

ORDINANCE NO. 2019-44

**AN ORDINANCE TO REGULATE PERMITTING,
SITING, AND CONSTRUCTION OF WIRELESS
TELECOMMUNICATIONS FACILITIES,
INCLUDING BUT NOT LIMITED TO TOWERS
AND ANY ASSOCIATED EQUIPMENT OR
FACILITIES**

WHEREAS, the Telecommunications Act of 1996 affirmed the City of Madison’s authority concerning the placement, construction, and modification of wireless telecommunications facilities; and

WHEREAS, pursuant to Alabama Code §11-45-1, municipal corporations may adopt resolutions and ordinances to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the inhabitants of the municipality; and

WHEREAS, the City Council of the City of Madison finds that wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, character, and environment of the City and its inhabitants; and

WHEREAS, the City also recognizes that facilitating the development of wireless service technology can be an economic development asset to the City and of significant benefit to the City and its residents; and

WHEREAS, the City wishes to establish reasonable service fees and charges in order to facilitate the proper permitting and processing of applications for the placement of wireless telecommunications facilities;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MADISON, ALABAMA, as follows:

Section I. The Code of Ordinances of the City of Madison, Alabama, is hereby amended to add a new Section 8-79 in Chapter 8, Article IV, Buildings, Construction, and Related Activities, as follows:

Section 1 Purpose and Legislative Intent

- (a) The Telecommunications Act of 1996 affirmed the City of Madison’s authority concerning the placement, construction, and modification of wireless telecommunications facilities. This ordinance provides for the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the City and ensures the ready availability of

reliable wireless services to the public, government agencies, and first responders, with the intention of furthering the public health, safety, and general welfare.

- (b) The City of Madison finds that wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, character, and environment of the City and its inhabitants. The City also recognizes that facilitating the development of wireless service technology can be an economic development asset to the City and of significant benefit to the City and its residents. In order to assure that the placement, construction or modification of a facility is consistent with the City's land use policies, the City is adopting a single, comprehensive, wireless telecommunications facility application and permitting process. The intent of this Ordinance is to minimize the physical impact of wireless telecommunications facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the City of Madison.

Section 2 Severability

- (a) If a court of competent jurisdiction declares any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance, or a Special Use Permit granted under this Ordinance, void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Ordinance, or a Special Use Permit granted under this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

Section 3 Definitions

For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

- (a) **"Accessory Facility or Structure"** means an accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities and located on the same property or lot as the wireless telecommunications facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
- (b) **"Administrative Official"** means the Director of Development Services or his/her designee. The administrative official may appoint a representative as appropriate.

- (c) **“Amend”, “Amendment,” and “Amended”** mean and shall relate to any change, addition, correction, deletion, replacement or substitution, other than typographical changes of no effect.
- (d) **“Applicant”** means any wireless service provider submitting an application for a special use permit for wireless telecommunications facilities.
- (e) **“Application”** means all necessary and required documentation that an Applicant submits in order to receive a special use permit or a building permit for wireless telecommunications facilities.
- (f) **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals with a single transmit and a single receive connection. It is expressly not multiple antennas, even if such are contained in a single housing or radome.
- (g) **“City”** means the City of Madison, Alabama.
- (h) **“City Council”** means the City Council of the City of Madison, Alabama.
- (i) **“Co-location”** has the same meaning as provided in 47 C.F.R. §1.40001 (b)(2), as may be amended, which defines that the term as “the mounting or installation of transmission equipment on an eligible support structure for transmitting and/or receiving radio frequency signals for communication purposes.
- (j) **“Commercial Impracticability” or “Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone and for a single site, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable.”
- (k) **“Complete Application”** means a true, accurate, and correct application that contains all necessary information required in this ordinance, as well as data necessary to enable an informed decision.,
- (l) **“Concealment”** means a physical design or treatment that minimizes adverse aesthetic and visual impacts on the view from land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of a wireless telecommunications facility, which shall mean the least visually and physically intrusive facility, so as to make it substantially invisible, and that is not technologically or commercially impracticable under the facts and circumstances.

- (m) **“Drive Test”** means measuring and assessing the coverage, capacity and signal strength or quality of service of a wireless service provider(s) using a mobile vehicle outfitted with drive testing measurement equipment.
- (n) **“Eligible Facility”** means an existing wireless tower or base station that involves collocation of new transmission equipment or the replacement of transmission equipment that does not constitute a substantial modification.
- (o) **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
- (p) **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
- (q) **“Facility”** See definition for ‘Wireless Telecommunications Facilities’.
- (r) **“Height”** means, when referring to a tower or wireless support structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an antenna or lightening protection device.
- (s) **“Information Service”** has the same meaning as defined and used in 47. U.S.C. 253, and subsequent FCC and applicable case law interpretation. It expressly is not a ‘Personal Wireless Service’ as defined in 47. U.S.C. 332.
- (t) **“Maintenance”** means plumbing, electrical, or mechanical work that may require a building permit, but that does not constitute a modification of the facility.
- (u) **“Modification”** or **“Modify”** means, the addition, removal or change of any of the physical and/or visually discernable components or aspects of a wireless facility with effectively identical components of the same weight and size or less, including but not limited to antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, the color or materials of any visually discernable components, vehicular access, parking, and/or an upgrade or change-out of equipment for better or more modern equipment. Modification and the type of modification shall be defined as set forth in FCC Report and Order 14-153.
- (v) **“Necessary”** or **“Necessity,”** or **“Need”** means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting or acting in a manner that prohibits the provision of service as intended and described in the narrative of the application. Necessary does not mean what may be desired, preferred or to comply with voluntary chosen company policies, preferences or standards.

- (w) **“NIER”** means Non-Ionizing Electromagnetic Radiation.
- (x) **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
- (y) **“Personal Wireless Service”** or **“PWS”** or **“Personal Telecommunications Service”** or **“PTS”** shall all have the same meaning as defined and used in 47. U.S.C. 332, the 1996 Telecommunications Act, and subsequent FCC and applicable case law interpretation. It expressly is not an ‘Information Service’ as defined in 47. U.S.C. 253.
- (z) **“Repairs and Maintenance”** means the replacement or repair of any components of a wireless facility when the replacement is effectively identical to the component being replaced or for any matters that involve a change without the addition, removal, or change of any of the physical or visually discernable components or aspects of a wireless facility that will change the visible appearance of the facility from that originally permitted.
- (aa) **“Special Use Permit”** means the official document or permit by which an applicant is allowed to file for a building permit to construct and use a facility as granted or issued by the City, including for a substantial modification.
- (bb) **“State”** means the State of Alabama.
- (cc) **“Structural Capability”** or **“Structural Capacity”** notwithstanding anything to the contrary in any other standard, code, regulation or law, means up to and not exceeding a literal 100% of the designed loading and stress capability of the support structure.
- (dd) **“Substantially invisible”** means effectively unrecognizable as a wireless facility.
- (ee) **“Substantial Modification”** has the same meaning as provided in 47 C.F.R § 1.40001(b)(7), as may be amended, which defines that term differently based on the particular facility type and location. For clarity, the definition in this section organizes the FCC’s criteria and thresholds for a substantial change according to the facility type and location.
 - (1) For towers outside the public rights-of-way, a substantial change occurs when:
 - a) The proposed co-location or modification increases the overall height more than ten percent (10%) or the height of one additional antenna array not to exceed twenty (20) feet (whichever is greater); or
 - b) The proposed co-location or modification increases the width more than twenty (20) feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or

- c) The proposed co-location or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four (4); or
 - d) The proposed co-location or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
- (2) For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
- a) The proposed co-location or modification increases that overall height more than ten percent (10%) or ten (10) feet (whichever is greater); or
 - b) The proposed co-location or modification increases the width more than six (6) feet from the edge of the wireless tower or base station; or
 - c) The proposed co-location or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - d) The proposed co-location or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted cabinets; or
 - e) The proposed co-location or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- (3) In addition, for all towers and base stations wherever located, a substantial change occurs when:
- a) The proposed co-location or modification would defeat the existing concealment elements of the support structure as determined by the City; or
 - b) The proposed co-location or modification violates a prior condition of approval as regards to height, width, number, and size of equipment cabinets, or any excavation is inconsistent with the thresholds for a substantial change described in this section.
- (4) As to all measurements set forth herein, the following principles shall govern:
- a) Any threshold or limits of height increase is cumulative or collective.
 - b) For sites with horizontally separated deployments, the cumulative limit is measured from the originally permitted support structure without regard to any increases in size due to wireless equipment not included in the original design.
 - c) For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012, the date of passage of the Middle-Class Tax Relief and Job Creation Act of 2012 Section 6409(a).

- (ff) **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
- (gg) **“Telecommunications Site”** See definition for Wireless Telecommunications Facilities.
- (hh) **“Telecommunications Structure”** means a structure used to support equipment used to provide wireless communications.
- (ii) **“Temporary”** means not permanent in relation to all aspects and components of this Ordinance, something intended to, and that does, exist for fewer than ninety (90) days.
- (jj) **“Tower”** means any structure designed primarily to support an antenna(s) for receiving and/or transmitting a wireless signal.
- (kk) **“Wireless Telecommunications Facility”** or **“Facilities (WTF or WTFs)”** means and includes a **“Telecommunications Site”** and **“Personal Wireless Facility.”** It means a structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes without limit, towers of all types and kinds, and structures, including but not limited to buildings, church steeples, silos, water towers, signs or any other structure that is used or is proposed to be used as a support structure for antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters, and enclosures, cabinets and other structures associated with the facility. It is a structure and facility, including a compound, intended for transmitting and/or receiving wireless communications, including but not limited to radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless service, permitted by the FCC.

Section 4 General Policies and Procedures for Applications under this Ordinance

In order to ensure that the placement, construction, and modification of a facility does not endanger or jeopardize the health, safety, public welfare, environmental features, or change the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Ordinance, the City hereby adopts an overall policy and related procedures with respect to the submittal, review, approval, and issuance of permits or Administratively granted authority for wireless facilities for the express purpose of achieving the following outcomes. The following are general policies intended to accomplish this:

- (a) Requiring a Special Use Permit or Administrative Approval for:

- (1) the construction of any new wireless telecommunications facility including a new tower or other support structure; or
 - (2) the substantial co-location/modification of wireless telecommunication equipment on an existing tower or support structure that is not an Eligible Facility pursuant to the FCC's Report and Order 14-153 dated October 17, 2014; or
 - (3) the co-location or modification of wireless telecommunication equipment on an existing tower or support structure that is defined as an Eligible Facility pursuant to the FCC's Report and Order 14-153 dated October 17, 2014.; or
 - (4) the modification of any facility or support structure that is deemed by the City of Madison not to be general repair and maintenance.
- (b) Implementing an application process and requirements;
- (c) Establishing procedures for examining an application and issuing a Special Use Permit or Administrative Authority that is both fair and consistent;
- (d) Promoting, and requiring wherever possible, the sharing and/or co-location of support structures among service providers;
- (e) There shall be no towers or other support structures permitted or built on speculation, such meaning without a carrier or other wireless provider proving the need for such as required in this Section and committing in writing to attach to and provide service from the tower or other new structure immediately upon construction.
- (f) Minimizing the Visual Impact: For reasons of concealment, requiring, promoting and encouraging wherever possible, the placement, height and profile of a Facility in such a manner as to minimize the physical and visual impact on the community, including but not limited to the use of stealth or camouflaging techniques, so as to make the facility substantially invisible.
- (g) The Building Department is the officially designated department of the City to which applications for a Special Use Permit for a facility must be made, and which is authorized to make decisions with respect to granting or not granting or revoking Special Use Permits applied for under this Ordinance. The City Council may at its discretion delegate or designate the City Planning Commission or other official agencies or officials of the City or outside consultants to accept, review, analyze, evaluate and make recommendations with respect to the granting or not granting or revoking Special Use Permits for wireless telecommunications facilities. The City Council may at its discretion delegate or designate other official agencies or officials

of the City the authority to grant administrative authorization for all requests or applications for eligible facility request.

- (h)** Pre-application meeting: There shall be a pre-application meeting for all intended applications. The pre-application meeting may be held either on site or telephonically as deemed appropriate. The purpose of the pre-application meeting will be to address i) issues that will help to expedite the application review and permitting process; and ii) identify and address certain issues or concerns the City or the applicant may have.
- (i)** Site Visit: If there has not been a prior site visit for the requested facility within the previous six (6) months a site visit shall be conducted. Costs of the City's consultant to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of the application fee specified in Section 5 of this Ordinance which must be paid to the City prior to any site visit.
- (j)** Number of Applications: An Applicant shall submit to the City the number of copies of completed applications determined to be needed at the pre-application meeting. If Planning Commission action is required, applications will not be transmitted to the Planning Commission for consideration until the application is deemed complete by City staff.
- (k)** Applicant(s) of Record: The owner(s) of the support structure to which antennas or related equipment are to be attached must be an official Applicant of Record. Notwithstanding the preceding, for a new tower or other new support structure or for a substantial modification, the technical need for a new facility must be documented and substantiated by clear and convincing evidence showing a particular carrier's or other user-of-the-Facility's technical need for what is requested. Notwithstanding the preceding, to avoid any conflict of interest as relates to City-owned facilities, the City is not permitted to be an applicant or a party to an application by a private commercial entity.
- (l)** Properly Completed Application: All Applicants shall closely follow the instructions for preparing an application. Not closely following the instructions without permission to deviate from such shall result in the application being deemed incomplete.
- (m)** Amended Application: Unless expressly and boldly stated in the front of the application at the time of its submittal that the application is not complete, it shall be assumed that the applicant reviewed the application for compliance and intended the application to be complete, and therefore any subsequently submitted information intended to correct any deficiencies shall be deemed an amendment to the application..
- (n)** Denial of a non-eligible facility application: The City may, for just reason and cause, deny an application for anything other than an eligible facility application, that does not meet the requirements stated herein or which is otherwise not complete after

proper notice and a reasonable opportunity to make the application complete has been afforded.

- (o) No work of any kind on a facility shall be started until (1) the application is reviewed and approved by the City Council or its authorized designee, and (2) the Special Use Permit, or Administrative Authorization if applicable, has been issued and any applicable permits have been issued.
- (p) An application shall be signed on behalf of the applicant(s) by the person(s) vested with the authority to bind and commit the applicant and attesting to the truth, completeness and accuracy of the information presented.
- (q) Certification: Where a certification is called for, such certification shall bear the signature and seal of a Professional Engineer licensed in the State of Alabama.
- (r) Concealment and Harmony with Surroundings: A tower or other support structure and any and all accessory or associated structures and equipment shall maximize the use of building materials, colors and textures designed to harmonize with the natural surroundings so as to make the facility substantially invisible. This shall include the utilization of stealth or camouflage techniques or other concealment methods such as but not limited to abiding by the established limited or maximum permitted height.
- (s) Utilities: All utilities at a facility site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the City, including specifically, but not limited to applicable electrical codes.
- (t) Vehicular Access: At a Facility needing vehicular access, an access road, parking and turn around space for emergency vehicles shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance, grade change and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations.
- (u) Compliance with Applicable codes: All work at a facility shall be done in strict compliance with all versions or editions of the latest applicable building, technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent edition of the TIA/ANSI Code, National Electrical Safety Code, the National Electrical Code and the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry

practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

- (v) Permits and Licenses: A holder of a Special Use Permit shall obtain, at its own expense, all permits, and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.
- (w) Compliance: All Facilities, must at all times comply with all applicable local, State and Federal laws, rules and regulations, including but not limited to applicable safety rules, regulations and standards.
- (x) Equipment shall consist only of the minimum-size antenna array technologically needed to provide service primarily and essentially within the City.
- (y) For any facility outside the public Rights-of-Way that is not an Eligible facility, the City reserves the right to require a drive test to be conducted under the supervision of the City or its designee as evidence of the technical Need for what is requested.
- (z) To provide an opportunity for those reasonably expected to be affected to understand what is proposed and its impact, and to have input to the applicant, for any new support structure, or any Substantial Modification, the Planning Commission will hold a public hearing. Written notice of the hearing and its purpose shall be provided to all residents located within one thousand (1,000) feet of the site at least two (2) weeks prior to the date of the hearing. The hearing shall be scheduled by the Planning Department. All costs related to the hearing shall be borne solely by the Applicant, including but not limited to the cost of written notification and any reasonable costs of the City.

Section 5 Application Fee

- (a) At the time that a person submits an application for a Special Use Permit, such person shall pay a non-refundable application fee to the City.
 - (1) The application fee for a new wireless telecommunication facility or a substantial modification, shall be \$5,000.00.
 - (2) The application fee for a modification or co-location that is an eligible facility request, shall be \$2,500.00.
 - (3) No Application fee is required in order to recertify a Special Use Permit for wireless telecommunications facilities, unless there has been a modification of the wireless telecommunications facilities since the date of the issuance of

the existing Special Use Permit for which the conditions of the Special Use Permit have not previously been modified.

Section 6 Exceptions and Existing Facilities Prior to the Adoption of this Ordinance

- (a) If constructed as required by the original permit, any properly permitted facility that exists on the effective date of this Ordinance shall be allowed to continue as it presently exists, provided that i) it exists and is operating as originally permitted; and ii) any modification of the facility has been properly permitted.
- (b) Any modification not properly permitted under a previously-existing ordinance must be permitted under this Ordinance.
- (c) Any modification of a facility or its equipment subsequent to the adoption of this Ordinance, must be permitted under this Ordinance and will require the entire facility and any new or modified installation to comply with this Ordinance, except that any tower or other support structure properly permitted prior to the adoption of this Ordinance may remain at the originally permitted height.
- (d) Any repair and maintenance of a wireless facility that does not, i) increase the height of the structure, ii) alter the profile, iii) change the loading, iv) change the RF emissions levels, v) increase the footprint of the facility or vi) otherwise exceed the conditions of the Special Use Permit, does not require an application for a Special Use Permit, but may require a building permit. In no instance shall any additional construction or modification be considered repair or maintenance.

Section 7 Exclusions

The following shall be exempt from this Ordinance:

- (a) Any facilities expressly exempt from the City's siting, building and permitting authority.
- (b) Any wireless reception or transmission devices expressly exempted under 47 U.S.C. 332 or the FCC's rules and regulations.
- (c) Facilities, except towers, used exclusively for private, non-commercial radio and television reception and private citizens' bands, licensed amateur radio and other similar non-commercial telecommunications.
- (d) Non-Commercial Facilities used exclusively for providing unlicensed spread spectrum technologies where; i) there is no charge for the use of the wireless service; ii) the facility does not require a new tower or increase the height of the structure being attached to; and iii) the service is not intended to be useable more than one-hundred feet (100') from the antenna(s).

Section 8 Application Requirements for a Special Use Permit

- (a) General Application Requirements: the following items are considered general application requirements and shall be included in all applications for a Special Use Permit or Administrative Approval:
- (1) The name, address, phone number, and e-mail address of the person preparing the application
 - (2) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided.
 - (3) The postal address and tax map parcel number of the property.
 - (4) The zoning district or designation in which the property is situated.
 - (5) For all new Facilities, a list of the specific frequency bands to be initially activated immediately upon completion of construction and a copy of the FCC licenses applicable for all the frequency bands licensed to the carrier to provide service in the City.
 - (6) All Applications shall include written commitment statements that:
 - a) the applicant's facility shall always without exception be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable City, State and Federal Laws, rules, and regulations, unless specifically granted relief by the City in writing;
 - b) the construction of the facility is legally permissible, including, but not limited to the fact that the applicant is licensed to do business in the State.
 - (7) Certified detailed construction drawings, including but not limited to the following information:
 - a) the size of the property footprint on which the structure to be built or attached to is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines and rights-of-way.
 - b) location of the nearest residential structure and habitable structure.

- c) the location, size, and height of all existing and proposed structures on the property.
 - d) enclosures and cabinets on the property on which the structure is located that are related to the subject of the application.
 - e) a site plan to-scale showing the footprint of the support structure and the type, location and dimensions of access drives, landscaping and buffers, fencing, underground utilities of any kind and any easements.
 - f) elevation drawings showing the profile or the vertical rendition of the facility and identifying all existing and proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the existing grade, materials, colors and lighting.
 - g) proposed electrical and grounding plans for the facility.
- (8) The azimuth, size, top of antenna height, locations of all proposed and existing antennas on the support structure, and the height of the tip of any lightning arrestor.
- (9) The type and manufacturer of the tower and a rigorous structural analysis and report, including the calculations, certified by a Professional Engineer licensed in the State of Alabama and proving the structure's capability to safely accommodate the facilities of the applicant.
- (10) An ANSI/TIA-222 Maintenance and Conditions Assessment report regarding the physical condition of the facility and its components, using the most recently adopted version of ANSI/TIA-222. The report shall contain tolerances including but not limited to guy tensions if applicable, plumb, twist, slip splices, and take-up devices. No Special Use Permit shall be issued for any wireless facility or related equipment where the structure being attached to is in need of safety-related remediation to comply with the requirements of this Ordinance and other adopted standards of the City, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the City.
- (11) For telecommunications towers taller than thirty-three feet (33') in height, a completed and signed checklist for categorical exclusion of radio frequency electromagnetic emissions. If the modification, co-location or construction of a new wireless facility is not categorically excluded based on the Federal Communications Commission's rules, the applicant shall provide a compliance letter to the City and shall remain in full compliance with all requirements set forth by the latest edition of the Federal Communications Commission (FCC)

OET Bulletin 65. In certain instances, the City may deem it appropriate to have an on-site RF survey of the facility done after the construction or modification of the facility. Such survey shall be done under the observation and direction of the City or its designee, and an un-redacted copy of the survey results along with all calculations provided, prior to the issuance of a Certificate of Compliance.

- (12) A signed statement that the applicant will expeditiously remedy any physical or RF interference with other wireless devices or services.
 - (13) Cut Sheets or specifications for all equipment to be installed/mounted on the structure.
- (b)** Co-location Application Requirements: In addition to the requirements set forth in Subsection (a), these items shall be included in the application for a Special Use Permit for co-locations on existing structures:
- (1) A copy of the lease with the owner of the structure, and the landowner if different than the structure owner, and if applicable a signed letter of agency granting authorization to represent and commit for the party represented. If the applicant owns the site, a copy of proof of ownership is required.
 - (2) The frequency, modulation, and class of service of radio or other transmitting equipment.
 - (3) Transmission and maximum effective radiated power of the antenna(s).
 - (4) Direction of maximum lobes and associated radiation of the antenna(s).
 - (5) If requested by the City, to-scale Photographic simulations of the Facility “before and after construction” from key viewpoints inside of the City as may be appropriate and required and a map showing the locations of where the photos were taken and the distance(s) of each location from the proposed structure. Guidance will be provided concerning the appropriate key viewpoints on an individual application basis.
 - (6) A unredacted copy of the applicants Certificate of Liability Insurance.
- (c)** New Wireless Structures and Substantial Modification Requirements: In addition to the requirements set forth in Subsections (a) and (b), the following shall be included in the application for a Special Use Permit for new wireless support structures and Substantial Modifications of support structures:
- (1) The applicant for a new tower shall submit clear and convincing technical evidence by a wireless service provider justifying the technical Need for the

proposed height of the facility and the need for such, to the exclusion of all reasonable alternatives. Evidence in the form of propagation studies must include the modeling data and assumptions used to produce the studies on a form to be provided by the City.

- (2) The Applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share space on the new tower.
- (3) If a Modification of a facility is needed whereby the height, profile or size of the facility is increased, or construction is needed outside the permitted compound or property, a detailed narrative explaining what changes are needed and why they are needed.
- (4) The type of support structure, the number of antenna arrays proposed to be accommodated and a Certified structural report, including all calculations demonstrating the facility's capacity to accommodate the required number of antenna arrays for which the structure must be designed.
- (5) A copy of the foundation design, including a geotechnical sub-surface soils investigation report and foundation design recommendation for the tower or other structure.
- (6) A written copy of an analysis completed by a qualified individual or organization to determine if the proposed wireless telecommunications facility is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. Unless already lighted, this requirement shall also be for any facility where the application proposes to increase the height of the Facility. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.
- (7) A narrative description of what will be done to minimize the visual impact. The City expressly reserves the right to require the use of stealth or camouflage techniques.
- (8) For a new tower or other new support structure, or for a Substantial Modification, the applicant shall be required to submit clear and convincing evidence that a new tower or support structure or the Substantial Modification is the only option within one-half (1/2) mile of the proposed new tower or support structure that will enable the provision of wireless services within the intended service area.
- (9) In order to better inform the public, in the case of a new tower, the applicant shall hold a "balloon test" or erect a story pole, prior to the initial public

hearing on the application. The balloon test shall be based upon the fact and circumstances of the application.

- a) The applicant shall arrange to fly, or raise upon story pole, a minimum of a four (4) feet in diameter, brightly colored balloon at the maximum height of the proposed new tower.
 - b) At least fourteen (14) days prior to the conduct of the balloon test, a sign shall be erected so as to be clearly visible from the road nearest the proposed site and shall be removed no later than fourteen (14) days after the conduct of the balloon test. The sign shall be at least two feet (2') by three feet (3') in size. The sign shall be placed off, but as near to, the public right-of-way as is possible. The sign shall contain the times and date(s) of the balloon test and contact information.
 - c) The dates, (including a second date, in case of poor visibility or wind in excess of 15 mph on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the City and as agreed to by the City. The Applicant shall inform the City in writing of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four (4) consecutive hours between 10:00 am and 2:00 p.m. on the dates chosen. The primary date shall be on a week-end, but the second date, in case of poor visibility on the initial date, may be on a week day. A report with photos from various locations of the balloon and to-scale superimposed photo simulations of the facility when completed shall be provided with the application.
 - d) The applicant shall notify all property owners and residents located within one-thousand (1,000) feet of the nearest property line of the subject property of the proposed construction of the tower and wireless facility and of the date(s) and time(s) of the balloon test. Such notice shall be provided at least fourteen (14) days prior to the conduct of the balloon test and shall be delivered by first-class mail. The applicant shall bear all costs associated with said notification.
- (10) The owner of a tower or other support structure, and his/her successors in interest, shall negotiate in good faith for the shared use of the facility by other wireless service providers, and shall:
- a) Respond within 60 days to a request for information from a potential shared-use applicant;

- b) Negotiate in good faith concerning future requests for shared use of the new wireless telecommunications facility by other telecommunications providers.
 - c) Allow shared use of the new wireless telecommunications facility if another telecommunications provider agrees in writing to pay reasonable charges.
 - d) Understand that failure to abide by the conditions outlined above may be grounds for revocation of the Special Use Permit.
- (11) The Applicant shall provide a description in writing and a visual rendering demonstrating how it shall effectively screen from view the bottom fifteen feet (15') of the facility and all related equipment and structures associated with the facility. The buffer, which may be located within the required setback area, shall consist of a landscape strip, at least five (5) feet in depth, located outside the security fence. The landscape strip should be planted with a combination of trees and/or shrubs which are capable of attaining, at maturity, a height as high as the security fence and which will enhance and, at minimum, partially screen the outward appearance of the security fence. For towers located within 1,000 feet of a residential area, the City may require wider landscape buffers and other items such as decay resistant, solid wood fences, earth berms, and brick or masonry walls in addition to the security fence. All fencing, walls, and landscaping shall be kept in good condition and repair and maintained in a neat manner by the owner of the tower.
- (12) Co-location on an existing structure is not reasonably feasible if the co-location is technically or commercially impracticable or the owner of the structure is unwilling to enter into a contract for its use. Clear and convincing evidence to support such claims shall be submitted with an application.
- (13) A building permit shall not be issued for construction of a new tower or other support structure until there is an application filed for or by a specific carrier that documents that the facility is Necessary for that carrier to provide service in the in the intended service area primarily within the City and that a less visually intrusive option co-location on an existing structure is not technologically impracticable.

Section 9 Location of Wireless Telecommunications Facilities

- (a) New Towers or other support structures shall be prohibited in Residential Districts, Historic Districts, and areas officially deemed to be visual or scenic sensitive areas unless the applicant provides clear and convincing evidence demonstrating that i) a new tower as proposed is necessary to the exclusions of any alternative or reasonable combination of alternatives; ii) that the intended area cannot be served from outside

- the District without a new tower or other support structure; iii) that no existing or previously approved facility can reasonably be used for antenna placement; and iv) that not to permit a new tower or other support structure would result in a significant gap in service.
- (b)** Applicants shall locate, site, and erect all Facilities and associated equipment in accordance with the following priorities, in the following order:
- (1) On City-owned properties or facilities without increasing the height of the tower or support structure.
 - (2) On other existing structures without increasing the height of the tower or support structure.
 - (3) On City-owned properties or facilities without exceeding the maximum permitted height under this Ordinance.
 - (4) On other existing structures without exceeding the maximum permitted height under this Ordinance.
 - (5) On City-owned properties or facilities.
 - (6) On properties in areas zoned for non-residential use.
 - (7) On properties in designated Historic Districts, Restricted Overlay Districts and properties in areas zoned for Residential use.
- (c)** If the proposed site is not proposed for the highest priority listed above, a detailed narrative and technical explanation consisting of clear and convincing technical evidence must be provided to document the need to use any lower siting priority.
- (d)** The person seeking such an exception must satisfactorily demonstrate the reason(s) why a Special Use Permit or Administrative Authorization should be granted for the proposed site as opposed to a site(s) higher in the priority list.
- (e)** The existence of a lease or an option to lease shall not be deemed justification for not complying with the siting priorities set forth in this Ordinance. An applicant may not by-pass sites of higher priority because the site proposed is under lease or an option to lease. Build-to-Suit agreements between a carrier and a tower owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with the requirement to co-locate.
- (f)** Notwithstanding the priorities set forth in the preceding §(a), the City may approve any site located within an area in the above list of priorities, provided that the City

finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. Conversely, the City may direct that the proposed location be changed to another location that is more in keeping with the goals of this Ordinance and the public interest as determined by the City and that serves the intent of the applicant.

Section 10 Type and Height of Towers

- (a) All new towers shall be of the monopole type. No new towers of a lattice or guyed type shall be permitted, unless relief is otherwise expressly requested and granted based on the provision of clear and convincing technical evidence. Maximum tower diameter shall not be greater than that which is required for the height of the tower.
- (b) The maximum permitted total height of a new tower or support structure outside the right-of-way shall be one hundred (100) feet above pre-construction ground level, unless an applicant proves by clear and convincing technical evidence that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the City. The maximum permitted height is expressly not an as-of-right height, but rather the maximum permitted height absent clear and convincing technical evidence of the technological need for a greater height.
- (c) As the City has made the policy decision that more facilities of a shorter height are in the public interest, as opposed to fewer taller facilities, spacing or the distance between facilities shall be such that the service may be provided without exceeding the maximum permitted height.
- (d) With respect to the overall designed strength of a tower, but not with respect to height, towers shall be structurally designed to accommodate a minimum of four (4) carriers using substantially similar equipment to that used by the first carrier attaching to a tower and that can be increased in height if needed for technical reasons.

Section 11 Visibility and Aesthetics

- (a) Concealment: To make new facilities as substantially invisible as possible to the greatest number of people, all new facilities, including but not limited to towers, shall utilize stealth or camouflage siting techniques, unless such can be shown to be either commercially or technologically impracticable.
- (b) Facility Finish/Color: Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Ordinance.
- (c) Profile and Concealment: So as to be the least visually intrusive reasonably possible given the facts and circumstances involved and create the smallest profile reasonably

possible under the facts and circumstances and thereby have the least adverse visual effect and be substantially invisible, all antennas attached to a Tower or other structure shall be flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.

- (d) No tower or support structure constructed after the effective date of this Ordinance shall be tall enough to require lighting. In the event lighting is legally required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. For any facility for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device must be compliant with or not in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA. As of the effective date of this Ordinance, in the event a tower that is lighted is modified, at the time of the modification, for purposes of concealment the City may require that the tower be retrofitted so as to comply with the lighting requirements of this Ordinance.
- (e) Attachments to Buildings: To preserve and protect the nature and character of the area and enable the site to be substantially invisible, for any attachment to a building or other structure with a facade, the antennas shall be mounted on the facade without increasing the height of the building or other structure, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exteriorly encased or exposed cabling shall match as closely as possible the color and texture of the structure. If antennas are required to be mounted above the roof-line of any building, the applicant must include a plan to camouflage the antennas.
- (f) Attachments to Water Tanks: If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the Applicant can prove that to locate elsewhere on the tank with less visual effect will prohibit or have the effect of prohibiting the provision of service or will create a safety hazard. All attachments and exteriorly encased or exposed cabling shall match as closely as possible the color and texture of the structure.

Section 12 Reasons for Denial

- (a) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may disapprove an application for any of the following reasons:
 - (1) Conflict with safety and safety-related codes and requirements;

- (2) The facility would not conform to the City's policy of concealment as described in Section 12;
- (3) Conflict with the historic nature or character of a neighborhood, district or adjacent surrounding area;
- (4) The use or construction of facilities contrary to an already stated purpose of a specific zoning or land use designation;
- (5) The placement and location of facilities which would create an unacceptable safety or financial risk to residents, general public, employees and agents of the City, or employees of the service provider, or other service providers, or the reasonable probability of such;
- (6) Conflicts with the provisions of this Ordinance.

Section 13 Security

All wireless telecommunications facilities and antennas shall be secured by a security fence, at least eight (8) feet in height, around the perimeter of the compound that prevents unauthorized access. Specifically:

- (a) Fences shall be of masonry, ornamental metal, vinyl coated chain-link, vinyl, durable wood, or a combination thereof. Untreated wood, uncoated chain-link, plastic or wire shall not be permitted. The finished side of the fence shall face abutting property.
- (b) All facilities, including antennas, towers and other supporting structures, such as guy anchor points and guy wires, shall be made inaccessible to unauthorized individuals and shall be constructed or shielded in such a manner that they cannot be climbed or collided with; and
- (c) Transmitters and telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.

Section 14 Signage

- (a) Facilities shall contain a sign no larger than four (4) square feet and no smaller than two (2) square feet in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of the same size is also to be installed bearing the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and must be visible from the access point of the facility and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted,

unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

Section 15 Setback and Fall Zone

- (a) All proposed towers and any new proposed support structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: i) a distance equal to the height of the proposed Tower or support structure plus ten (10) percent of the height of the Tower or other structure, otherwise known as the fall zone; or the existing setback requirement of the underlying zoning district, whichever is greater. Any accessory structure shall be located within the fenced compound area as approved in the Special Use Permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The fall zone shall be measured from the nearest edge of the tower to the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile, as well as any property boundary lines. At the discretion of the Planning Director, the preceding may not apply to facilities located in the public-rights-of-way.
- (b) The nearest portion of any access road leading to a facility shall be no less than ten (10) feet from the nearest property line.
- (c) There shall be no development or human occupation of habitable buildings within the setback area or fall zone.
- (d) Small Wireless Facilities shall be exempt from requirements set forth by this Section.

Section 16 Retention of Expert Assistance Cost to be Borne by Applicant

- (a) The City may hire a consultant to assist the City in reviewing and evaluating applications.
- (b) The total amount of consultant's fee may vary with the scope and complexity of the application, the completeness of the application, as well as other information as may be needed to complete the necessary review, analysis, and inspection of any construction or modification.
- (c) To prevent the taxpayers from having to bear the cost related to the issue of permitting and regulating wireless telecommunication facilities, an applicant shall place with the City a deposit, which shall be maintained in an escrow account for that application.
 - (1) The escrow deposit amount for new wireless telecommunication facilities and substantial modifications, shall be \$7,500.00.

- (2) The escrow deposit amount for modifications and co-locations that are eligible facility requests, shall be \$7,500.00.

- (d) If at any time during the review process this escrow account has a balance less than \$1,000.00, applicant shall immediately, upon notification by the City, replenish said escrow account so that it has a balance of at least \$2,500.00 or such other amount as determined to be needed given the anticipated amount of work remaining on the application. Such additional funds must be deposited with the City before any further action or consideration is taken on the application. In the event that the amount held in the escrow account is more than the amount of the actual billing or invoicing at the time of the grant of the Certificate of Completion, the remaining balance shall be promptly refunded to the applicant upon request.

- (e) If an application is amended at any time prior to the grant of the permit or authorization required under this Ordinance, the City reserves the right to require a separate and additional payment for review and analysis equal to, but not exceeding, the cost created for the City by the amendment of the application. Such amount shall be paid to the City prior to the issuance of the Special Use Permit or Administrative Authorization.

- (f) The City will maintain an accounting for the expenditure of all such funds. The City's consultant/expert shall invoice the City for all time expended for its services in reviewing the application including the on-site inspections of the construction and modification once permitted, plus out-of-pocket expenses.

- (g) The total amount of the consultant's fee may vary with the scope and complexity and/or the completeness of the application or the amount of time spent responding to an applicant's arguments as regards the requirements of this Ordinance or other applicable law, rule or regulation.

Section 17 Procedural Requirements for a Granting a Special Use Permit

- (a) The following procedures shall apply where a Special Use Permit is requested:
 - (1) The City shall schedule any required public hearing(s) once it finds the application is complete and there are no issues of non-compliance with applicable law, rule, or regulation. The City is not required to set a date if the application is not complete or if there are unresolved issues of non-compliance. The City may, at any stage prior to issuing a Special Use Permit or Administrative Authority, require such additional information as it deems necessary and is not prohibited from requiring as relates to the issue of the siting, construction, or modification of or at a wireless facility.

- (2) Upon City review and approval, a Special Use Permit shall be issued. Notwithstanding the preceding, the Building Permit for a new tower or other support structure shall not be issued until an applicant has provided clear and convincing documentation substantiating the needed height of the first antenna array and the City has approved the application.

Section 18 Action on an Application

- (a) The City will undertake a review of an application pursuant to this Article in a timely fashion, consistent with its responsibilities and applicable law, and shall act within the time required by applicable law.
- (b) The City may refer any application or part thereof to any advisory committee or consultant for a non-binding recommendation.
- (c) Either after a public hearing if a hearing is required, or after Administrative review as applicable, and after formally considering the application, the City may i) approve; ii) approve with conditions; or iii) deny a Permit or Administrative Authorization. The decision shall be in writing and shall be supported by substantial evidence contained in a written record. Throughout the application and permitting process, the burden of proof for compliance with this ordinance or the need for something not allowed, shall always be upon the applicant.
- (d) If, the City approves the Special Use Permit or Administrative Authority for the facility, then the applicant shall be notified of such approval within the time allowed by applicable law. The Special use Permit or Administrative Authorization shall be issued within the time allowed by applicable law, after such approval.
- (e) If the City denies the Special Use Permit or Administrative Authority for the facility or the modification, then the applicant shall be notified of such denial in writing within 30 calendar days of the action and shall set forth in writing the reason or reasons for the denial.

Section 19 Extent and Parameters of Special Use Permit or Administrative Authority for Wireless Telecommunications Facilities

- (a) The extent and parameters of a Special Use Permit or Administrative Authorization for a Facility shall be as follows:
 - (1) A Special Use Permit or Administrative Authorization shall not be assigned, transferred or conveyed without the express prior written notification to the City, such notice to be not fewer than thirty (30) business days prior to the intended assignment, transfer or conveyance.

- (2) A transfer, assignment or other conveyance of the Special Use Permit or Administrative Authorization shall require the written commitment of the new holder of the Special Use Permit or Administrative Authorization to abide by all applicable laws, rules and regulations, including but not limited to this Ordinance.
- (3) Following notice and an opportunity to cure and if not cured, a Special Use Permit or Administrative Authorization granted under this Ordinance may be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit or other applicable law, rule or regulation, and if warranted the payment of a fine(s) as is permissible.
- (4) If not cured within the time frame set forth in the notice of violation, a hearing shall be held upon due prior notice to the applicant citing the violation(s) and the date, time and place of the hearing, which shall be provided by registered mail to the last known address of the holder of the Special Use Permit.
- (5) Following the original notice and an opportunity to cure as relates to a given facility, subsequent or repeated violations of a substantially similar nature shall not require an opportunity to cure prior to the imposition of fines.

Section 20 Removal and Performance Security

- (a) Support Structure Removal and Performance: The Applicant and the owner of record of any proposed new tower or support structure shall, at its sole cost and expense, be required to execute and file with the City a bond or other form of security that is acceptable to the City as to the type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a tower or other support structure and with such sureties as are deemed adequate by the City to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Special Use Permit issued pursuant to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original Special Use Permit.

Section 21 Reservation of Authority to Inspect Wireless Telecommunications Facilities

- (a) In order to verify that the holder of a Special Use Permit for facility and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct and operate such facilities in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and conditions of any permit granted under this Ordinance, the City may inspect, or cause to have inspected by a third party, all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures

constructed or located on the permitted site, including but not limited to electrical service, wiring and components.

- (b) Refusal to allow or grant access to a City representative upon reasonable notice shall be deemed a violation of this ordinance.

Section 22 Liability Insurance

- (a) A holder of a Special Use Permit for a wireless telecommunications support structure shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below:
 - (1) Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate; and
 - (2) Automobile Coverage: \$1,000,000.00 per occurrence/ \$2,000,000 aggregate; and
 - (3) A \$3,000,000 Umbrella coverage; and
 - (4) Workers Compensation and Disability: Statutory amounts.
- (b) For a facility located on City property, the Commercial General Liability insurance policy shall specifically name the City and its officers, boards, employees, committee members, attorneys, agents and consultants as additional insureds.
- (c) The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.
- (d) Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days prior to the expiration of the insurance that such policies are to renew or replace.
- (e) Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than fifteen (15) days prior to the grant of the Building Permit, the holder of the Special Use Permit or Administrative Authorization shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.
- (f) A Certificate of Insurance that states that it is for informational purposes only and does not confer rights upon the City shall not be deemed to comply with this Ordinance.

Section 23 Indemnification

- (a) Any application for wireless telecommunication facilities that is proposed to be located on City property shall contain a provision with respect to indemnification of the City. Such provision shall require the applicant, to the extent permitted by applicable law, to at all times defend, indemnify, protect, save, hold harmless and exempt the City and its officers, commissions, committees, employees, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.
- (b) Notwithstanding the requirements noted in §(a) of this section, an indemnification provision will not be required in those instances where the City itself applies for and secures a Special Use Permit for a wireless telecommunications facility.

Section 24 Fines & Penalties

- (a) A violation of this Ordinance shall be punishable by a fine not to exceed the sum of five hundred (\$500) for each offense, and if a willful violation, by imprisonment, not to exceed six months, or both, at the discretion of the court trying the same. Each day shall constitute a separate offense. The penalties and remedies provided by this Article shall not apply to the City or any official (elected or appointed), agent, consultant, officer, or employee of the City who is administering this Ordinance or otherwise performing its, his, or her official duties.
- (b) Any building inspector or code enforcement officer may issue a stop work order at any time such inspector or officer has reason to believe that any provision of this Ordinance has been violated. Upon issuance of a stop work order, all personnel will leave the site, except those necessary to correct the violation that prompted the order or to ensure the protection of the structure and occupants, if occupied, to ensure the health, welfare and safety of the occupants. No further work will be done until the violation is corrected, and the stop work order rescinded by either the director of building, deputy building official, code enforcement officer or as otherwise provided herein.
- (c) Notwithstanding anything in this Ordinance, the holder of the Special Use Permit or Administrative Authorization for a facility may not use the payment of fines, liquidated

damages or other penalties, to evade or avoid compliance with this Ordinance or any section of this Ordinance. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit or Administrative Authorization.

- (d) Without limiting other remedies available to the City, the City may also seek injunctive relief to prevent the continued violation of this Ordinance.

Section 25 Responsible Party(s)

The owner(s) of a facility, including any support structure used to accommodate wireless facilities and equipment, and the owner of the land upon which a facility or support structure is located, shall at all times be jointly and severally responsible for: (1) the physical and safe condition of the facility and all components on the site related to the facility; (2) assuring that all activities of owners, users, or lessees occurring on the site, and all components on the site related to the facility, are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the facility; and (3) assuring the proper permitting as required by this Article and other City regulations by all owners of equipment, lessees and users of the facility, including but not limited to any upgrades and/or modifications of equipment. Said owner(s) shall monitor activities at the site to assure that the facility is operated in compliance with this Ordinance, other City regulations, and any Special or Conditional Use Permit.

Section 26 Default and/or Revocation

If a support structure or facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance or of the Special Use Permit or Administrative Authorization, then the City shall notify the holder of the Special Use Permit or Administrative Authorization in writing of such violation. A Permit or Administrative Authorization holder found to be in violation may be considered in default and subject to fines as permitted under applicable State law, and if a violation is not corrected to the satisfaction of the City in a reasonable period of time, the Special Use Permit or Administrative Authorization shall be subject to revocation.

Section 27 Removal or Moving of Wireless Telecommunications Structures and Facilities

- (a) If attached to an existing structure, unless the Planning Director deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or carrier's facilities and equipment to be moved or relocated from one structure to another, or replaced by the construction of a new facility, without proof that not to be relocated to or replaced by a facility at another location would for technical reasons prohibit or serve to prohibit the provision of service in the service area served by the existing wireless facility.
- (b) If the lease for the existing co-location expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed only upon i) the provision of

convincing evidence satisfactory to the City Council of the need to move or relocate the facility; and ii) convincing evidence satisfactory to the City Council of the lack of impact on the neighborhood or area of intended new location. Cancellation or abandonment of a lease by a wireless service provider or carrier or other lessee, shall not be deemed a permissible reason for relocating.

(c) The owner of any facility shall be required to provide a minimum of ninety (90) days written notice to the City Clerk prior to abandoning any facility.

(d) Under the following circumstances, the City may determine that the health, safety, and welfare interests of the City warrant and require the removal of facilities.

(1) A facility has been abandoned (i.e. not used as a Wireless Telecommunications Facility) for a period exceeding ninety (90) consecutive days or a total of one hundred-eighty (180) non-consecutive days in any three hundred sixty-five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall be completed within 90 days of abandonment;

(2) A support structure or facility falls into such a state of disrepair that it creates a health or safety hazard or is deemed an attractive nuisance or a visual blight;

(3) A support structure or facility has been located, constructed, or modified without first obtaining, or in a manner not authorized by the required Special Use Permit or Administrative Authorization, and the Special Permit or Administrative Authorization may be revoked.

(4) If the City makes a determination as noted in subsections (2) or (3) of this section, then the City shall notify the holder of the Permit or Administrative Authorization for the Facility within forty-eight (48) hours that said Facility is to be brought into compliance and conformity or removed.

a) **The holder of the Special Use Permit or Administrative Authorization, or its successors or assigns, shall dismantle and remove such facility and all associated structures and equipment from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability. Restoration shall be completed within ninety (90) days of receipt of written notice from the City. However, if the owner of the property upon which the facility is located wishes to retain any access roadway to the facility, the owner may do so with the approval of the City.**

b) **If a facility has not been removed, or substantial progress has not been made to remove the facility, within ninety (90) days after the**

permit holder has received notice, then the City may order officials or representatives of the City to remove the facility at the sole expense of the owner or Special Use Permit holder.

c) If the City removes, or causes facilities to be removed, and the owner of the facility does not claim and remove the material from the site to a lawful location within ten (10) days, then the City may take steps to declare the Facility a nuisance.

(5) Notwithstanding anything in this Ordinance to the contrary, the City may approve a temporary use permit/agreement for the facility for no more than ninety (90) days duration, during which time a suitable plan for removal, conversion, or re-location of the affected facility shall be developed by the holder of the Special Use Permit, subject to the approval of the City, and an agreement to such plan shall be executed by the holder of the Special Use Permit or Administrative Authorization and the City. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the City may take possession of and dispose of the affected facility in the manner provided in this Ordinance and utilize the performance and removal bond.

Section 28 RF Emissions

(a) To assure the protection of the public health and safety, the City expressly reserves the right to require that an applicant, a user of a facility or the owner of the facility verify compliance with the FCC's regulations regarding RF emissions, either for individually-owned equipment or cumulatively for all equipment at the site, as may be deemed appropriate from time to time, and that all users of the facility cooperate with the party responsible for such verification.

(b) With respect to support structures other than towers, if any section or portion of the structure or the entire site or within 100' of the boundaries of the site, is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with brightly colored plastic chain or striped warning tape as appropriate, as well as placing RF Radiation warning signs as needed and appropriate to warn individuals of the potential danger.

Section 29 Relief

(a) Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Ordinance shall address and identify such at the pre-application meeting. The relief or exemption must be contained in the submitted application for either a Special Use Permit or Administrative Authorization, or in the case of an existing or previously granted Special Use Permit or Administrative Authorization, a request for modification

of the facility and/or equipment. Such relief may be temporary or permanent, partial, or complete.

- (b) If relief waiver or exemption for any item or issue is not requested at the pre-application meeting and is requested after the submittal of the application, the City reserves the right to require a formal Amendment of the Application, including the payment of all fees and charges.
- (c) Any waiver or relief from the standards of this Ordinance must be requested in writing to the City's designated consultant. The applicant must include a written justification demonstrating sufficient reason for the waiver or relief to be granted.
- (d) Any relief or waiver or relief granted may contain one (1) or more conditions;
- (e) Any waiver or relief from the regulations contained in this ordinance shall be subject to a test of i) technological impracticability and ii) commercial impracticability, both in relation to the area intended to be served by the proposed Facility; and iii) any situation that would result in non-compliance with any safety or safety-related law, rule or regulation.
- (f) The burden of proving the need for the requested relief, waiver or exemption shall be solely on the applicant.
- (g) The applicant shall bear all costs of the City in considering the request and the relief, waiver or exemption.
- (h) No relief, waiver or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the City, its residents and other service providers.
- (i) In the event that the City's designated consultant denies the applicant's request for a waiver or relief, the applicant may appeal the decision to the City's Administrative Official within ten (10) business days of the consultant's written decision. In the event that the City's Administrative Official denies the applicant's appeal and request for a waiver or relief, the applicant may appeal the decision to the City Council within ten (10) business days of the Administrative Official's written decision. The City Council's decision shall be conclusive.

Section 30 Adherence to State and/or Federal Rules and Regulations

- (a) To the extent that the holder of a Special Use Permit or Administrative Authorization for a wireless telecommunications facility has not received relief, or is otherwise

exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

- (b) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Special Use Permit or Administrative Authorization for wireless telecommunications facilities, then the holder of such a Special Use Permit or Administrative Authorization shall conform the permitted facility to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

Section II. Designation of appropriate City officials and consultants.

- (a) Pursuant to Section 4 of this Ordinance, the City Council delegates and designates the authority to accept, review, analyze, evaluate, and make recommendations with respect to granting, denying, or revoking Special Use Permits for wireless telecommunications facilities to the Building Department and to the City’s professional consultants, the Center for Municipal Solutions (Retained via Agreement dated May 31, 2017 as authorized in Resolution No. 2017-107-R). The City’s Building Department and the Center for Municipal Solutions shall also have the authority to grant administrative authorization for all requests or applications for eligible facility request.
- (b) The City Council delegates to the City Planning Commission the authority to hold any public hearings that the Planning Department recommends pursuant to Section 4(z).

Section III. Application Fees. That Table 8-6 is hereby amended according to the following chart:

Cell Phone Tower and other Wireless Telecommunications Facility (Section 8-79)	Application Fee for Installation of new tower or substantial modification	\$5,000.00
	Application Fee for Co-locations and alterations to existing facilities	\$2,500.00
	Minimum Escrow Deposit for Consultant’s Fee	\$7,500.00

Section IV. Severability. The provisions of this Ordinance are intended to be severable, and if any word, clause, phrase, sentence, paragraph, or provision of this Ordinance shall be invalidated by a court of competent jurisdiction, such invalidity shall not affect any other word, clause, phrase, sentence, paragraph, or provision hereof.

Section V. Effective Date. This Ordinance shall be deemed effective after its adoption and as of the date of its publication.

Section VI. Conflict and Repeal. Where this Ordinance differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the City, State, or Federal government, this Ordinance shall apply.

Section VII. Incorporation in the Code of Ordinances. The provisions of this Ordinance shall be included in and incorporated in the Code of Ordinances of Madison, Alabama, as an addition of a new Section 8-79 in Chapter 8, Article IV, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

READ, PASSED, and ADOPTED this 11th day of March, 2019.

Steve Smith
Council President
City of Madison, Alabama

ATTEST:

Melanie A. Williard, City Clerk-Treasurer
City of Madison, Alabama

APPROVED this 12th day of March, 2019.

Paul Finley, Mayor
City of Madison, Alabama