

**MINUTES OF A SPECIAL CALLED MEETING OF THE EUFAULA CITY COUNCIL
HELD ON MONDAY, APRIL 26, 2021 AT 5:00 P.M.**

The Eufaula City Council met in special called session Monday, April 26, 2021 at 5:00 p.m. in the Police Department court room at 545 East Barbour Street. Council President Register called the meeting to order. Upon call of the roll, the following members were present: President Wes Register, President Pro Tem Otis Hill, Marvin Brown, Ben Garrison, and John Robinson. Also present: City Clerk Joy White, and City Attorney Joel Smith.

Council President Register introduced Ordinance 2021-2 (First Reading - Small Cell Tower Ordinance) for discussion. The first reading was done by City Attorney Joel Smith, an ordinance adopting regulations for small cell facilities in the City of Eufaula. City Attorney Smith noted that to prevent the City's loss of control of right-of-way small cell installation, the City must adopt a local ordinance by May 1, 2021. City Attorney Smith noted that this ordinance will put into place standards such as application, permitting, licensing, design, and appeal process if needed.

Mr. Garrison offered a motion to suspend the rules for immediate consideration of Ordinance 2021-2 (First Reading – Small Cell Tower Ordinance). President Pro Tem Hill seconded the motion. A roll call vote was taken and recorded as follows: Yeas: Mr. Robinson, Mr. Garrison, Mr. Brown, President Pro Tem Hill, and Council President Register. Nays: None.

Mr. Garrison then offered a motion to adopt Ordinance 2021-2 (First Reading – Small Cell Tower Ordinance). Mr. Robinson seconded the motion. A roll call vote was taken and recorded as follows: Yeas: Mr. Robinson, Mr. Garrison, Mr. Brown, President Pro Tem Hill, and Council President Register. Nays: None. After the roll call vote, Council President Register announced that Ordinance 2021-2 was adopted.

ORDINANCE NO. 2021-2

**AN ORDINANCE ADOPTING REGULATIONS FOR SMALL CELL FACILITIES
IN THE CITY OF EUFAULA**

WHEREAS, the City of Eufaula, Alabama desires to promote and encourage the growth and deployment of next generation wireless technology and its use within the City, while administering reasonable rules and regulations not inconsistent with state and federal law, the City of Eufaula Code of Ordinances, the provisions of the Federal Telecommunications Act of 1996 and other applicable Federal Communications Commission (FCC) regulations; and

WHEREAS, the City of Eufaula recognizes the need to encourage wireless infrastructure investment and the digitization of and more efficient management of small cell systems as systems advance up to and beyond 5G networking for new applications such as virtual reality,

4K video and new vertical industrial applications; and

WHEREAS, the installation, expansion and maintenance of small cell technology related facilities and associated structures on or along the public right-of-way and on private property within the City of Eufaula, may include significant impact on (1) the aesthetic values and historic character of the City; (2) safe use and passage on or along the Rights-of-Way by the public; (3) properties and property values in the City in areas where such structures are placed; and (4) industrial or business related growth unless a fair and predictable process is enacted; and

WHEREAS, as provided in this ordinance, the City seeks to mandate, where feasible, the collocation of small cell facilities on existing poles and other support structures as opposed to installation of new structures; and

WHEREAS, the above-noted collocation and other provisions of this ordinance are intended to provide reasonable regulations for the placement, expansion, height, and maintenance of small cell facilities and their associated structures; and

WHEREAS, the City determines that the adoption of this ordinance and the creation of a Chapter in the Code of Ordinances for the City of Eufaula is necessary to enhance the provision of personal wireless service and protect the public welfare, health, safety and interests of the City's citizens in its implementation.

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

A new Chapter entitled "Wireless Telecommunications", which reads as follows, is hereby adopted and shall be inserted in the City of Eufaula, Alabama Code of Ordinances:

ARTICLE I – IN GENERAL

Reserved.

ARTICLE II

SMALL CELL FACILITIES REGULATIONS

Section 1. Purpose and Scope.

(a) The purpose of this Article is to establish policies and procedures for the placement of small wireless facilities in rights-of-way within the City's jurisdiction, which will provide public benefit consistent with the preservation of integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole. It is not the intent of this Article to prohibit or

have the effect of prohibiting wireless communication services; unreasonably discriminate among providers of functionally equivalent wireless communications services; regulate the placement, construction, or modification of small cell facilities on the basis of environmental effects of radio frequency emissions where it is demonstrated that a 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.

(b) In enacting this Article, the City is establishing uniform standards to address issues presented by small wireless facilities, including without limitation, to:

Prevent interference with use of streets, sidewalks, alleys, parkways, and other public ways and places;

(i) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

(ii) Prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;

(iii) Protect against environmental damage, including damage to trees;

(iv) Preserve the character of the neighborhoods in which facilities are installed; and

(v) Facilitate rapid deployment of small cell facilities to provide the benefits of advanced wireless services, which include a competitive array of options for consumers and businesses.

Section 2. Definitions. For purposes of this Article, the terms below have the following meanings, whether such terms are capitalized or not capitalized. 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.

"Abandonment" or "Abandon(s)" means that, following the placement of Small Cell Facilities (and its 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 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 Article concerning them, or other valid reason; or (c) the Applicant fails to perform any of its responsibilities, obligations and requirements in this Article or in a permit that relate to the installation, construction, maintenance, use or operation of the Facilities, Accessory Equipment or Support Structures, and that breach remains uncured for a period of sixty (60) days after the City provides written notice of the breach to the Applicant.

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

"Administrative Fee" means a permit application fee assessed pursuant to Section 4 for City staff review of a Small Cell Site Application.

"Annual License Fee" means the amount and annual rate described in Section 4 of this Article.

"Antenna" means communications equipment that transmits and receives electromagnetic radio signals, is attached to a Small Cell Support Structure and is used to communicate wireless service.

"Applicable Codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with the terms in this Article.

"Applicant", whether singular or plural, means a personal wireless service provider, a wireless infrastructure provider such as an entity that is authorized by a personal wireless service provider to apply for or receive a permit to install, construct, modify or maintain a Small Cell Technology Facility 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 anyone owning and maintaining the wireless facilities. For purposes of this Article, "applicant" shall refer to those applying and the actions required upon award of permit.

"Application" means a request submitted by an applicant (i) for a Permit to collocate small wireless facilities; or (ii) to approve the installation or modification of a utility pole or Small Cell Wireless Support Structure.

“Building Inspector” means the City of Eufaula’s building inspector.

"City" means the City of Eufaula, Alabama.

“City Council” means the City Council of the City of Eufaula, Alabama.

“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, towers, buildings, and communications infrastructure, regardless of whether located within or outside the public rights-of-way.

“City-Owned Pole” means (i) a utility pole owned or operated by the City in the rights-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 ROW that supports only Wireless Facilities.

“City Engineer” means the engineer or engineering firm utilized by the City for engineering services.

“Cluttered” shall mean placement in a confused, disordered, disorganized, or jumbled or crowded state, which can occur when too much is located in too small of an area given the reasonable location context.

“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.

“Day” means calendar day.

“Distributed Antenna System” or “DAS” means a network or facility that distributes radio frequency signals to provide wireless services 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 and meets the height and size characteristics of a small cell facility.

“Eligible facilities request” means any request for modification of an existing Small Cell Facility or related Accessory Equipment on an existing pole that involves collocation of new transmission equipment; removal of transmission equipment; or replacement of transmission equipment; provided that no such modification can substantially change the physical dimensions of such facility.

“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 facilities in the right-of-way to be unusable and result in loss of the services provided.

“FCC” means the Federal Communications Commission of the United States.

"Mayor" means the chief administrative official of the City of Eufaula. For purposes of this Article, "Mayor" includes any designee of the Mayor to perform the responsibilities in this Article such as a Building Inspector, subdivision or zoning administrator, City Engineer or city attorney.

"Occupy or Use" means, with respect to a right-of-way, to place a tangible thing in the rights-of-way, including attaching to existing or new Small Cell Wireless Support Structures for any purpose, including, but not limited to, constructing, repairing, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or facilities necessary for the delivery of any services provided by wireless provider.

"Permit" means a written authorization required by the City to perform an action or initiate, continue, or complete a project or deployment of small cell facilities.

"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.

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

"Planning Commission" means the City of Eufaula Planning Commission.

"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.

"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 associate with said property.

"Project" means a managed plan to deploy multiple small cell facilities or nodes within three to six month time period, in that upon application, a person can provide multiple site locations (up to 30 nodes per project) in one consolidated application and pay one application fee, pursuant to the terms contained in Section 8(g) and not otherwise inconsistent with this Article.

"Replacement" means constructing a new small cell wireless support structure of comparable proportions and of comparable height to a preexisting small cell wireless support structure in order to accommodate collocation of small cell facilities; and the associated removal

of the preexisting wireless facilities or small cell wireless support structure.

"Right(s)-of-Way," whether singular or plural, means the surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, any other land dedicated or otherwise designated for a compatible public use, which is maintained by the City. This excludes a private easement or any property owned by the county, state or federal rights-of-way or any property owned by any person other than the City.

"Small Cell Facilities", "Small Wireless Facilities" or "Facilities" mean the following types of wireless facilities: antenna and associated accessory equipment, which meet the following requirements: (1) each antenna associated with the deployment, excluding associated accessory equipment, is no more than three cubic feet in volume; (2) all other accessory equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; (3) the facilities are mounted on structures 50 feet or less in height including their antennas, or are mounted on structures no more than ten percent taller than other adjacent structures located within 100 feet and on the same portion of the right-of-way, or do not extend existing structures on which they are located to a height of more than 50 feet or by more than ten percent, whichever is greater; (4) the facilities do not require antenna structure registration under the FCC's rules; and (5) the facilities do not result in human exposure to radio frequency emissions in excess of the standard specified in applicable FCC rules, as these rules may be hereafter amended. The term includes micro wireless facilities, DAS and other wireless technologies that fall within the above specifications and may be referred to as a "node(s)" when referencing the numbers of small cell facilities per application or elsewhere in this chapter. Where reference is made in this Article to small cell facilities or facilities, it shall mean the antenna or associated accessory equipment, or both.

"Small Cell Support Structure" or "Support Structure" means a freestanding structure designed or used to support, or capable of supporting, Small Cell Facilities, including, but not limited to utility poles, street light poles, traffic signal structures, rooftops, attics, or other enclosed or open areas of a building or accessory structure, or a sign. 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. Further, these terms do not include the City owned poles or City owned structures that are not available or approved for collocation or attachment of a small cell facility.

"Stealth Technology" means a method(s) of concealing or minimizing the visual impact of a Small Cell Technology Facility (and associated Accessory Equipment) and Support Structure by incorporating features or design elements which either totally or partially conceal such Facilities or equipment. The use of these design elements is intended to produce the result

of having said Facilities and associated structures blend into the surrounding environment and/or disguise, shield, hide or create the appearance that the Facilities are an architectural component of the support structure. Photographs and illustrations of examples of the types of Stealth Technology that may be used when buildings are utilized as Support Structures and other applications of Stealth Technology that are currently contemplated shall be maintained by the City Clerk and in such a form that is satisfactory to the Building Inspector or as designated by the Mayor.

"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 personal wireless service providers or to a personal wireless service provider's customers.

"Transmission Media" refers to the point which the waves from the facilities are guided along a physical path; examples of guided media include phone lines, twisted pair cables, coaxial cables, and optical fibers.

"Utility Pole" means a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, streetlights 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 the City grants a waiver for such use.

"Wireless Facility", whether singular or plural, means equipment at a fixed location which enables wireless communications between user equipment and a communications network, 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 and the term does not include: (i) the structure or improvements on, under, within, or adjacent to the structure on which the equipment is colocated; (ii) wireline backhaul facilities; or (iii) 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.

"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 not a wireless services provider.

Section 3. Grant of Authority. Upon application by a wireless provider or wireless infrastructure provider on forms provided by the City, the City may grant a non-exclusive franchise or license to construct, maintain and operate small cell facilities or support structures in

the City's rights-of-way in accordance with and subject to the provisions of this Article, applicable law, and any acceptable additional terms as negotiated by the City or permitted by applicable law. Approval of installation of facilities at specific locations or on specific support structures will be administered through the permit process set forth in this Article.

Section 4. Application, Permit, and Fees.

(a) *In General, Application and Permit Required.* Any person desiring to obtain the ability to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate and replace Small Cell Facilities within the City right-of-way, on City-owned support structures or facilities, utility poles, or any private property within the corporate limits of the City, must file an application, pay the appropriate fees required, and obtain a permit, except as otherwise provided in this Article. The City Council may upon determination of a public purpose, waive, reduce, or otherwise modify the provisions of this Article and the permitted use as necessary to achieve the desired saturation of small cell facilities in the City.

(b) *Application Required for Each Small Cell Facility and Equipment.* A permit application must be submitted for each project 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 Clerk.

(c) *Consolidation Application Permitted.* One permit application must be submitted per thirty (30) nodes or small cell facilities and must comply with the requirements and standards for design, size, and location as provided in Sections 6 - 9.

(d) *Initial Fee.* An initial administrative and permit issuance fee of \$500.00 is assessed for each permit application submitted to place and operate facilities in the public right-of-way or on private property. This fee shall include application and placement for up to 5 nodes, with an additional \$100 fee for each small wireless facility beyond five.

(e) *Additional Fee for New Support Structure.* For placement of a new pole or support structure (i.e. not a collocation), a one-time fee of \$1,000 is assessed, and each new pole or support structure must be designed to support more than one node and its necessary equipment.

(f) *Annual License Fee.* An annual license fee of \$270.00

is assessed per node in the public right-of-way. The initial annual license fee shall be due and payable upon issuance of the permit. Subsequent annual license fees shall be due and payable on or before February 15.

(g) *Removal Fee May be Applicable.* A fee for removal of facilities and/or their respective equipment may be applicable and is hereby authorized as necessary. Such fee may be waived by the Mayor or his designee if the above fees in subsections (d) – (e) have already been tendered for the year of request and their removal does not hinder an ongoing City project or improvement and/or/ no additional City personnel is necessary to ensure safe removal.

(h) *Additional Fee for Attachment to City-Owned Utility/Traffic Poles and Structures.* The City shall provide a good faith estimate for any make-ready work necessary to enable the City-owned pole or structure to support the requested small wireless facility, including pole replacement if necessary within sixty (60) days after receipt of a completed request. Make-ready work including any pole attachment shall be completed within forty-five (45) days of written acceptance of the good faith estimate by the wireless provider. Failure to pay make-ready cost by the Applicant within three (3) months shall constitute a violation of this Article. The Applicant and City shall collaborate on design and construction for the work necessary and Applicant may undertake the make-ready work necessary at their own expense upon written approval from the City Engineer in order to meet a more stringent timeframe.

(i) *No application fee required for Pre-Approved Eligible Facilities Request.* A permit application fee shall not be required for routine maintenance and/or/ the replacement of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height, so long as, notification of working in right-of-way received.

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

(a) If an Applicant transfers, sells or assigns its assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this Article.

(b) Written notice of any such transfer, sale or assignment shall be provided to the City within twenty (20) days after the effective date of the transfer, sale or assignment.

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

(a) *Establishment of Review Process.* The City shall allow placement of Small Cell Facilities (including Accessory Equipment) and Support Structures on the public right-of-way for any Applicant who adheres to the provisions of this Article through an administrative application review process as described herein. To ensure the public health and safety, the Building Inspector and, if deemed necessary by the Mayor or the Building Inspector, the City Engineer, shall provide written recommendations for approval or denial of permit applications, as the case may be.

(b) *Review by Mayor.* The Mayor or his designee will review and administratively process any request for a permit to determine, whether in the exercise of the Mayor's or his designee's reasonable discretion and with review of the recommendations as provided in subsection (a), that a permit for the facilities should be issued for the location and the manner requested by the Applicant.

(c) *Burden on Applicant.* The burden is on the Applicant to demonstrate that the placement of the proposed facilities and their associated accessory equipment or support structure on the right-of-way is the minimal physical installation which will achieve the goal of enhancing the provision of personal wireless services when considering all pertinent factors contained in Section 8 and other provisions of this Article.

(d) *Prohibitions.*

No wireless facilities other than Small Cell Facilities and related accessory equipment shall be installed in the City's right-of-way without a permit.

Wireless Facilities, other than Small Wireless Facilities and micro wireless facilities, are strictly prohibited within the city right-of-way unless a waiver is granted by the City.

No facility or related equipment shall materially interfere with the safe operation of traffic control equipment.

No facility or related equipment shall materially interfere with sight lines or clear zones for transportation, pedestrians, or public safety purposes.

No facility or related equipment shall materially interfere with compliance with

the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

No facility or related equipment shall materially interfere or comply with the Alabama Department of Transportation Utility Manual, as it may be applicable and amended.

No facility or related equipment shall fail to comply with the Applicable Codes.

No facility or related equipment 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.

No attachment to a utility pole owned by any utility not owned or operated by the City of Eufaula unless an express waiver is provided from said owner.

No facility or related equipment shall be placed on any arms or any horizontal structure used to support or mount traffic control signals or other traffic control devices.

No facility or related equipment shall materially interfere with electrical lines, cable lines, or their associated equipment, in that wireless facilities must be placed at least 20 feet away from energized electrical distribution lines, unless otherwise approved by the utility company.

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

(e) The Applicant or its successor(s) must remove small cell facilities at any time if warranted by public health or safety as determined by the City.

(f) Electrical Limitations.

- 1) Wireless facilities collocated, if allowed, on the same utility pole as a street light shall be on the same disconnect as the street light, where practicable.
- 2) Facilities shall be grounded and otherwise comply fully with all applicable electrical codes.
- 3) Whenever a conduit of wireless 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 as promulgated by

the building department and other related City departments.

- 4) Facilities must comply with the applicable structural requirements with respect to wind speed.

(g) Applicant shall at all times comply with and abide by all applicable provisions of the state and federal law and city ordinances, codes and regulations in placing and maintaining facilities in the City right-of-way.

(h) The burden of proof shall at all times be on the Applicant to establish compliance with requirements under this Article and state and federal law.

(i) No placement or maintenance of small cell facilities or their operation there of shall commence until all applicable permits are obtained, and no operation shall occur unless the City has conducted a final inspection and issued a Certificate of Completion and license to continue, except in case of emergency. The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. A permit shall still be required after-the-fact within thirty (30) days if a permit would have originally been required to perform the work undertaken in the City 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) *Factors Considered in Awarding Permit.* When determining whether to issue a permit for placement of Small Cell Facilities and associated structures on the Right-of-Way, the Mayor or his designee and/or subsequently upon appeal or request, the Planning Commission, may consider as follows:

- 1) The demonstrated need for placing the structures at the requested location and geographic area in order to deliver or enhance personal wireless service;
- 2) The visual impact of placing the Support Structures or Facilities in the subject area;
- 3) The character of the area in which the structures are requested, including surrounding buildings, properties and uses;
- 4) Whether the appearance and placement of the requested structures is aesthetically consistent with the immediate area;

- 5) Whether the structures are consistent with the historic nature and characteristics of the requested location;
- 6) The Applicant's network coverage objective and whether the Applicant should use available or previously unconsidered alternative locations to place the Support Structures or facilities;
- 7) Collocation. To the extent practical, all Facilities and associated Accessory Equipment that are placed in the City shall be attached to a pre-existing Support Structure that is owned, controlled or leased by a utility, franchisee, the City or other entity. If the Applicant demonstrates that no collocation opportunities exist in the area where a technologically documented need for a facility exists, the Applicant may request that a new pole or other Support Structure be installed in that area for purposes of constructing the Facilities. Before any new Support Structure is permitted, each of the following must occur:
 - a. The Applicant must have provided the City written evidence that no practical collocation opportunity exists. 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 or area, that the Applicant has pursued but 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;
 - b. The City Engineer must recommend the placement of a new Support Structure in the Right-of-Way; and
 - c. The Building Inspector or other person designated by the Mayor will approve 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 as soon as practical after the recommendation is made.
- 8) 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 Building Official 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;

- 9) The Accessory Equipment shall, if reasonably possible, be placed at least 8 feet above the ground;
- 10) The color of antenna and Accessory Equipment shall be compatible with that of the Support Structure;
- 11) The Facility (including the Accessory Equipment) shall not be illuminated unless required by federal regulations;
- 12) Whether the proposed installation could cause harm to the public or poses any undue risk to public safety;
- 13) Whether the proposed installation may interfere with vehicular traffic, passage of pedestrians, or other use of the Right-of-Way by the public;
- 14) 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
- 15) If the proposed new pole will be compatible with the design and character of the surrounding neighborhood.

(k) In order to expedite review of a Project for deployment, photographs and illustrations of examples of the types of acceptable collocation, stealth technology, and other design aesthetics that may be used when placing small cell facilities in the City and/or for buildings utilized as Support Structures and other applications of stealth technology that are currently contemplated may be maintained by the City Clerk and in such a form that is satisfactory to the Mayor.

(l) As the City recognizes that a lack of competitive land-based internet access options may exist for certain residential areas (which means an area with fewer than two options via coaxial cable, copper lines, fiber, or other land-based internet), the Mayor may approve an Applicant for permit and placement of small cell facilities in the City right-of-way solely to provide increased internet coverage. This provision shall not be a cause for denial of a permit or placement by a wireless service provider or wireless infrastructure provider.

a.

Section 7. Placement and Maintenance of Facilities on Private Property.

In any instance when an Applicant desires to place small cell facilities, or equipment on private property the following factors, guidelines and requirements that the Mayor may consider and will apply when determining whether to issue a permit for placement of facilities and any associated accessory equipment or support structure on private property include, but are not limited to, the following:

- (a) The factors and requirements set forth in Section 6(j).
- (b) The guidelines in Section 6(j)(7) to utilize existing poles and support structures for the placement of facilities and accessory equipment are also applicable when considering whether to permit the installation of those facilities and support structures on private property.
- (c) Stealth Technology, when installing the facilities and associated accessory equipment on any building or accessory to that building that is located on private property. Further, stealth technology should be used when placing facilities on other types of support structures on private property unless the Applicant can reasonably demonstrate that, given the nature of the requested application, the use of such technology is (a) unnecessary; or (b) impractical.
- (d) If Facilities are placed on an existing or new building or accessory to that building, the following dimensional regulations shall apply:
 - 1) Facade-mounted antennas shall not extend above the face of any wall or exterior surface of the building.

Roof-mounted antennas and Accessory Equipment may be permitted on buildings in accordance with the following table:

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

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

Accessory Equipment must be located in an equipment cabinet, equipment room in an existing building or in an unmanned equipment building. If the equipment building is freestanding prior approval from the Building Inspector is required, and it shall conform to City of Eufaula Code of Ordinances with respect to building setbacks and receive approval from the Building Inspector, and shall also conform to the City's Code of Ordinances, including but not limited to the zoning ordinance, as amended, with respect to building setbacks and other applicable zoning regulations. Further, if an equipment building or cabinet is located in a residential zone, or the nearest adjoining property is in a residential zone, that building or cabinet shall include an exterior facade that mimics the character of homes in that area and be surrounded by landscaping to provide a screen of the same height as the building or cabinet.

Section 8. Application Review; Decisions; Time Frames.

(a) *Non-Discriminatory Issuance of Permits.* Review of an application shall be performed in light of its conformity with applicable regulations of this Article, and permits shall be issued on a nondiscriminatory basis.

(b) *Notice of Deficient Application.* Within 10 days after receiving an application, the City shall determine and notify the Applicant by electronic mail to the email address provided in the application as to whether the application is complete. If an application is deemed incomplete, the City shall specifically identify the missing information. An application is deemed complete if the City does not provide notification to the Applicant within 10 days; however, this does not otherwise prohibit the City from requesting additional information or clarification as to answers or documents provided.

(c) *Application Review Period Within Maximum of Ninety (90) Days.* The Mayor or his designee shall approve or deny an application within sixty (60) days after receipt of the complete application for

collocation on an existing support structure. The Mayor or his designee may extend review of an application to attach Facilities to a new Support Structure up to thirty (30) additional days or immediately refer it to be placed on the next regular or called meeting agenda of the Planning Commission for determination. The intent is for the application review period to be complete within a maximum of ninety (90) days.

(d) *Failure to Timely Act on Application*. If the City fails to act on an application within ninety (90) days, the Applicant may provide notice that the time period for acting has lapsed and the application is then deemed approved.

(e) *Notification Procedure*. The City shall notify the Applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions on which the denial was based, and send the documentation to the Applicant on or before the day the City denies the application.

(f) *Opportunity to Cure Deficiencies*. The Applicant may cure the deficiencies identified by the City and resubmit the application within 30 days of the denial without paying an additional application fee. The City shall approve or deny the revised application within 30 days of receipt of the amended application. The subsequent review by the City shall be limited to the deficiencies cited in original denial.

(g) *Consolidated Applications*. An Applicant may file a consolidated application for a Project and receive a single permit for approval of up to 30 Small Cell Facilities. In reviewing a consolidated application, the City may separately review, address and consider each node with respect to deficiencies or lack of conformity with the standards set forth in this Article.

(h) *Alternative Locations*.

- 1) If an Applicant seeks to place a Small Cell Facility upon a City utility pole or seeks to install a new utility pole, the City may, within 14 days after the date that an application is filed, request the proposed location of the facility be moved to another location in the right-of-way and placed on an alternative city utility pole or support structure or may place a new utility pole.

The City and the Applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for thirty (30) days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted

by the Applicant, the Applicant must notify the City of such acceptance and the application shall be deemed granted for any new location for which there of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application.

If an agreement is not reached as to a requested alternative location, the Applicant must notify the City of such non-agreement and may petition for review by the Planning Commission of the sole location at issue. The Planning Commission shall hear this at the next scheduled meeting and shall have the final say in a dispute about collocation on the sole location presented if such request cannot be resolved by the Building Inspector. The remaining locations as contained in the original application may proceed forward while review occurs on the disputed requested location.

Electronic mail is a sufficient writing for the purposes of Alternative Collocation correspondence only and does not extend to this Article as a whole.

(i) *Review of Application.* Subject to the time frames set forth in this Article, the Mayor or his designee, which may include, without limitation, the Building Inspector, shall expeditiously determine if a permit application is to be issued and may establish an expedited time process for consideration and processing of applications, so long as the requisite factors of consideration and applicable codes as contained in this Article are preserved.

(j) *Appeal of Decision.* Upon denial of a permit by the Mayor or his designee, Applicant may provide a written appeal to the City Clerk within fifteen (15) days for reconsideration by the Planning Commission and placement on the next regularly scheduled agenda of the Planning Commission. Prior to the next regularly scheduled meeting, notification shall be sent to all property owners within 500 feet of the proposed location, notifying each residence and/or business of the time, place and location of the hearing before the Planning Commission. Consideration shall be had from, at minimum, the City Engineer, Building Inspector, zoning and/or planning officials, and police department, regarding their recommendations as to the effect of the facilities and equipment on the character, nature, and style of the surrounding area. A majority of a quorum of the Planning Commission present shall be determinative of if the permit is granted.

(k) *Appeal to Circuit Court.* Upon denial of the Planning Commission, an appeal may be had to the Circuit Court of Barbour County, Alabama within fifteen (15) days of the Commission's decision.

Section 9. Application Requirements and Process.

(a) Except as otherwise provided, a permit to construct or install small cell facilities shall not be granted under this Article except upon approval by the Mayor or his designee, or upon appeal, the Planning Commission, or as otherwise designated by resolution or ordinance to consider applications under this Article, 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 facilities in the City right-of-way and/or on private property.

(b) An application must be submitted for every small cell facility, equipment or support structure. As set forth in Section 8(g), an Applicant may submit a Consolidated Application for up to thirty (30) facilities or nodes may be included in one permit application, provided that Section 9(c) (1)-(22) is complied with along with all other provisions of this Article.

(c) At a minimum, every small cell facility permit application should include the following:

- 1) The applicant's name, address, telephone number, and e-mail address.
- 2) 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.
- 3) A general description of the proposed work and the purposes and intent of the facility, with the scope and detail of such description being appropriate to the nature and character of the facilities, with special emphasis on those matters likely to be affected or impacted by the proposed facilities.
- 4) Site plan and engineering design and specifications for installation of the facilities, 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.
- 5) Photo(s) of the existing pole, and photo simulation of pole with attached equipment.
- 6) If applicable, the design documents should include specifications on stealth design, pole modification, and ADA compliance.

- 7) Map(s) designating with specificity the location(s) of the requested facilities.
- 8) The geographic coordinates (GIS) of all antenna and other proposed facilities.
- 9) For City traffic light poles, verification that the pole is eligible for attachment. Also include a load bearing study that determines whether the pole requires re-enforcement or replacement in order to accommodate attachment of Facilities and/or Equipment. If pole re-enforcement or replacement is warranted, the design documents should include the proposed pole modification.
- 10) 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.
- 11) 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.
- 12) Supporting information if the proposed installation requires a new pole, including design and specification drawings for such pole, including whether the pole is a smart pole (poles that have all facilities integrated within the pole itself and is not visible except the visibility of an antenna at the very top) and a statement explaining the reasons a new pole is required, what other alternatives were identified but not utilized, and why such alternatives were not utilized.
- 13) Applicable design and specification drawings if the proposed installation will require re- enforcement or replacement of an existing pole.
- 14) The number, size, type and proximity to the facilities of all communications conduit(s) and cables to be installed.
- 15) Description of the utility services required to support the facilities to be installed.
- 16) Description of interference restrictions associated with other wireless providers.
- 17) If the facilities will be located on a support structure on the right-of-way that is owned by any entity other than the City or the Applicant, a copy of any permit, license, lease, agreement or other documentation evidencing that the

owner of that support structure authorizes the facilities to be attached thereto or agrees in principle to authorize that attachment (which documentation may be redacted as to business terms including rent or other fee or payment information); provided that, if a representation is made to the City that the attachment has been authorized by law or regulation or in principle by the owner of the support structure but the Applicant subsequently fails to furnish the City documentation that finalizes any such agreement, the City may refuse to issue the requested permit until that documentation is provided, or, if the City issues the requested permit before receiving such final documentation, the subject permit may be revoked by the City Council and any license to use that part of the Right-of-way be rescinded.

- 18) If the Applicant requests permission to place facilities on a new support structure, Applicant's network coverage objective and whether the Applicant should use available or previously unconsidered alternative locations to place the support structures or facilities;
- 19) All permits and letters of authorization.
- 20) Valid FCC license, where applicable or other appropriate certificates or permits as required.
- 21) List of the contractors and subcontractors, and their contact information, authorized to work on the project.
- 22) A statement that all facilities and equipment comply with the applicable codes.

(d) Objective Design Standards; Other Requirements.

- 1) *Similar Character and Style of Area Required*. Applicant shall make every effort 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. Photographs and illustrations of examples of the types of acceptable collocation, stealth technology, and other design aesthetics that may be used when placing small cell facilities in the City and/or for buildings utilized as Support Structures and other applications of stealth technology that are currently contemplated shall be maintained by the City Clerk and in such a form that is reasonably satisfactory to the Mayor or his designee.
- 2) *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 Mayor or his designee and/or Planning Commission (when applicable) determines that no existing structure that does not require the placement of a new structure in the right-of-way can accommodate the Applicant's proposed facility or antenna.

- 3) *Pole heights.* The height of poles above the ground including the antennas shall:
 - a. Be fifty (50) feet or less in non-residentially zoned areas;
 - b. Be forty (40) feet or less in residentially zoned areas with above ground power; and
 - c. Be thirty-five (35) feet or less in residentially zoned areas with underground power.

- 4) *Collocation is a priority and preferred.* To promote the public interest that is served by collocating Facilities and associated Accessory Equipment on existing Support Structures and thereby mitigating the installation of additional Support Structures throughout the City, no person or entity (including any Provider, Applicant, utility, or franchisee) that utilizes an existing Support Structure that is located on Right-of-Way or on private property in the City and has space available thereon may not unreasonably deny an Applicant the right to use or access an existing Support Structure for purposes of attaching Facilities permitted by this ordinance without sound operational, technological or other good reason.

- 5) *Limitations; No Property Right.* A permit from the City constitutes authorization to undertake only certain activities in public right-of-ways in accordance with this Article and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public right-of-ways.

- 6) *Limitations:* Use of City-owned poles or structures. City-owned structures or poles may not be available, and the City may determine that an additional structure is detrimental or otherwise not desired and such decisions will be final. Availability will be on a first come, first serve basis and if the City determines collocation on such City-owned poles or structures has reached its maximum, is aesthetically undesirable or otherwise not permitted, the City may seek alternative collocation as provided in Section 8 (h). At no point will the Mayor or his designee allow cluttered placement of facilities and or equipment within the right-of- way.

- 7) *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 public rights-of-way and Applicant may be required to reasonably alter its placement or maintenance schedule as necessary to minimize disruptions.
- 8) *Zoning.* Any wireless provider that seeks to construct or modify a utility pole, wireless support structure, small cell facility, or wireless facility that exceeds the height or size limits contained in this Article, shall be subject to applicable zoning requirements in addition to any other requirements or provisions of this Article.
- 9) *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 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 a the surrounding area in a manner that reduces visibility and is aurally unobtrusive. 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 existing structures.

(e) *Submission of Application.* Upon meeting the requirements as listed herein and submitting the small cell facility application, the City shall review and issue permits within the timeframes and processes provided herein.

(f) An application shall not be deemed complete until the Applicant has submitted all documents, information, forms and fees specifically enumerated in this Ordinance that pertain to the location, construction, or configuration of the facilities or support structures at the requested location(s). Within 10 calendar days after an application for permit is submitted, the City shall notify the Applicant in writing if any additional information is needed to complete that application or supplemental information is required to process the request. If the City does not notify the Applicant in writing that the application is incomplete within 10 days following its receipt, the application is deemed complete.

b.

(g)

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

(a) *Ninety Day Notice to Remove, Relocate or Modify.* Whenever the City reasonably 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 wireless facilities within the rights-of-way whenever the City has determined that such removal, relocation, change or alteration, is reasonably 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, or other equipment in the Public Way; and/or
- 4) To protect or preserve the public health or safety.

(b) *Alternate Location.* 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. If at any time during the Term for which the permit is granted, the City determines that utility facilities will be placed underground in an area including any City-owned Facilities upon which Applicant has installed Equipment, Applicant and the City will cooperate in good faith on the design and installation, at Applicant' s costs, of suitable replacement of Applicant' s facilities, including decorative streetlight poles; and Applicant agrees that if reasonably required by the Mayor or his designee, which may include the Building Inspector, or upon final appeal by the Planning Commission in order to ensure appropriately even and level lighting within a previously unlighted area, additional facilities, which may include decorative streetlight poles beyond or more numerous than those required for

Applicant's facilities, shall be installed. Applicant agrees that 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, Applicant agrees that 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.

(c) *Emergency Removal or Relocation of Facilities.* The City retains the right and privilege to cut or move any small wireless 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 wireless provider after cutting or removing a small wireless facility.

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

Section 11. 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 Article and 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 for entry on the right-of- way shall be valid for a period greater than one (1) year. Unless otherwise agreed by City, annual permit renewals may occur automatically if the required fees are paid by February 15 and the terms and conditions of this Article, as amended are followed.
- 2) *Limitations on Construction.* When the application is approved to undertake the activities described in this Article, every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The Building Inspector is authorized to grant, in writing, one or more extensions of time, for periods not more than 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 be invalidated and suspended; (ii) If construction has not occurred or completed 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 as to give Applicant a period for use of the right-of-way greater than twelve (12) months without submitting for annual renewal, unless otherwise modified by the City Council through agreement or subsequent regulation.

(c) *Entry on Right-of-Way Authorized.* Provided the Applicant agrees to comply with the permitting and other requirements in this Article and as negotiated by the City, the City shall authorize entry upon the right-of-way and/or attachment to City-owned support structures for the purposes of operating their Equipment and Facilities including the right to draw electricity for the operation of its small cell facilities from the power source (if any) that the City furnishes or is made available for that Support Structure at the sole cost of Applicant.

Section 12. Make Ready Work

(a) For a City-owned utility pole or structure that does not support an aerial facility used to provide electric service, the Applicant seeking to collocate a small wireless 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.

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

(c) Fees for make-ready work shall not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to communication service providers other than wireless services providers for similar work and shall not include any consultant fee or expense. This is applicable only if the City performs the make-ready work.

(d) Fees for make-ready work must be paid to the City, even if they exceed the Applicant's estimate, before the wireless facilities may be operational, unless otherwise agreed.

(e) The City makes no warranties or representations regarding the fitness, suitability, or availability of the city's public 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.

Section 13. Suspension of Permits . The City may suspend a permit for work in the public right-of-way for one or more of the following reasons:

(a) Willful violation of permit conditions, including conditions set forth in the permit, this article or other applicable city ordinances, codes or regulations governing placement or maintenance of Small Cell Facilities in public rights of way;

(b) Misrepresentation or fraud by the Applicant in application to the City;

(c) Failure to properly relocate or remove facilities as may be lawfully required by the City.

Notwithstanding the foregoing, the City may provide Applicant with the opportunity to cure any violation, which shall be reasonable under the circumstances.

Section 14. Insurance Required for Facilities or Equipment in Operation and/or in City Right-of-Way.

(a) Prior to the commencement of any work under this Article or the installation of any Facilities or Support Structures, the Applicant shall provide the City with a certificate(s) of insurance, or self-insurance, 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: (1) General Liability coverage insuring the risk of claims for damages to persons or property arising from or related to the installation, construction, maintenance, operation or any use of Facility or Support Structure placed on or along the Right-of-Way by the Applicant (or any of their contractors) with minimum limits of \$1,000,000 per occurrence; and (2) Workers Compensation Insurance as required by statute.

(b) 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) 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) All 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.

(e) Following the installation of any Facilities and associated Support Structures, the Applicant, upon reasonable request and for good cause, shall furnish the City Engineer and/or Building Inspector a written certification from a licensed professional engineer in the State of Alabama stating that those structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals. For purposes of this provision, "good cause" shall mean circumstances have arisen that

indicate the Facilities and associated Support Structures have been damaged, are not functioning in compliance with applicable laws and regulations, or otherwise pose a hazard to the public. If those Support Structures should fail at any time to comply with applicable laws and regulations, the Applicant, at either of their expense, shall cause those structures to be brought into compliance with said laws and regulations within fifteen (15) days of the date of any written notice to them from the Building Inspector, City Engineer, Mayor or his/her designee of non-compliance, or cease all personal wireless service operations related to those structures until the Applicant comes into full compliance with said laws and regulations.

(f) Upon receipt of notice from its insurer, the Applicant will provide the City with thirty (30) days prior written notice of cancellation.

(g) 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 Facilities on the right-of-way in the City.

(h) The Mayor or his designee may require a surety bond be issued by Applicant if it is determined that the construction of the facilities and placement of small cell by the Applicant would interfere or disturb a sidewalk, street or streetscape, or property belonging to or under the control of the City. The purpose is to maintain the overall design aesthetics of the area the facilities are proposed to be in and will be reviewed on a case by case basis. 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 their 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 Article. The surety bond must be:

- 1) In the amount not less than \$70,000.00;
- 2) Issued by a surety company licensed to do business in the State of Alabama;

- 3) Under terms and conditions acceptable to the City Attorney;
- 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 Article; and
- 5) For 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 15. Non-Applicability. The placement of an antenna(s), facilities or equipment related to the following types of wireless communication services are exempt from regulation under this ordinance: (a) amateur radio service that is licensed by the FCC if the facilities related thereto are not used or licensed for any commercial purpose; and (b) facilities used by any federal, state or local government or agency to provide safety or emergency services. Further, the provisions in this Chapter are not intended to alter, affect or modify the provisions in Article XII "Cable Television" and Article XIV "Telecommunications Regulations."

Section 16. Repealed. All ordinances or parts of ordinances heretofore adopted by the City Council that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

Section 17. 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 18. Effective Date. This ordinance shall become effective immediately upon adoption and publication as provided by law.

ADOPTED this the ____ day of _____, 2020.

Wes Register
City Council President

ATTEST:

Joy White
City Clerk

Council President Register reported that he toured the community center to view the building's structure for issues that require repairs. Barge Design explained the costs and how the associated repairs should be done in sequence as they relate to those costs. As a result of the proposed comprehensive study of the facility, and the roof repair being a priority, it is recommended that the designers address each of the issues, with an assigned cost, as a planning tool to efficiently and simultaneously get all of the work completed.

President Pro Tem Hill wanted clarification that the plan would be outlined in such a way that the work to be done would be done sequentially to the replacement of the roof. Council President Register also wanted clarification as to whether the proposal included any type of engineering or detail specs for roof replacement. Barge Design responded that the proposal includes what the cost of the roof replacement would be, but not the detailed specs for roof replacement. Council President Register then clarified that the presented proposal and engineering are separate.

Mr. Robinson asked for clarification about potential wiring being included in the proposed costs that may need to be done in connection to the roof replacement. Barge Design responded that wiring costs in connection to the roof replacement is included in the proposed costs.

President Pro Tem Hill presented a concern about random shooting in the Chattahoochee Courts complex and the need to deter future occurrences to prevent any harm or personal injury to residents. A meeting is expected to be scheduled to present ideas to resolve this issue.

There being no further business to come before the Council, the same was on motion by Mr. Garrison duly made and seconded by President Pro Tem Hill, adjourned this 26th day of April, 2021.

THE CITY OF EUFAULA, ALABAMA
A MUNICIPAL CORPORATION

Wes Register, Council President

ATTEST:

Joy White, City Clerk/Treasurer