned pole or structure under this chapter and to comply with all applicable standards. The work may include, but is not limited to, repair, rearrangement, replacement and construction of poles; inspections; engineering work and certification; permitting work; tree trimming (other than tree trimming performed for normal maintenance purposes); site preparation; and electrical power configuration. The term does not include a wireless provider’s routine maintenance.
- (25) “*Micro wireless facility*” or “*micro facility*” means a small wireless facility that (a) is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height; and (b) has an exterior antenna no longer than 11 inches.
- (26) “*Occupy*” or “*use*” means, with respect to a right-of way, to place a tangible thing in such right-of-way, including attaching to existing or new small cell support structures for the purposes

of offering or providing personal wireless services as defined in 47 U.S.C. 332, including, but not limited to, constructing, repairing, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or small cell facilities necessary for the delivery of any services provided by wireless provider. The term does not include the business activities of an electric utility that is regulated by the Alabama Public Service Commission, or of any parent, affiliate, or subsidiary thereof, when placing a tangible thing in the right-of-way.

(27) “*Permit*” means a written authorization required by an authority to perform an action or initiate, continue, or complete the deployment of small cell facilities.

(28) “*Person*” means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.

(29) “*Point of demarcation*” means the point of where the transmission media of small cell equipment terminates and interconnects with broadband backhaul transmission facilities, which is the point that the small cell connects into fiber or other wired mediums to transmit or assist in the transmission of data, whether provided by landline or wireless communications infrastructure.

(30) “*Private property*” means real property located in the city that does not lie within the right-of-way, including such appurtenant or easements attached to or associated with such property, and that is not owned by the city, state, or other public body.

(31) “*Replacement*” means installing a new small cell support structure of comparable or smaller proportions and of comparable or shorter height to a preexisting small cell support structure in order to accommodate collocation of small cell facilities, and the associated removal of the preexisting wireless facilities or small cell support structure. To qualify as a replacement, the replacement pole must be installed no more than five (5) feet of the location of the existing pole that it will replace.

(32) “*Right(s)-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 that is not inclusive of the police jurisdiction of the city. This term does not include county, state, or federal rights-of-way or any property owned by any person or entity other than the city, except as provided by applicable laws or pursuant to an agreement between the city and any such person or entity.

(33) “*Small cell facility(ies)*” or “*facilities*”, whether singular or plural, means and includes the following types of facilities: (a) antenna; and (b) associated accessory equipment that, individually and collectively, are part of a system that meets the following qualifications: (1) each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; (2) all other wireless facilities associated with the structure, including the wireless facilities associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and (3) the facilities are

mounted on structures 50 feet or less in height including their antennas, or are mounted on structures no more than 10 percent taller than other adjacent structures, or 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. Accessory equipment is not to be included in the calculation of equipment volume and may be located outside the equipment enclosure. The term includes micro wireless facilities, DAS and other wireless technologies meeting the above qualifications and may be referred to as a “node(s)” when referencing the numbers of small cell facilities per application or elsewhere in this chapter.

(34) “*Small cell support structure*” or “*support structure*”, whether singular or plural, means a freestanding structure designed or used to support, or capable of supporting, small cell facilities, including, but not limited to, towers, electric utility distribution 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. 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 replacement or make ready use for these decorative and architecturally significant poles may be limited or declined, unless otherwise agreed in writing by the city. These terms also do not include city-owned buildings or other city-owned structures located outside the rights-of-way unless and until the party desiring access to that property first enters into a lease agreement with the city for use of that property. These terms also do not include electric utility transmission poles.

(35) “*Stealth technology*” or “*stealth*” means a method(s) of concealing or minimizing the visual impact of a small cell facility (and associated accessory equipment) and support structure by incorporating features or design elements which either totally or partially conceal such small cell facilities or accessory equipment. The use of these design elements is intended to produce the result of having such facilities, equipment and associated structures blend into the surrounding environment and/or disguise, shield, hide or create the appearance that the small cell facilities are an architectural component of the support structure.

(36) “*Substantially change(s)*” means, in the context of an eligible support structure, a modification of an existing support structure where any of the following criteria is met:

(i) for a support structure not located in the rights-of-way:

(a) the height of the support structure is increased by (i) more than 10 percent, or

(ii) by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or

(b) there is added an appurtenance to the body of the support structure that would protrude from the edge of the support structure by (i) more than 20 feet, or (ii) more than the width of the support structure at the level of the appurtenance, whichever is greater.

(c) changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other

circumstances, changes in height should be measured from the dimensions of the support structure, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act (P.L. 112-96);

(ii) For a support structure located in the right-of-way:

(a) the height of the support structure is increased to a height of more than 50 feet or by more than 10 percent, whichever is greater; or

(b) there is added an appurtenance to the body of that structure that would protrude from the edge of that structure by more than 6 feet; or

(c) it involves the installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other ground cabinets associated with the structure; or

(d) it involves the installation of any new equipment cabinets on the ground if there is no pre-existing ground cabinet associated with that structure.

(iii) For any eligible support structure:

(a) it involves the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or

(b) there is entailed in the proposed modification any excavation or deployment outside of the current site of the support structure; or

(c) the proposed modification would cause the concealment/camouflage elements of the support structure to be defeated; or

(d) the proposed modification would not comply with the conditions associated with the prior siting approval of construction or modification of the support structure, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding thresholds in this section.

(iv) To measure changes in height for the purposes of this section, the baseline is:

(a) for deployments that are or will be separated horizontally, measured from the original support structure;

(b) for all others, measured from the dimensions of the support structure, inclusive of originally approved appurtenances and any modifications that were approved by the city prior to February 22, 2012.

(37) “*System*” means one or more of the protocol-agnostic, fiber-based optical networks which may incorporate small cell facilities and equipment that may be owned, leased, or controlled by the wireless infrastructure provider or third parties and is provided by the wireless infrastructure provider to wireless service providers or to a wireless service provider’s customer

(38) “*Transmission media*” refers to the point which the waves from small cell facilities are guided along a physical path; examples of guided media include phone lines, twisted pair cables, coaxial cables, and optical fibers.

(39) “*Utility pole*” means a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, street lights or other lighting, cable television, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached, and does not include a pole or similar structure 15 feet in height or less unless an authority grants a waiver for such use.

(40) “*Wireless facility*” or “*wireless facilities*” means equipment at a fixed location which is used to offer or provide personal wireless services as defined in 47 U.S.C. 332, including radio transceivers, antennas, distributed antenna systems (“DAS”), wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small cell facilities but does not include: (a) the structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated; (b) wireline backhaul facilities; or (c) coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

(41) “*Wireless service provider*” means a person that provides personal wireless services, as defined in 47 U.S.C. 332, to the public or citizens of the city on a commercial basis and is authorized by the FCC to provide those services. The term does not include an electric utility that is regulated by the Alabama Public Service Commission or such electric utility’s parents, affiliates, or subsidiaries when they are acting in supporting of the electric utility.

(42) “*Wireless infrastructure provider*” means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities or support structures, but that is neither a personal wireless services provider nor an electric utility that is regulated by the Alabama Public Service Commission (or any parent, affiliate, or subsidiary of such electric utility).

(43) “*Wireless provider*” means a wireless infrastructure provider or a wireless service provider.

Section 3. Grant of Authority. The city may grant a non-exclusive franchise or license to construct, maintain and operate small cell facilities within the city to any person who agrees to comply with the requirements of this chapter and acceptable terms as negotiated by the city. This grant of authority will be administered through an annual licensing process that will allow annual renewals pursuant to the terms of this chapter. Approval of installation of facilities at specific location(s) or on specific support structure(s) will be administered through the permit process set forth in this chapter.

Section 4. Permitted Use: Application, and Fees.

- a. *In General, Application and Permit Required.* Any person desiring to obtain a permit to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate and replace small cell facilities within the right-of-way, on city-owned structures or facilities, utility poles, or any private property within the corporate limits of the city, must file an application, pay the required fees, and obtain the permit, except as otherwise provided in this chapter.
- b. *Application Required for Each Small Cell Facility and Equipment.* A permit application must be submitted for each small cell facility and accessory equipment on a form, paper or electronic, provided by the city. If any information is deemed proprietary or confidential, then the applicant must mark each page accordingly. An application packet will be maintained by the city engineer.
- c. *Pre-Application Review.* Prior to the submission of an application, the applicant is strongly encouraged to have a voluntary pre-application meeting with the director, or his/her designee(s), to review preliminary documents and graphic exhibits of the proposed facilities and discuss the application, location and design requirements for the proposed facilities. The primary purposes of the review are to streamline applications and reduce site plan and design revisions, as well as the multiple reviews associated therewith. Any applicant desiring a pre-application review will agree in writing that the applicable time-line for application review, as set forth in section 8, will be tolled during such review period.
- d. *Consolidation Application Permitted.* Up to thirty (30) nodes or small cell facilities may be included in a single application.
- e. *Application Fees.* Unless otherwise provided by law, all applications for permits pursuant to this chapter shall be accompanied by a nonrefundable fee for actual, direct, and reasonable costs incurred by the city to process and review the application, in the following amounts:
- (i) \$500.00 for an application seeking up to five (5) small cell facilities attached to existing support structures, with an additional \$100.00 for each attached small cell facility in excess of five; or
 - (ii) for an application to construct or install a new pole or support structure (i.e., not a collocation), a one-time fee of \$1,000.
- f. *Annual License Fee.* An annual license fee of \$270.00 is assessed per node in the right-of-way.
- g. *Removal Fee may be Applicable.* A fee for removal of small cell facilities and/or their respective equipment may be applicable and is hereby authorized as necessary unless the fees described in subsections (e) and (f) above have already been tendered for the year in which the removal will occur, the removal does not hinder an ongoing city project or improvement, and the city incurs no additional cost to ensure safe removal.

h. Additional Cost for Make-Ready Work for Attachment to City-Owned Poles and Structures. Applicant may be required to bear additional costs for any necessary make-work estimate or construction as provided in section 12.c.

i. No Application or Permit Fee Required for Eligible Facilities Requests. Provided that the applicant gives notice to the director of the work to be undertaken in the right-of-way and obtains street barricade or any other applicable permit required by the city, a permit or application fee shall not be required for: (i) routine maintenance or repairs of wireless facilities; (ii) the replacement or modification of a small cell facility that results in a facility of substantially similar or smaller size, weight, and height; or (iii) micro wireless facilities installations.

j. Escalation of Fees. The fees required under subsections e. and f. of this section 4 may be adjusted (1) to recover a reasonable approximation of the increase in the city's actual and reasonable costs in administering and overseeing the small cell facilities, accessory equipment and support structures installed pursuant to this chapter, or (2) as otherwise permitted by applicable laws and regulations.

Section 5. Notice of Transfer, Sale or Assignment of Assets in Right-of-Way.

a. Compliance Required. If an applicant transfers, sells or assigns its assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this chapter.

b. Notice. Written notice of any such transfer, sale or assignment shall be provided to the city within thirty (30) days after the effective date of the transfer, sale or assignment.

Section 6. Placement and Maintenance of Facilities in Rights-Of-Way.

a. Administrative Review. The city shall utilize an administrative application review process as described herein for applications for the placement of small cell facilities (including accessory equipment) and any support structure in the right-of-way.

b. Departmental Review. To ensure the public health and safety, the written recommendations for the addition of small cell facilities and accessory equipment will be required after submission of the permit application from the following departments:

- (1) planning, engineering and permits
- (2) transportation.

c. Review by Director. The director or his/her designee(s) will review and administratively process any application to determine if the application is complete and consistent with applicable codes and whether a permit for the small cell facilities should be issued for the location and the manner requested by the applicant, consistent with this chapter.

d. Minimal Physical Installation. The applicant's application shall demonstrate that the placement of the proposed small cell facilities and their associated accessory equipment or support structure on the right-of-way is the minimal physical intrusion and burden on the rights-of-way

that will achieve the goal of enhancing the provision of personal wireless services when considering all pertinent factors contained in section 8.

e. Prohibitions.

- (1) No wireless facilities, accessory equipment or new support structure for such facilities or equipment may be installed in the city's right-of-way without (A) a license or franchise granted pursuant to section 3 hereof, and (B) a permit granted pursuant to sections 6 and 8 hereof. This prohibition shall not extend to a request by an electric utility that is regulated by the Alabama Public Service Commission to place or install a new utility pole where such request is not made to accommodate a small cell facility of a wireless service provider.
- (2) No wireless facilities, other than small cell facilities and micro wireless facilities, may be installed within the right-of-way unless a waiver is granted by the city.
- (3) No facility or equipment shall interfere with the safe operation of traffic control equipment, public safety communications equipment or street lights.
- (4) No facility, equipment or new support structure shall interfere with sight lines or clear zones for vehicular transportation, pedestrians, or public safety purposes.
- (5) No facility, equipment or new support structure shall interfere with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
- (6) No facility, equipment or new support structure shall interfere or fail to comply with the Alabama Department of Transportation Utility Manual, as it may be applicable and as amended.
- (7) No facility, equipment or new support structure shall fail to comply with the applicable codes.
- (8) No facility, equipment or support structure shall be closer than five (5) feet from the street curb or edge of pavement if no curb is present, unless otherwise approved by the city engineer.
- (9) No facility or equipment shall be attached to a utility pole owned by any utility not owned or operated by the city unless a lease, license, permit, certificate of authority, express waiver or other similar documentation demonstrating authorization is provided from such owner.
- (10) No facility or equipment shall be placed on any arms or any horizontal structure used to support or mount traffic control signals or other traffic control devices.
- (11) No facility or equipment shall interfere with electrical lines, cable lines, or their associated equipment, in that wireless facilities must be placed at least 10 feet away from energized electrical distribution lines, unless otherwise approved by the utility company.

(12) No wireless facility may be hung from energized electrical lines or mounted on poles to be removed in conjunction with the city's desire to utilize undergrounding of electrical utilities in a particular area.

(13) Facilities and equipment shall comply with the following spacing requirements:

(a) Minimum spacing between proposed new (non-replacement) and existing privately-owned support structures:

(i) The minimum horizontal distance between a new (non-replacement) support structure and associated small cell facilities and any other existing, or permitted but unconstructed, support structures and small cell facilities on the same side of the right-of-way at the time a complete application is filed with the city, irrespective of the owners/operators, shall be not less than 300 linear feet, as measured parallel to the right-of-way, unless a waiver is granted by the city based upon demonstrated need or other circumstances.

(b) Spacing between proposed new (non-replacement) support structures and existing publicly owned support structures:

(i) New support structures shall be located midway between the immediately adjacent existing publicly-owned support structures on either side of the proposed support structure to the maximum extent possible.

(c) Multiple requests for installations at the same location:

(i) If multiple requests are received and are pending at the same time to install support structures that would violate the applicable spacing requirements, or to collocate two or more small cell facilities on the same support structure, the city may resolve conflicting requests in a reasonable and nondiscriminatory manner.

f. *Limitations.*

(1) If allowed, small cell facilities collocated on the same utility pole as a street light shall be on the same disconnect as the street light, where practicable.

(2) Small cell facilities shall be grounded and otherwise comply fully with all applicable codes.

(3) Whenever a conduit of small cell facilities crosses telephone or electric power wires, wires shall cross and be maintained in accordance with the National Electrical Code, the National Electrical Safety Code, and all applicable ordinances, codes and regulations of the city and all other applicable codes.

(4) Small cell facilities must comply with the applicable structural requirements with respect to wind speed.

g. *Compliance with Law.* Applicant shall at all times comply with and abide by all applicable provisions of state and federal law and city ordinances, applicable codes and regulations in placing and maintaining small cell facilities in the right-of-way.

h. *Burden of Proof.* The burden of proof shall at all times be on the applicant to establish compliance with requirements under this chapter and state and federal law.

i. *Permit Required; Emergency.* Except in case of emergency, no placement or maintenance of small cell facilities or their operation thereof shall commence until all applicable permits are obtained. The city reserves the right to inspect all wireless facility work to ensure compliance with this chapter and applicable permits. Applicant shall provide a written notice and certification of compliance that the facilities were constructed in accordance with the approved specifications upon final completion of a wireless facility installation, and no operation shall occur unless the city has conducted a final inspection and issued a certificate of completion. Where a facility has been installed or operated without permit due to an emergency, a permit shall be required after-the-fact within thirty (30) days if a permit would have originally been required to perform the work undertaken in the right-of-way in connection with the emergency. Once the emergency is abated, the small cell facilities in question must be removed unless permitted without the emergency as a basis.

j. *Administrative Review.* The director or his/her designee(s) will review and administratively process any application for a permit to determine whether, consistent with the requirements set forth in this chapter, a permit should be issued for the location and in the manner requested by the applicant. The permitting process will be administrative and not require the approval of the city council. The factors, requirements, and guidelines the director and/or subsequently, upon appeal, the city council, may consider and will apply when determining whether to issue a permit for placement of new support structures or small cell facilities and accessory structures on the right-of-way include the following:

(1) whether denial of a permit to place the proposed structures at the requested location would prohibit or have the effect of prohibiting the provision of telecommunications or personal wireless service;

(2) the ability and specifications of the structures upon which the small cell facilities are placed to safely support those facilities;

(3) the visual impact of placing the support structures or small cell facilities in the subject area;

(4) the character of the area in which the structures are requested, including surrounding buildings, properties and uses;

(5) whether the appearance and placement of the requested structures is consistent with the any uniform design guidelines hereafter adopted as provided in section 9.d.(2);

(6) whether the structures are consistent with the historic nature and characteristics (if any) of the requested location, including but not limited to any uniform design guidelines hereafter

adopted as provided in section 9.d.(2), land use requirements of the city's commercial revitalization project areas and framework plan areas;

(7) all small cell facilities and support structures must— (a) not obstruct the safe operation of traffic control equipment or street lights; (b) not interfere with driver or pedestrian sight lines or clear zones for transportation or pedestrians; (c) comply with applicable federal, state and city standards regarding pedestrian access and movement; (d) comply with applicable health and safety codes; (e) be constructed in a manner to minimize physical damage to private property; and (f) not include advertisements.

(8) each antenna associated with a small cell facility— (a) when mounted at the top of a pole, whether or not enclosed, (i) an initial installation will not exceed six feet above the top of the pole, and (ii) a collocated installation will be no taller than necessary to house the collocation; (b) when mounted at the top of a pole, a pole-top extension shall be no taller than necessary for separation from other attachments; (c) when mounted on a lateral standoff bracket on a pole, the antenna shall protrude no more than necessary to meet clearances, (d) when mounted on or within an existing or replacement decorative pole, shall conform to the design aesthetics of the original pole, including the design, style and color; and (e) when mounted on another structure, shall not impair the function of the structure.

(9) wireless equipment associated with an antenna shall— (a) when mounted on a pole other than at the top, be flush-mounted or as near to flush as possible; (b) when mounted on a pole other than at the top, provide a minimum of ten feet of clearance above streets, driveways and sidewalks; and (c) when located in a ground-mounted cabinet, meet design, style, color and material requirements per the City's lawful right-of-way regulations.

(10) replacement poles shall be - (a) installed within five (5) feet of the location for the original pole; and (b) of a material and dimensions that matches as closely as feasible existing adjacent poles, or consistent with any published local standards for utility pole placements.

(11) new poles shall - (a) be aligned with the predominant pattern of existing adjacent structures; and (b) not be located directly in front of storefront windows, primary walkways, primary windows, or primary egress points to buildings.

(12) to the extent feasible, cables and wires associated with a small cell facility shall be - (a) installed within the pole; (b) flush-mounted to the pole where internal installation is not feasible; or (c) encased in a cover or conduit when flush-mounted to the pole.

(13) an electric meter, if required, will be pole-mounted where feasible to the extent authorized by the pole owner and electric provider.

(14) to the extent feasible, all small cell 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. If the applicant demonstrates that (i) no reasonable collocation opportunities exist in the area where the small cell facility is proposed to be placed, or (ii) attachment to a new structure will provide a more visually appealing design,

demonstrably more effective service coverage, or some other public benefit that would not be achieved by collocation, the applicant may request that a new pole or other support structure be installed in that area for purposes of constructing the small cell facilities. Before any new support structure is permitted, each of the following must occur:

a. The applicant must have provided the city written evidence supporting a claim under subparagraph (j)(14)(i) or (ii) above. In the case of (i), this evidence shall include, but not be limited to, affidavits, correspondence, or other written information that demonstrates that the applicant has taken all commercially reasonable actions to achieve collocation in the requested location that the applicant has pursued but has received no response or has been denied access to all potential collocation sites in the subject area (and the reasons any such denial(s)), and otherwise show that the applicant is unable to co-locate on an existing support structure. In the case of (ii), the evidence required by the city may include, but is not be limited to, affidavits, correspondence, engineering report or other written information depicting the claimed more visually appealing design, demonstrating the claimed more effective service coverage, or demonstrating the claimed public benefit;

b. The city engineer must recommend the placement of a new support structure in the right-of-way; and

c. The director or his/her designee(s) must approve the recommendation of the city engineer to allow the issuance of a permit that includes placement of a new support structure in the right-of-way.

(15) 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 ten (10) feet above the height of that structure; provided that, in the event that the applicant demonstrates that National Electric Safety Code, National Electric Council, or International Code regulations (as maintained and adopted by the city) or other factors create an undue hardship in complying with this height requirement, the director may permit a facility to extend up to fifteen (15) feet above the height of such support structure, unless it creates a life safety issue;

(16) the accessory equipment shall, if reasonably possible, be placed at least 8 feet above the ground;

(17) the color of antenna and accessory equipment shall be compatible with that of the support structure;

(18) the facility (including the accessory equipment) shall not be illuminated unless required by federal regulations;

(19) whether the proposed installation could cause harm to the public or poses any undue risk to public safety;

(20) whether the proposed installation may interfere with vehicular traffic, passage of pedestrians, or other use of the right-of-way by the public;

(21) 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; and

(22) If the proposed new pole will be compatible with the design and character of the surrounding neighborhood.

k. *Under-Served Areas.* As the city recognizes that a lack of competitive land-based internet access options may exist for certain underserved residential areas (which means an area with fewer than two options via coaxial cable, copper lines, fiber, or other land-based internet), the director may consider whether a permit application offers increased service coverage in an underserved residential area in deciding whether to permit the installation of a new support structure in the rights-of-way pursuant to subparagraph (j)(14). This provision shall not be a cause for denial of a permit or placement by a wireless service provider or wireless infrastructure provider.

Section 7. RESERVED.

Section 8. Application Review; Decisions; Time-Frames.

a. *Standards for Review.* Review of applications shall be in light of its conformity with applicable regulations of this chapter and shall be issued on a nondiscriminatory basis.

b. *Review for Completeness; Notice of Deficiency.* In the case of a small cell facility application, the director will, within ten (10) days after receiving the application, determine and notify the applicant by electronic mail to the email address provided in the application whether the application is complete. 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 small cell facilities or support structures at the requested location(s). If an application is deemed materially incomplete, the city must specifically identify (i) the missing documents or information and (ii) the specific rule, regulation or code provision creating the underlying obligation to provide same. If the applicant makes a supplemental submission to address or provide the missing information or documents identified by the city within sixty (60) days of the notice sent by the city, the city shall have ten (10) days from receipt of such supplemental submission to verify that the application is complete and, if not, notify the applicant in writing that the supplemental submission was not sufficient to render the application complete and specifically identify the missing documents or information that still need to be submitted pursuant to the city's original notice. The additional documents or information provided in the supplemental submission shall be limited to the deficiencies cited in the original notice from the city and no material changes shall be made to the original application other than those necessary to cure any identified deficiencies. If a supplemental submission includes material changes to the proposed small cell facilities identified in the original application, proposes or requests a small cell facility not identified in the original application, or otherwise includes or makes a material change to the original application other than as necessary to cure the deficiencies identified by the City, such supplemental submission shall be deemed a new application. If an applicant fails to submit sufficient documents or information to render the application complete within sixty (60) days of the notice sent by the city, the original notice sent

by the city shall serve as written notice of the denial of the application, and the application shall be deemed denied.

c. Timeline for Action on Applications. The director will approve or deny an application for a permit within the applicable time period set forth in this subsection c.(1), plus any tolling period(s) pursuant to subsection c.(2).

(1) General Time Period for Action on Application. Subject to the tolling provisions set forth below, the city, by and through the director, or his/her designee(s), will make its final decision to approve or deny the application(s) within the following time periods, unless the director and the applicant agree to toll the applicable deadline:

(a) For an application(s) to collocate a small cell facility on an existing structure, within sixty (60) days of receipt of such application(s); or

(b) For an application(s) to deploy a small cell facility on a new structure, within ninety (90) days of receipt of such application(s); or

(c) For multiple applications or a single, consolidated application for a small cell facility network project which seeks approval of a mix of collocated small cell facilities and new structures (i.e., one or more of the applications is for a new structure), within ninety (90) days of receipt of such applications.

(2) Tolling Period. Unless otherwise agreed to in writing by the applicant and the city, the tolling period for an application, if any, shall be as follows:

(a) If within ten (10) days of receipt of an application for a permit to install a small cell facility in the right-of-way, the director notifies the applicant that an application is materially incomplete and specifically identifies (i) the missing documents or information and (ii) the specific rule, regulation or code provision creating the obligation to submit same to the city, the time period for action on an application shall reset and not begin until the applicant submits all of the documents and information identified by the director to render the application complete (i.e., the date the applicant submits all of the documents and information identified by the city in the deficiency notice is day zero).

(b) For all other initial applications, the tolling period shall be the number of days from:

(i) The day after the date the city sends written notice to the applicant that the application is incomplete in accordance with subsection b. of this section, until

(ii) The date the applicant submits all the documents and information identified by the city in such notice to render the application complete.

(c) For resubmitted applications (or supplemental submissions) following a notice of deficiency from the city pursuant to subsection b. of this section, the tolling period shall be the number of days from:

(i) The day after the date the city sends written notice to the applicant that the applicant's supplemental submission was not sufficient to render the application complete and specifically identifies the missing documents or information that need to be submitted based on the city's original notice under subsection b. of this section, until

(ii) The date the applicant submits all the documents and information identified by the city to render the application complete, provided that such notice regarding the insufficiency of the supplemental submission is sent by the city to the applicant within ten (10) days following the city's receipt of the supplemental submission in response to the city's original notice under subsection b. of this section.

(3) Final Decision. The director will inform the applicant in writing of its final decision and, if such final decision is to deny the application, provide the basis for such denial, including identifying the specific city rule, regulation or code provision or other applicable law on which the denial was based.

(4) Effect of Timelines. The city's failure to issue a final decision within the processing timelines set forth in subsections 8(c)(1) and (2) shall not constitute, or be construed to constitute, a grant of an applicant's application(s). Upon expiration of these timelines, applicant may pursue whatever remedies are available to it under applicable law.

d. Consolidated Applications. An applicant may file a consolidated application and receive a single permit for approval of up to thirty (30) small cell facilities. If the application includes multiple facilities, then the city may separately address each facility for which incomplete information has been received or for which the application is denied.

e. Appeal of Decision by Director or Director's Designee(s). Upon denial by the director or director's designee(s), the applicant may, at its option, either seek review in a court of competent jurisdiction or file a written appeal to the city clerk within fifteen (15) days for reconsideration by the city council and placement on the next regularly scheduled agenda of the city council. If the applicant appeals to the city council, it may seek review of an adverse council decision in a court of competent jurisdiction.

Section 9. Application Requirements and Process.

a. Approval Required. Except as otherwise provided, a permit to construct or install small cell facilities shall not be granted under this chapter except upon approval by the director or director's designee(s), city council, or as otherwise designated by resolution or ordinance to consider application under this chapter, in which applicant must sufficiently describe the manner, form, design, placement, its effect and impact, and other pertinent information with regard to placement and maintenance of small cell facilities in the right-of-way and/or on private property.

b. Application. An application must be submitted for every small cell facility, equipment or support structure.

c. Application Requirements. At a minimum every application should include, as follows:

- (1) (a) The applicant's name, address, telephone number, and e-mail address; and (b) the names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
- (2) A general description of the proposed work and the purposes and intent of the small cell facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed;
- (3) Site plan and engineering design and specifications, including engineering drawings to scale, of the proposed small cell facilities and related structures, including the location of radios, antenna facilities, transmitters, equipment shelters, cables, conduit, point of demarcation, backhaul solution, electrical distribution panel, electric meter, and electrical conduit and cabling, and support structure(s);
- (4) Design documents should include photo(s) of the existing pole, and a photo simulation of the pole with attached equipment. Where applicable, the design documents should include specifications on stealth design, pole modification, and ADA compliance;
- (6) Map(s) designating with specificity the location(s) of the requested facilities; The geographic coordinates (GIS) of all antenna and other proposed facilities;
- (7) For city traffic light poles, verification that the pole is eligible for attachment;
- (8) A load bearing study that determines whether the pole requires re-enforcement or replacement in order to accommodate attachment of small cell facilities and/or equipment. If pole re-enforcement or replacement is warranted, the design documents should include the proposed pole modification;
- (9) Copy of the manufacturer's detailed specifications for small cell equipment and antennas, including photographs or illustrations and a complete description of all pertinent physical and electrical characteristics;
- (10) Supporting information if stealth modifications are required in order to comply with the design standards (i.e. to blend with the character and style of the surrounding area) or criteria for installations;
- (11) Supporting information if the application seeks approval of a new pole, including design and specification drawings for the new pole, and a statement regarding the reasons for and what other alternatives, if any, were identified but not utilized, and why;
- (12) Applicable design and specification drawings if the proposed installation will require re-enforcement or replacement of an existing pole;
- (13) The number, size, type and proximity to the small cell facilities of all communications conduit(s) and cables to be installed;

- (14) Description of the utility services required to support the small cell facilities to be installed;
- (15) If the small cell 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 permit, license, lease, agreement, letter of authorization, 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 (which documentation may be redacted as to business terms including rent or other fee or payment information); provided that, if the city issues the requested permit but it is subsequently determined that the applicant lacked such authority, the subject permit may be revoked and any license to use that part of the right-of-way be rescinded;
- (17) All permits and letters of authorization; Valid FCC license, where applicable or other appropriate certificates or permits as required;
- (18) List of the contractors and subcontractors, and their contact information, authorized to work on the project;
- (19) A certification from a licensed engineer that the small wireless facility, associated equipment, and any associated new or replacement support structure shall comply with all applicable codes and FCC rules and regulations; and
- (20) A declaration signed by an authorized representative of the applicant stating that the information in the application is true and accurate and that the small wireless facility and (if applicable) associated pole will be built in conformance with the specifications set forth in the application.

d. *Objective Design Guidelines; Other Requirements.*

- (1) Similar Character and Style of Area Required. Applicant shall use best efforts to provide a reasonable location, context, color, stealth and concealment necessary to maintain the character and style of the surrounding areas so as to minimize the visibility and environmental impact.
- (2) Design Guidelines. The director is authorized to adopt reasonable design guidelines addressing aesthetics requirements provided such design guidelines they are no more burdensome than those applied to other types of infrastructure deployments, objective and are published in advance.
- (3) New Structures; Availability of Alternatives. No new utility pole, pole-type structure, or other freestanding structure shall be allowed in the right-of-way unless the applicant demonstrates and the director or his/her designee(s) and/or city council (when applicable) determines that no existing structure in the right-of-way can accommodate the applicant's proposed facility or antenna, or that attachment to a new structure will provide a more visually appealing design, more effective coverage, or some other public benefit that would not be achieved by collocation.
- (4) Limitations: No Property Right. A permit from the city constitutes authorization to undertake only certain activities in rights-of-way in accordance with this chapter and does not

create a property right or interest in the right-of-way or grant authority to impinge upon the rights of others who may have an interest in the rights-of-way.

(5) Limitations: Use of City-owned Poles or Structures. City-owned structures or poles for attachment or collocation may not be available where the city determines that an additional attachment or collocation is detrimental to public safety or welfare, and such decisions will be final. Availability will be on a first-come, first-served basis, and if the city determines collocation on such city-owned poles or structures has reached its maximum, is unsafe or should otherwise not be permitted, the city may propose alternative collocations to the applicant.

(6) Coordination of Work. Upon request of the city, applicant may be required to coordinate placement or maintenance activities under a permit with any work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable time frame in the subject rights-of-way and applicant may be required to reasonably alter its placement or maintenance schedule as necessary to minimize disruptions.

(7) Zoning. Any applicant that seeks to construct or modify a wireless facility or support structure on private property shall be subject to applicable zoning requirements.

(8) Undergrounding Provisions. From time to time, as both residential and commercial developments continue within the city, new regulations relating to undergrounding utilities and their placement may require relocation of small cell facilities or replacement thereof to deploy stealth design of facilities to camouflage with the undergrounding of utilities including relocation of equipment to enhance compatibility and blend into the character and style of the surrounding area in a manner that reduces visibility. Applicant shall comply with nondiscriminatory undergrounding requirements that prohibit electric utilities, telecommunications or cable providers from installing structures in the rights-of-way without prior zoning approval in areas zoned for single family residential use, provided such requirements shall not prohibit the replacement of, or collocation on, existing structures.

(9) Conditional Use of Public Right-of-Way.

(a) The city shall retain the right, without limitation, to alter, change, or cause to be changed, the grading, installation, relocation or width of the rights-of-way within the limits of the city. Neither the issuance of a permit nor any provision set forth in this chapter shall affect the city's authority to add, modify, vacate or abandon rights-of-way.

(b) If an applicant desires to use any of its small cell facilities for the purpose of providing any other services other than the provision of communications service, including utility or non-utility services to existing or potential consumers or resellers, or by providing any other use to existing or potential consumers, an applicant shall seek such additional and separate authorization from the city and other authority as may be required by applicable law.

(c) An applicant, or any person that leases or otherwise uses the small

cell facilities of an applicant, which has been issued a permit or that has otherwise been authorized to place a small cell facility in the rights-of-way of the city shall not take any action against the city that will impede the lawful exercise of the city's rights, including without limitation the city's right to require the removal or relocation of such facilities from the rights-of-way of the city, notwithstanding the effect of same on applicant's ability to place or maintain small cell facilities in rights-of-way of the city.

(11) All Rights of City Reserved. Notwithstanding any provision of this section or the city's issuance of a permit or other authorization to place a small cell facility in the right-of-way, the city may place and maintain, grant utility easements for, or otherwise permit the placement and maintenance of other utilities in the rights-of-way, including, water, sewer, electric, gas, storm drainage, telecommunications, traffic, and other utilities and facilities, cables or conduit, including underground and overhead installations, in rights-of-way occupied by the applicant. Applicant may allow city facilities to be collocated within rights-of-way through the use of a joint trench during applicant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between applicant and city and may be subjected to other city rights-of-way requirements. The city further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation or width of the rights-of-way within the city.

(12) Restoration of Right-of-Way. The area disturbed by the construction or maintenance of a small cell facility in the right-of-way shall be kept to a minimum. The applicant shall, at its own expense, restore all right-of-way to a condition equal to or better than the condition existing prior to such construction or maintenance activities. Restoration methods and any work required to repair the right-of-way shall be performed in accordance with articles G, H and I of title 4, chapter 5 of the city code or other city-adopted standards and specifications applicable to the construction of city improvements within the right-of-way. All repairs and restoration work must be approved by the city engineer and final completion of any such work is subject to the reasonable approval of the city engineer. If necessary, unsatisfactory restoration work shall be corrected by the applicant, or by the city with all costs billed to the applicant.

(13) Maintenance. Applicant shall at all times keep the small cell facility authorized by the permit in a good state of repair from the standpoint of both structure and appearance.

(14) Scheduling. In the interest of the public's health, safety and welfare, upon request of the city, an applicant shall coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject rights-of-way. The city may require an applicant to alter reasonably its placement or maintenance schedule for permitted work as necessary so as to minimize disruptions and disturbance in the rights-of-way. The city may provide a more definite time frame based on specific city construction or maintenance schedules.

(15) Applicant's Liability and Risk. The city makes no warranties or representations regarding the fitness, suitability or availability of rights-of-way for the applicant's small cell facilities and any performance of work or costs incurred by applicant or provision of services shall be at applicant's sole risk. Nothing in this chapter shall affect the city's authority to add, vacate or

abandon rights-of-way and city makes no warranties or representations regarding the availability of any added, vacated or abandoned rights-of-way for small cell facilities. Notwithstanding any requirements or conditions, the city engineer may impose in order to protect the public from injury and the right-of-way from damage, an applicant shall be solely responsible for the adequacy and safety of the engineering of its facilities and the operations authorized by the permit. Construction performed to place or maintain an applicant's small cell facilities shall not interfere, displace, damage or destroy any other utilities or facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the city or any other person's facilities lawfully occupying the rights-of-way of the city.

(16) Inspection. The city shall have the right to make such inspections of facilities placed or maintained in rights-of-way as it finds necessary to ensure compliance with this section. In the event the city determines that a violation exists with respect to applicant's placement or maintenance of facilities in the rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the city will provide applicant written notice setting forth the violation and requesting correction.

(17) As-Built Plans. An application for a small cell facility right-of-way placement permit, including an application to replace an existing small cell facility in the right-of-way, shall include plans showing the location of the proposed installation of facilities in the rights-of-way. If the plans so provided require revision based upon actual installation, the applicant shall promptly provide revised plans. Further, the applicant shall provide "as-builts" upon completion of any installation or construction. The plans shall be in a digitized format showing the two-dimensional location of the facilities based on the city's geographical database, or other format acceptable to the city. The applicant shall provide such plans at no cost to the city.

(18) Cooperation. Subject to applicable law, an applicant shall, on the request of any person holding a permit issued by the city, temporarily support, protect, raise or lower its small cell facilities to permit the work authorized by the permit. The expense of such temporary support, protection, raising or lowering of facilities shall be paid by the person requesting the same, and the applicant shall have the authority to require such payment in advance. The applicant shall be given not less than thirty (30) days' advance written notice to arrange for such temporary measures. If the city requests the temporary support, protection, raising or lowering of a facility for a public purpose, the city shall not be charged for the temporary support, protection, raising or lowering of the facility.

(19) Signage.

(a) No signage, logos, symbols, or any messages of a commercial or noncommercial nature are permitted on any small cell facility, accessory equipment, support structure, or security fencing. This prohibition does not include the information sign permitted in the following subsection.

(b) One small sign measuring no more than 2 feet by 3 feet that contains wireless provider information, emergency telephone numbers, and any other information required by local, state, and federal regulations governing small cell facilities is permitted. Such signage shall not include commercial advertising and is subject to approval by the city.

(c). *Submission of Application.* Upon meeting the requirements as listed herein and submitting the application, the city shall review and issue permits within the timeframes and processes provided herein.

Section 10. Removal, Relocation or Modification of Small Cell Facility in the Right-of-Way.

a. *Ninety Day Notice to Remove, Relocate or Modify.* Whenever the city determines that the relocation is needed as described below, then within ninety (90) days following written notice from the city, the applicant shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small cell facilities within the rights-of-way whenever the city has determined that such removal, relocation, change or alteration, is necessary for (excluding beautification only projects), as follows:

- (1) the construction, repair, maintenance, or installation of any city improvement in or upon, or the operations of the city in or upon, the rights-of-way; and/or
- (2) if required for the construction, completion, repair, relocation, or maintenance of a city improvement or project in or upon, or the operations of the city in or upon, the rights-of way; and/or
- (3) because the small cell facility or its related equipment is interfering with or adversely affecting proper operation of any city-owned light poles, traffic signals, public safety communications or other equipment in the right-of-way; and/or
- (4) to protect or preserve the public health or safety.

In any such case, the city shall use its best efforts to afford applicant a reasonably equivalent alternate location. If applicant shall fail to relocate any equipment as requested by the city within a reasonable time under the circumstances in accordance with the foregoing provision, the city shall be entitled to relocate the equipment at applicant's sole cost and expense, without further notice to applicant. Decorative streetlight poles may be required by the city in the future in the place of initially-installed standard-design streetlight poles, in which replacement of the applicant's facilities and equipment on decorative streetlights that were initially installed standard-design streetlight poles shall be solely at applicant's cost. Further, in such instances and at such time as replacement poles are installed, the city may reasonably require that the configuration and/or location of ground furniture (which references any equipment on the ground that is needed to supply power or backhaul services to the small cell facility) and/or pole-mounted equipment or equipment cages be changed (such as changing from pole-mounted equipment cages to ground furniture), in the discretion of the city.

b. *Emergency Removal or Relocation of Facilities.* The applicant or its successor(s) must remove the small cell facilities at any time if warranted by public health or safety, or in the event of an emergency, as determined by the city. The city will provide as much notice as reasonably possible under the circumstances. In non-emergency situations, the city will provide at least 60 days' notice. The city retains the right and privilege to cut or move any small cell facility or related structure located within the rights-of-way of the city, as the city may determine to be necessary,

appropriate or useful in response to any public health or safety emergency. If circumstances permit, the city shall notify the applicant and provide the applicant an opportunity to move its own facilities, if possible, prior to cutting electrical service or removing a facility and shall notify the personal wireless services provider after cutting or removing a small cell facility.

c. Abandonment of Facilities. If an applicant abandons any facility (including the accessory equipment) or an associated support structure (collectively “abandoned 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 applicant, at applicant’s 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 the applicant and to reasonably restore the property at which the abandoned facilities are located to the condition existing before the abandoned facilities were installed. If the wireless provider or applicant fails to remove and reclaim its abandoned facilities within such 60-day period and the abandoned facilities are located on the right-of-way, the city shall have the rights to (a) remove the abandoned facilities and charge its expense of any such removal operation to the account of the wireless services provider or applicant, (b) purchase all abandoned facilities at the subject location from the wireless services 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 net proceeds of any resale of abandoned facilities by the city to a third party shall be credited to the account of the applicant that used those abandoned facilities before the abandonment, and (d) charge any expense incurred by the city to restore the right-of-way to the account of the wireless services provider or applicant.

Section 11. Annual License.

a. Term of License. The license granted pursuant to Section 3 hereof shall be valid for a period of one (1) year. Annual license renewal may occur automatically if licensee has paid all required fees by December 31 and complied with requirements of this chapter.

b. Use of Right-of-way Authorized. Provided the applicant agrees to comply with the requirements in this chapter and as negotiated by the city, a license authorizes entry upon and use of the right-of-way and/or attachment to city-owned structures in the right-of-way for the purposes of installing and operating small cell facilities, including the right to draw electricity for the operation of its small cell facilities from the power source (if any) that is made available for that support structure at the sole cost of applicant.

c. Limitation. A license granted pursuant to Section 3 does not create a property right or grant the licensee authority to impinge upon the rights of others who have a right to use the rights-of-way.

d. Revocation. The city may revoke a license if, after reasonable notice and opportunity to cure is given to licensee, the licensee fails to comply with any provision of this chapter.

Section 12. Effect of Permit.

a. *Authority Granted; No Property Right or Other Interest Created.* A permit from the city authorizes an applicant to undertake only certain activities in accordance with this chapter and creates a license only. A permit does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

b. *Duration.*

(1) For Use in General. No permit issued to conduct construction, installation or other activities in the right-of-way shall be valid for a period greater than one (1) year.

(2) Limitations on Construction. When the application is approved to undertake the activities described in this chapter, every permit issued shall become invalid unless the work on the site authorized by such permit is completed within one hundred eighty (180) days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of one hundred eighty (180) days after the time the work is commenced. The director is authorized to grant, in writing, one or more extensions of time, for periods not more than one hundred eighty (180) days each, provided that the extension shall be requested in writing with justifiable cause demonstrated, such that: (i) if no request for extension is received, then the permit will become invalid; (ii) if construction has not commenced by the 180th day of permit issuance or by the one year anniversary of the application approval, then the applicant must re-apply and be subject to the same provisions as if the applicant is applying for the first time; and (iii) no portion of this section shall be construed to give applicant a period for use of the right-of-way greater than twelve (12) months without applying for a new permit.

c. *Make-Ready Work for Collocation.*

(1) For a city-owned pole or structure that does not support an aerial facility used to provide electric service, the applicant seeking to collocate a small cell facility shall provide a make-ready estimate of the costs, at the applicant's expense, for the work necessary to support the facility, including pole replacement, and the applicant shall perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The city shall not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the city.

(2) The city shall not require more make-ready work than is required to meet applicable codes or industry standards.

(3) If the city performs the make-ready work, the fees for make-ready work shall not include costs related to preexisting damage or prior noncompliance. Such fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to communication service providers other than personal wireless services providers for similar work and shall not include any consultant fee or expense in excess of the actual, reasonable and necessary costs of the consultant.

(4) Fees for make-ready work performed by the city, must be paid to the city, even if they exceed the applicant's estimate, before the wireless facilities may be operational, unless otherwise agreed.

d. No Warranties. The city makes no warranties or representations regarding the fitness, suitability, or availability of the city's right-of-way, city-owned structures, and city-owned real property for the facilities or any performance of work, costs incurred, or services provided by applicant is at their sole risk.

e. Suspension or Revocation of Permits.

(1) (a) The director may immediately suspend a permit for work in the right-of-way for one or more of the following reasons or the permission of a wireless provider to make new or additional small cell facilities if: (i) the applicant materially fails to comply with the terms of its franchise, permit or license; (ii) the director believes that the applicant or the wireless communication facility is in violation of this chapter, or other applicable city ordinances, codes or regulations governing placement or maintenance of small cell facilities in rights-of-way; or (iii) the applicant fails to properly relocate or remove facilities as may be lawfully required by the city. Written notice of the alleged violation shall be mailed to the wireless provider and the property owner (if different) by certified mail, return receipt requested. This notice shall identify the reasons why the director believes that a violation as enumerated above has occurred. If the wireless provider fails to cure the violation on or before the 60th day after receipt of the notice, or if it is established that there was misrepresentation or fraud by the applicant in application to the city, the director may revoke the wireless provider's permit. Written notice of revocation will be sent to the wireless provider via certified mail, return receipt requested.

(b) An applicant shall immediately begin removal of its small cell facilities after revocation of its permit. Unless the city grants an extension of time, a wireless provider must remove all small cell facilities not later than the 60th day after the effective date of revocation.

(c) After revocation of an applicant's permit, the applicant must comply with the terms of this chapter, the wireless provider's franchise, permit, license, or other authority until all small cell facilities are removed.

(d) An applicant may appeal the revocation of its permit to the city council. While an appeal is pending, an applicant may continue to use its existing facilities but may not make, change, move, rearrange, construct, or install an additional facility.

(2) Upon receipt of a notice of appeal, the city shall schedule a hearing before the city council, and notify the applicant and any current users of the specific small cell facility occupied by, or proposed to be occupied by, the applicant of the time and date of the hearing by certified mail, return receipt requested, at least ten (10) days before the date of the hearing.

(3) The applicant has the burden of proof to establish that the decision being appealed is incorrect and in the case of a decision requiring discretion or judgment, that the decision is an

abuse of discretion. At the hearing, the applicant may be represented by an attorney, present evidence and call witnesses in support of its case.

(4) If the city council determines to uphold the revocation of the permit, the reasons for its action shall be set forth in the written minutes of the meeting.

(5) A decision by the city council to uphold the revocation of the permit may be appealed to the circuit court of Jefferson County. An appeal must be filed with the circuit court clerk and with the city within twenty-one (21) days of the council's decision.

f. *Other Penalties.* Revocation is separate from any other penalties that may be imposed by the director. A revocation will not preclude the prosecution of any civil or equitable remedy that may be available to the director.

Section 13. Insurance Required at All Times Small Cell Facilities or Equipment are in Operation and/or use in Right-of-Way.

a. *Coverages and Amounts.* Prior to the commencement of any work under this chapter or the installation of any small cell facilities or support structures, the applicant shall provide the city with a certificate(s) of insurance, or self-insurance approved by the director, evidencing that it has obtained and will maintain the following types of insurance, or self-insurance, in connection with its operations on or use of the right-of-way: (i) 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 minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, which shall include coverage for bodily injury, broad form property damage (including completed operations coverage), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations; and (2) workers compensation insurance as required by statute.

b. *General Liability Coverage Requirements.* 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 who are reasonably acceptable to the city and authorized to transact business in the State of Alabama.

c. *Confirmation of Coverage.* On an annual basis following initial installation, the applicant also shall furnish the city a certificate indicating that the above-noted coverage, or self-insurance, remains and will remain in effect

d. *Notice of Cancellation.* Upon receipt of notice from its insurer, the applicant will provide the city with thirty (30) days prior written notice of cancellation.

e. *Replacement Coverage.* Within thirty (30) calendar days of suspension, cancellation or non-renewal of coverage, the applicant shall provide a replacement certificate of insurance and applicable endorsements to the city. The city shall have the option to suspend the applicant's

performance should there be a lapse in coverage at any time during the permit. Failure to provide insurance shall be a material breach of the applicant's agreement to place small cell facilities on the right-of-way in the city.

f. Surety Bond may be Required by Director. The director or his/her designee(s) may require a surety bond be issued by applicant if it is determined that the construction and placement of the small cell facilities by the applicant would interfere or disturb a sidewalk, street or streetscape, or property belonging to or under the control of the city. The purposes of the bond are to maintain the overall design aesthetics of the area in which the small cell facilities are proposed to be located, which will be reviewed on a case-by-case basis; to provide for the removal of abandoned or improperly maintained facilities, including those that the city determines need to be removed as provided in section 10; or to recoup fees that have not been paid by the applicant, provided that applicant has received at least sixty (60) days' notice of non-compliance from the city with respect to such matters and a reasonably opportunity to cure. "Interfere or disturb" means movement of earth such that the sidewalk or street or streetscape has to be dug up and either replaced or repaired from the work by applicant to bring its small cell facilities and equipment online. If required, the applicant shall obtain and maintain at its sole cost a corporate surety bond securing performance of its obligations and guaranteeing the faithful adherence to the requirements under this chapter. The surety bond must be for:

- (1) In the amount not less than \$75,000.00;
- (2) Issued by a surety company licensed to do business in the State of Alabama;
- (3) Under terms and conditions reasonably acceptable to the city attorney; and
- (4) Obtained no later than the thirtieth (30th) day following the effective date of any license or franchise agreement consistent with the terms of this chapter. The rights reserved to the city under this bond are in addition to all other rights. No action proceeding or exercise of a right regarding the bond shall affect the city's right to demand full and faithful performance under the franchise or license agreement or limit the applicant's liability for damages.

Section 14. Compliance with Laws.

a. Compliance with Laws. All small cell facilities and associated support structures shall be installed, erected, maintained and operated in compliance with applicable federal and state laws and regulations, including, but not limited to, regulations of the FCC.

b. Engineer's Certification. Following the installation of any small cell facilities and associated support structures, the applicant, upon reasonable request and for good cause, shall furnish the director, or his/her designee(s), a written certification from a licensed professional engineer qualified to practice 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 small cell 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 applicant, at its expense, shall cause those structures to be brought into compliance with such laws and regulations within fifteen (15) days of the date of any written notice to them from the director or his/her designee(s) of noncompliance, or cease all personal wireless service operations related to those structures until the applicant comes into full compliance with such laws and regulations.

Section 15. Applicability.

a. *Amendments.* The city may further amend this chapter as it shall find necessary in the lawful exercise of its police powers and in the management of the rights-of-way. The provisions hereof shall be applicable to all small cell facilities placed in the rights-of-way on or after the effective date of the ordinance adopting or amending these provisions, as applicable. Further, to the full extent permitted by state and federal law, the provisions hereof shall be applicable to all existing small cell facilities placed in the rights-of-way prior to the effective date of the ordinance adopting or amending these provisions, as applicable, except that any provision of this chapter regarding the design, size, composition, or location of small cell facilities shall not apply to any facilities lawfully placed within any right-of-way prior to the effective date of the ordinance from which such provision is derived.

b. *Exemptions and Non-Applicability.* This chapter regulates the placement of small cell facilities (and associated accessory equipment) on or in the immediate vicinity of support structures that are located or proposed to be located on the right-of-way. This chapter does not apply to the placement of such facilities on city-owned property not located within the right-of-way, which placement will be allowed only through a lease or similar agreement with the city. 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. Further, the provisions in this chapter are not intended to alter, affect or modify the provisions in title 12, chapter 3.9. "cable communications" and title 12, article vi, section 18 "wireless communications facilities." No provision in this section or elsewhere in this chapter is intended to permit, regulate or authorize the placement by a wireless 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 the right-of-way. In the event any such wireless provider or applicant desires to place telecommunications equipment or small cell facilities along the right-of-way at points not regulated by this chapter, the city may enter into franchise or similar agreement that authorize, govern and apply to such use of other locations on or along the right-of-way. The applicant for a permit to place small cell facilities and associated support structures on the right-of-way shall pay the following types of fees pursuant to this chapter or its franchise agreement:

- (1) A permit application and review fee to be paid when an application is submitted; and

(2) An annual license fee per each small cell facility or support structure on the right-of-way pertaining to the ongoing use of public property.

Further, if a wireless provider has an existing franchise agreement, lease, right-of-way use agreement or other similar agreement with the city that addresses the placement of small cell facilities, support structures, and/or accessory equipment that was in effect prior to the enactment of this chapter (“existing agreement”), the existing agreement shall remain in force for its remaining term (but not for any extension or renewal thereof), and its provisions shall control over any conflicting provisions of this chapter, unless the wireless provider and the city otherwise agree in writing. Thereafter, the wireless provider’s small cell facilities, support structures, and/or accessory equipment shall be regulated by this chapter.

c. (1) This ordinance does not apply to any poles, attachments, equipment, facilities, business activities, or structures of an electric utility that is regulated by the Alabama Public Service Commission. This ordinance also does not apply to any attachments, equipment, easements, facilities, or business activities of such electric utility’s parents, affiliates, or subsidiaries when they are acting in support of the electric utility.

(2) Nothing in this ordinance shall affect or alter, or be construed to affect or alter, the terms of any pole attachment agreement entered into between or among a wireless service provider and an electric utility that is regulated by the Alabama Public Service Commission.

(3) When a wireless provider collocates, installs, or mounts a small wireless facility pursuant to a pole attachment agreement with an electric utility that is regulated by the Alabama Public Service Commission, the applicable sections of this chapter shall apply to the wireless service provider.

Section 16. Enforcement. Any violation of this chapter will be enforced by the director and any facility or structure located on private property shall be enforced by the city’s zoning administrator. Each unauthorized wireless communication facility or use is a separate offense. Each day a violation of this chapter continues is a separate offense. The remedies and penalties set forth herein are nonexclusive and the exercise of one or more of such remedies or penalties shall not preclude the exercise of another. In addition to the other remedies previously set forth herein, violations of the provisions of this chapter shall be enforced, prosecuted and punished in the same manner as set forth in the city code. Additionally, the city may take all necessary civil action to enforce the provisions hereof and may seek appropriate legal or equitable remedies or relief, including injunctive relief. The remedies set forth for in this Section are in addition to and cumulative of all other remedies provided by law.

SECTION II Repealer. All ordinances or parts of ordinances heretofore adopted by the city council of the City of Birmingham, Alabama, that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

SECTION III Severability. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or

impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION IV Effective Date. This ordinance shall become effective immediately upon adoption and publication as provided by law.

