

**ORDINANCE NO. 3218**

**AN ORDINANCE OF THE CITY OF AUBURN, ALABAMA, TO ADOPT REGULATIONS FOR THE DEPLOYMENT OF SMALL CELL WIRELESS FACILITIES IN THE CITY.**

**WHEREAS**, the City Council of the City of Auburn, Alabama seeks to facilitate the availability of reliable, personal wireless communication services for its citizens and the public by permitting the placement of Small Cell Wireless Facilities and associated structures and equipment along the Right of Way and on private property in the City; and

**WHEREAS**, the installation, expansion, and maintenance of Small Cell Wireless Facilities and associated structures on or along the Right of Way and on private properties might have significant impact upon: (1) the safe use and passage on or along the Rights of Way by the public; and (2) the aesthetic values and historic character of the City; and

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

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

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

**Section 1. Short Title and Definitions.**

a. *Short Title.* This Ordinance shall be known and cited as the Small Cell Regulation Ordinance.

b. *Definitions.* For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number, and words in the plural number include the singular number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

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

2. "Antenna" means an apparatus designed to emit radio frequency radiation and operate from a fixed location to provide wireless services. The term includes materials used for arranging, screening, and camouflaging antenna equipment.

3. "Antenna Equipment" means equipment, cabinets, optical converters, radios, DWDM and CWDM multiplexers, microcells, radio units, switches, wiring, fiber optic and coaxial cabling, power sources and amplifiers, shelters, or cabinets associated with an antenna and located at the same fixed location as the antenna.

4. "Applicable Standards" means:

A. Engineering and safety standards, including, but not limited to, building, fire, safety, electrical, plumbing, and mechanical codes adopted by the City that may regulate or otherwise affect the installation, maintenance, and operation of a facility authorized or affected by this Ordinance.

B. Applicable standards include, but are not limited to, the regulations of the Federal Communications Commission and the Occupational Safety and Health Administration as well as any local standards or regulations governing the use of rights-of-way.

5. "Activated" means the ability to deliver any type of Service using the System, or otherwise using the System to transmit and provide Service.

6. "Applicant", whether singular or plural, means a Provider or a Person that is authorized by a Provider to apply for or receive a permit to install, construct, modify or maintain a Small Cell Wireless Facility and related Accessory Equipment or Pole in the City.

7. "Application" and "Proposal" for the purposes of this Ordinance are synonymous and mean the formal request and documents submitted, and on which the City is intended in good faith to rely, for the purpose of permitting the installation, construction, modification or maintenance of Small Cell Wireless Facility(ies) and related Accessory Equipment or Pole in the City.

8. "City" means City of Auburn, a municipal corporation, in the State of Alabama, acting by and through its City Council, or its lawfully appointed designee.

9. "City Council" means the governing body of the City of Auburn, Alabama.

10. "City Manager" means the individual or organization designated by the City Council to act as the technical and administrative liaison or representative of the City, the Subscribers or Users, and the public in the City, in matters related to the provision of this Ordinance, and any Franchise as defined in this Section.

The City Manager may be designated as the point of contact for all matters under this Ordinance and that relate to a Franchise or a System owner or operator or Service Provider. If designated, unless specifically directed otherwise by the City Council, it shall at all times be presumed that the City Manager is acting as the City Council's designee and under the Council's direction.

11. "Collocation" means the placement or installation of a new Small Cell Wireless Facility or related Accessory Equipment on an existing pole that is owned, controlled or leased by a utility, the City, or other person or entity.

12. "Complete" or "Completion" means with respect to any construction, reconstruction, rebuilding, upgrading or repair of the System that in each instance:

A. attachment strand, if necessary, has been put in place for aerially serviced areas, and all needed cable or fiber has been securely and properly lashed to such strand; or,

B. all pipe, conduit, cable or fiber has been placed correctly in trenches in areas Serviced underground as required by applicable code and this Ordinance, the trenches have been refilled, all disturbed surfaces have been restored as required, and all landscaping restoration has been completed as required;

C. all poles, housings and modules, all fiber nodes, and all other active and passive devices necessary for the operation of the System and the provision of Service, have been installed;

D. primary and backup/standby power supplies, as required, have been installed and operate properly;

E. all bonding and grounding as required has been completed;

F. construction, reconstruction or upgrading of facilities have been completed, and all necessary equipment and components have been installed therein and are functioning as required; and

G. any and all other construction, reconstruction or upgrading necessary for the System to deliver Service to Subscribers or Users has been completed, including in the case of a rebuild or upgrade of the System, the replacement of drops or service lines to each and every Subscriber or User unit passed if such is either needed or proposed, pursuant to the plans, specifications, representations and commitments submitted to and approved or accepted by the City.

H. All required testing has been completed successfully on each new or technologically upgraded portion of the System, and shall demonstrate compliance with all applicable Technical Rules to the City's satisfaction, including but not limited to 'Proof-of-Performance' tests as may be appropriate or required, unless the City is expressly prohibited by law or rule from requiring such demonstration. Services provided to any segments of the System in the City will be Activated only when the required testing has been done and the System operates as required, and never before.

I. The term Completion, in relation to the construction, reconstruction, upgrade or rebuild does not include the marketing and installation of Subscriber or User Service.

J. Any construction, reconstruction, upgrade or rebuild shall not be deemed complete unless and until the System is capable of delivering all services to all addresses in any area being constructed, reconstructed, upgraded or rebuilt. If applicable, any construction, reconstruction, upgrade, or rebuild shall not be deemed complete until the wreck-out or removal of the old

segments of the System has been completed to the reasonable satisfaction of the City.

13. "Council" or "City Council" means the City Council of the City of Auburn, Alabama, which is the legislative body for the City of Auburn, Alabama. For purposes of clarification, the City Council is the Franchising Authority for the City of Auburn, Alabama.

14. "Development Review Team" (DRT) means the team of City officials and/or staff responsible for the review and approval of all engineering/construction plans involved with development within the City.

15. "Easement" means and shall include any compatible use easement, whether created by dedication to the City or by other means, for public utility purposes or any other purpose primarily benefiting the general public. Easement shall also include a private easement granted by a private property owner for the same or similar purposes.

16. "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

17. "Franchise" means the document of authorization granted by the City, regardless of the type of authorization, whether such authorization is a use, occupancy or operating authority, that permits a Person to occupy and use the City's property and rights-of-way for commercial purposes, including to construct, operate, rebuild, replace, upgrade, maintain and repair the System, and to provide Service in the City. A Franchise shall also include as an inseparable part any Application or Proposal for a Franchise, and any information contained therein on which the City was intended to rely. The particular type and scope of Franchise, and any distinction between any types of Franchises, may be dependent upon the scope of authority the City has over a given type of System owner or operator or Provider of Service.

18. "Franchise Agreement" means the Agreement or contract which the City and a Provider enter into, and that specifies the contractual agreements or commitments between the parties, and which may also serve as a Franchise granting the authority to own and operate a System or provide Service within all or a part of the City by using or occupying the City's property or rights-of-way in accordance with the City's franchising authority and any other authority, including its police powers. Subject to applicable ordinance, rule and regulation, a Franchise Agreement may be different in scope and content from other permissible types of grants of authority by the City.

19. "Franchisee" means any Provider that has been granted a valid Franchise by the City.

20. "Franchise Expiration" or "Franchise Agreement Expiration" or "Expiration" means the date of the end of the term of the document that granted authority to use and/or occupy the City's property or rights-of-way for commercial purposes, including the operation of a System or the provision of Service.

21. "Franchising Authority" means the City Council of the City of Auburn, Alabama.

22. "Grandfather" or "Grandfathered" means to retain or preserve a right, privilege or authority held, so long as the retention or preservation is expressly stated.

23. "Impracticable" when used in a non-economic or non-financial or non-commercial context, shall have the meaning ascribed in the most current edition of Webster's Encyclopedic Unabridged Dictionary of the English Language.

24. "Make-Ready Work" means Work that the City reasonably determines to be required to accommodate a Provider's installation under this Ordinance and to comply with all applicable standards, not including routine maintenance by a wireless provider. The term includes all of the following:

A. Repair, rearrangement, replacement, and construction of a pole.

B. Inspections.

C. Engineering work and certification.

D. Permitting work.

E. Tree trimming other than trimming performed for normal maintenance purposes.

F. Site preparation.

G. Electrical power configuration.

25. "Manager" means the City Manager of the City of Auburn, Alabama or his/her designee.

26. "PSC" means the Public Service Commission of the State of Alabama, or any successor agency or commission.

27. "Person" is any individual, firm, partnership, association, corporation, company, limited liability entity or other legal entity or any association of two (2) or more persons or entities having a joint common interest or a joint stock company.

28. "Pole" means a pole or similar structure that is used or is capable of being used, as an authority determines, wholly or partly for the installation of a small cell wireless facility antenna, and associated antenna equipment that is to be installed or mounted on the pole. This term does not include any distribution or transmission structure used by an electric provider for the transmission of electricity or electric service.

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

30. "Provider" means any Person who provides Wireless Service via Small Cell Wireless Facility(ies), and includes any Person who installs or installs on a Person's behalf Small Cell Wireless Facility(ies) to provide Wireless Service.

31. "Revocation" or "Termination" or "Involuntary Termination" means an official act by the City Council that removes, repeals, or rescinds any Franchise and authority to operate a System or provide Service in the City that is granted under or is subject to this Ordinance.

32. "Right-of-Way" or "Rights-of-Way" means the area on, below, or above any real property in the City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, utility easements or any other place, area, or real property owned by or under the control of the City which are dedicated for compatible use. This term shall not include county, state or federal rights of way or any property owned by any Person other than the City.

33. "Service(s)" shall mean all services provided by a Provider for which it receives compensation from its Subscribers or Users with respect to its operations in the City.

34. "Small Cell Wireless Facility(ies)" or "Facility(ies)", whether singular or plural means a wireless facility that meets all of the following conditions:

A. The total height of the facility, including the antenna and the height of any associated pole, is any of the following:

i. No more than 50 feet above existing grade.

ii. No more than ten percent (10%) taller than other adjacent structures.

iii. Does not extend the existing structure on which it is to be collocated to a height of more than 50 feet above existing grade or by more than ten percent (10%), whichever is greater.

B. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.

C. All other antenna equipment associated with the facility, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole, is no more than 28 cubic feet in volume.

D. The facility does not result in human exposure to radio frequency emissions in excess of the safety standards specified in applicable FCC rules, including 47 C.F.R. 1.1307(b), and as those rules may hereafter be amended.

E. The facility does not require antenna structure registration under FCC rules.

35. "State" means the State of Alabama.

36. "Structure" means a pole; tower, as defined in 47 C.F.R. §1.6100(b); base station, as defined in 47 C.F.R. §1.6100(b); or other building, whether or not it has an existing Small Cell Wireless Facility, that is used or to be used for the provision of Wireless Services.

37. "Subscriber" means a Person lawfully receiving Service delivered by a System owner or operator or a Service Provider.

38. "System" means one or more of the protocol-agnostic, fiber-based optical networks which may incorporate Small Cell Wireless Facilities and equipment that may be owned, leased, or controlled by a Provider to provide Wireless Services.

39. "Technical Violation" means a violation of this Ordinance or any Franchise that is of *de minimus* negative effect on the City or the public and that is not repeated after notice by the City. Notwithstanding the preceding, a history or repeated pattern of the same or similar Technical Violations shall not be deemed a Technical Violation.

40. "U.S.C." means United States Code.

41. "User" means a Person utilizing a System and/or its equipment, facilities or capabilities for commercial purposes, as opposed to the receipt of service as a Subscriber to Service.

42. "Wireless Facility" means Equipment at a fixed location that enables wireless communications between user equipment and a communications network. Wireless facility includes an antenna and associated antenna equipment. The term does not include a pole, or coaxial or fiber-optic cable that is located between wireless structures or poles, or not otherwise immediately adjacent to or directly associated with a particular antenna.

43. "Wireless Service(s)" means communications services provided to the public via wireless transmission using licensed or unlicensed spectrum, whether at a fixed location or using mobile equipment. The term does not include services provided by an electric provider (or its parents, affiliates, or subsidiaries) using wireless devices, facilities, or equipment in support of services of the electric provider.

44. "Wreck out" means, in the context of and with respect to, any construction, rebuild, upgrade, modification or maintenance activity of a System, the removal of the old cable, wires, pipes, conduit, parts and components of any portion of the System not currently and actively used in the provision of Service in the City.

## **Section 2. Administration; Delegation of Powers and Authority.**

a. Except as set forth otherwise herein, the City Manager is hereby designated the individual responsible for the continuing administration of this Ordinance and matters related to the operation of Providers of Service utilizing a System in the City that use or occupy the property of the City or the City's rights-of-way for such purpose.

b. Unless expressly prohibited by Federal, State or local Ordinance, the City Council or the Manager may delegate authority to assist in the administration of this Ordinance or a Franchise granted pursuant to this Ordinance.

c. Notwithstanding anything in this Section, the City Council may never delegate its initial or renewal franchising, licensing or permitting power, or power of revocation or termination of such, to another Person or representative, advisory Council, commission, or committee.

## **Section 3. Franchise Required.**

a. No Person shall be authorized to construct, build, rebuild, upgrade or operate Small Cell Wireless Facilities, or submit an application for a permit to construct, build, rebuild, upgrade or operate the same, or provide Wireless Service using Small Cell Wireless Facilities in, along, over, under or across City property or streets or Rights-of-Way of the City, without having first obtained a Franchise, unless such Person is expressly exempt from this requirement under State or Federal law.

b. The City Council may award one (1) or more non-exclusive Franchises within its corporate limits, or any area outside the corporate limits that is under the City's governmental or regulatory control, including the City's police power.

c. No Franchise granting authority to construct and operate Small Cell Wireless Facilities or provide Wireless Service using Small Cell Wireless Facilities shall be exclusive.

d. A Provider's Franchise Application or Proposal shall be evaluated and approved or disapproved as part of a public proceeding and hearing which affords the Applicant and the public an opportunity to be heard and which is in accordance with applicable federal and State laws, rules and regulations.

e. A Provider subject to this Ordinance may not lay or use any antennae, cable, lines, pipe, poles or wires, whether coaxial, fiber, or a functional equivalent, or any other component, equipment or Small Cell Wireless Facilities, on City-owned property or in the City's rights-of-way until the Franchise is fully executed and is in effect, including approval by the PSC, if such is required.

f. A Franchise shall be sufficiently detailed so as to clearly delineate the rights, privileges, duties, obligations and limitations of the parties concerned.

g. As permitted by applicable State or Federal law, and as may be applicable to a particular class or type of Provider, a Franchise shall, at a minimum, contain and address the following matters, as well as any requirements in accordance with any applicable rules of the FCC and/or PSC:

1. a statement of the specific Service(s) to be offered
2. the term or duration of the Franchise;
3. an indemnity and hold harmless provision;
4. an insurance commitment, as required;
5. performance bonds or other security, in a minimum amount of \$50,000, or in such greater amount as required, renewed annually;
6. completion bonds or other security, in a minimum amount of \$50,000, or in such greater amount as required, renewed annually;
7. the clearly designated Service area;
8. a schedule of service to any unserved areas of the City;
9. the construction, upgrade or rebuild schedule, if applicable;
10. to the extent practical, a requirement that all Facilities and associated equipment be attached to a pre-existing pole or support structure that is owned, controlled or leased by a utility, franchisee, the City or other entity.
11. that at any time during the period of the franchise, the grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of the City, (a) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, freeway or Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (b) a City project or activity makes disconnection, removal, or relocation necessary or less expensive for the City.
12. compensation, including, but not necessarily limited to a Franchise Fee for administering the Franchise;
13. a Fee or Rent for the commercial use and occupancy of the City's property and rights-of-way;
14. the name and address of the individual or entity designated to receive notices, filings, reports, records, documents, orders and other correspondence;
15. a statement of repeal of any previously granted or inconsistent Franchise;
16. a severability clause;
17. a commitment to abide by any and all Ordinances, rules and regulations that govern the Franchise or its use and occupancy of the City's property and rights-of-way and the provision of Service;

18. any exemptions or relief from this Ordinance, or any comparable policy, as may be granted.; and

19. an effective date.

h. Without limitation other than as may be established by superseding Ordinance, the City shall always have the right to require additional matters, issues and subjects to be contained in a Franchise, as may be reasonably deemed necessary in the interest of and to protect the City and its residents.

i. As may be applicable, but only to the extent expressly required by State or Federal law, rule or regulation, the City shall follow all applicable Federal and State laws and rules of the FCC and the PSC with respect to the submission and processing of initial and renewal Applications or Proposals for a Franchise.

#### **Section 4. Permit Required to Place Small Cell Wireless Facilities in Right of Way**

a. An Applicant or Provider must obtain a permit from the City before placing, installing, or constructing any new Pole or new Small Cell Wireless Facility (and associated accessory equipment) on the Right of Way, or substantially modifying the position or characteristics of any such existing Pole or Small Cell Wireless Facility thereon, or when the work to be performed requires excavation or the closure of sidewalks or vehicular lanes or that otherwise hinders the usual travel or public safety on the right-of-way or obstructs the legal use of the right-of-way by utilities.

b. The Development Review Team (DRT) is hereby authorized and empowered to review and administratively process any permit application to determine whether, in the exercise of the DRT's reasonable discretion, a permit should be issued for the work, location and in the manner requested by the Applicant or Provider. The DRT may condition the issuance of any permit on the compliance by the Applicant or Provider with certain terms as set forth by the DRT. The DRT shall also set forth the amount of any bond that shall be required of an Applicant or Provider for the work to be performed pursuant to the application.

c. The City may issue reasonable policy guidelines to establish procedures for determining how to control issuance of permits to multiple Applicants or Providers for the use of the same Rights-of-Way for their Small Cell Wireless Facilities. Applicants and Providers shall cooperate with the City in establishing such policy and comply with the procedures established by the City to coordinate the issuance of multiple permits in the same Right-of-Way segments.

d. Failure to obtain a permit, or to comply with permit requirements, shall subject violators to all enforcement remedies available to the City under Applicable Laws and this Ordinance.

e. Application Process

1. All applications for a permit shall be submitted on an application form developed by the City. The time for processing an application shall not begin to run until the City receives an application on an official City form. At a minimum, each application for a permit shall contain all of the following:

- A) A statement on its face whether it is an application under the FCC's Declaratory Ruling and Third Report and Order, §6409/Wireless Siting Order, or neither.
- B) A statement on its face as to which shot clock Applicant or Provider believes applies to the request and why.
- C) All other information required by the application form.

2. Concurrently with the application form, Applicant or Provider shall submit:

- A) Complete and fully signed and stamped Engineering plans and drawings depicting existing conditions and the work to be performed;
- B) Survey(s) by a licensed surveyor designating with specificity the location(s) of the requested work and identifying existing utilities;
- C) Detailed site plan of any proposed construction or excavation;
- D) The geographic coordinates of all proposed facilities;
- E) A description of any necessary make-ready work;
- F) A proposed schedule for completion, certified by a license professional engineer;
- G) If the work will include the installation of facilities on a pole on the Right of Way that is owned by any entity other than the City or the Applicant, a copy of any fully executed license, lease, agreement or other documentation evidencing that the owner of that pole authorizes the facilities to be attached thereto or agrees in principle to authorize that attachment; provided that, if a representation is made to the City that the attachment has been authorized in principle by the owner of the pole but the Applicant subsequently fails to furnish the City documentation that finalizes any such agreement, the City may refuse to issue the requested permit until that documentation is provided, or, if the City issues the requested permit before receiving such final documentation, the subject permit may be revoked and any license to use that part of the Right of Way be rescinded; and
- H) Any other information required by the DRT that will allow the DRT to properly evaluate the application.
- I) The DRT may promulgate additional application submittal requirements.

3. An application shall not be deemed complete until the Applicant has submitted all documents, information, forms and fees specifically enumerated in this Ordinance or in any DRT requirements that pertain to the location, construction, or configuration of the facilities or poles at the requested location(s). Within 15 calendar days after an application for permit is submitted, the City shall notify the applicant in writing if any 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 15 days following its receipt, the application is deemed complete.

4. The City may adopt regulations for the submission of a consolidated Application for all small cell wireless facilities to be installed with the City.

5. The factors, requirements and guidelines that the DRT may consider and will apply when determining whether to issue a permit for placement of facilities on the Right of Way include, but are not limited to the following:

- A) The terms of the Applicant or Provider's franchise agreement or, if no franchise agreement, any applicable law allowing Applicant or Provider to use the Right of Way.
- B) The engineering plans and drawings submitted by the Applicant or Provider showing the planned construction activities on the Right of Way.
- C) The demonstrated need for placing the facilities at the requested location and geographic area in order to deliver or enhance the specific Service;
- D) The capacity of the Right of Way at the requested location and geographic area to handle the proposed facilities;
- E) The impact the proposed facilities would have on other facilities and infrastructure currently located in the requested location and geographic area, including, but not limited to, water, sewer and storm water facilities and infrastructure;
- F) The impact the proposed facility would have on the use of the Right of Way by the City or the public;
- G) The Applicant's or Provider's coverage objective and whether the Applicant should use available or previously unconsidered alternative locations to place the facilities;
- H) Compliance with applicable standards, including the provisions of this Ordinance;
- I) Colocation. If the Applicant or Provider demonstrates that no colocation opportunities exist in the area where a documented need for a facility exists, the Applicant or Provider may request that a new pole(s) or other support structure be installed in that area for purposes of constructing the facilities. Before any new pole or support structure is permitted, each of the following must occur:

i. The Applicant must have provided the City written evidence that no practical colocation opportunity exists. This evidence shall include, but not be limited to, affidavits, correspondence, or other written information that demonstrates that the Applicant or Provider has taken all commercially reasonable actions to achieve colocation in the requested location or area, that the Applicant or Provider has pursued but been denied access to all potential colocation sites in the subject area (and the reasons for any such denial(s)), and otherwise show that the Applicant or Provider is unable to co-locate on an existing pole or support structure.

ii. The Development Review Team must recommend the placement of a new pole or support structure in the Right of Way; and

iii. Whether the proposed installation could cause harm to the public or pose any undue risk to public safety;

iv. Whether the proposed installation may interfere with vehicular traffic, passage of pedestrians, or other use of the Right of Way by the public; and

v. If the proposed installation will disturb conditions on the Right of Way, whether the Applicant or Provider can demonstrate its ability and financial resources to restore the subject area to its pre-existing condition following installation.

f. Time for Processing Application.

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

- 1. Sixty (60) calendar days from the date an application for a permit is filed with respect to a request to co-locate Facilities on an existing pole or support structure or all eligible facility requests under §6409; and
- 2. Ninety (90) calendar days from the date an application for a permit is filed with respect to a request to attach facilities to a new pole or support structure or to install facilities underground.

3. One hundred-fifty (150) days from the date an application for a permit is filed with respect to a request that does not fall into subsections (A) or (B).

To the extent additional information is required to complete the application after it is filed, the applicable calendar day review period set forth in this subsection shall be tolled and not continue to run until the Applicant has provided any missing or requested supplemental information; provided that tolling shall not occur if the City does not advise the Applicant in writing of the incompleteness of a submitted application within 15 days after that submission. The failure of an Applicant to provide all missing or requested supplemental information within thirty (30) days of notification by the City for such information shall result in denial of the Application, unless such period is extended in writing by the City.

If the City denies a permit, the City shall notify the Applicant or Provider in writing of the basis for the denial, including any documentation regarding the denial.

g. Anneal.

If the City fails to act on a completed application as provided in this Section 4, the Provider or Applicant may, after notifying the authority in writing and the passage of ten (10) business days after the receipt of notice, file an action in the Circuit Court of Lee County, Alabama.

**Section 5. Additional Requirements.** Any Provider or Applicant to whom a permit is issued or any Provider that places Facilities and associated poles on the Right of Way shall comply with the following requirements as long as those Facilities and Poles are on or under the Right of Way:

- a. In addition to the permit requirement contained in Section 4 of this Ordinance, prior to installing or modifying Facilities or Poles, the Applicant or Provider shall obtain all other approvals, including permits, licenses, leases, and agreements, that may be required by the City.
- b. Prior to installing the Facilities or Poles, the Applicant or Provider shall provide the City a certificate(s) of insurance evidencing that it has obtained and will maintain the following types of insurance in connection with its operations on or use of the Right of Way: (1) General Liability coverage insuring the risk of claims for damages to persons or property arising from or related to the installation, construction, maintenance, operation or any use of Facility or Pole placed on or along the Right of Way by the Applicant or Provider (or any of their contractors) with minimum limits of \$2,000,000 per occurrence; and (2) Workers Compensation Insurance as required by statute. 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 reasonable acceptable to the City and authorized to transact business in the State of Alabama. On an annual basis following initial installation, the Applicant or Provider also shall furnish the City a Certificate indicating that the above-noted coverage remains and will remain in effect.
- c. Any permit issued for work on the Right of Way shall be available at all times on the worksite for inspection by City officials.
- d. All Facilities and associated poles 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. Unless otherwise agreed to in writing by the City, all Facilities and associated poles shall be Completed and fully operational within 120 days after the date the last or final permit is issued. The failure of a Facility to operate in the time established under this subsection (e) shall allow the City to:
  1. Cancel the City's approval of the Facility or any associated new pole;
  2. Cause the removal of the Facility or associated new pole by the Provider at the Provider's sole expense and in a time specified by the City.
- f. The use of Right of Way or the attachment of Small Cell Wireless Facilities to public assets by an Applicant or Provider shall not obstruct or hinder:
  1. Travel or public safety on the Right of Way; or
  2. The legal use of the Right of Way or public assets by others.
- g. Following the installation of any Facilities and associated Poles, the Provider or Applicant, upon reasonable request and for good cause, shall furnish the City Manager 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 poles have been damaged, are not functioning in compliance with applicable laws and regulations, or otherwise pose a hazard to the public. If those poles should fail at any time to comply with applicable laws and regulations, the Provider or 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 City Manager of non-compliance, or cease all personal wireless service operations related to those structures until the Applicant or Provider comes into full compliance with said laws and regulations.
- h. A Provider shall promptly and regularly do the following:
  1. Repair any damage to the Right-of-Way or any damages to public or private facilities or improvements in the Right-of-Way caused by the activities of the Provider, or those acting on its behalf.
  2. Return the Right-of-Way to the Right-of-Way's condition before the damage caused by the Provider, or those acting on its behalf.
- i. The Facilities and associated Poles must at all times be maintained in good and safe condition and be kept free from graffiti or other marks of vandalism. On no more frequent than a triennial basis, the City Manager may request that the Provider or Applicant, at either of their expense, furnish certification from a professional engineer who is licensed in the State of Alabama that the Facilities and Poles are in sound condition. Should that engineer deem those structures unsound, the Provider or Applicant shall furnish to the City Manager a plan to remedy any unsafe conditions or structural defects and take that remedial action at the Provider or Applicant's expense.
- j. Each Applicant or Provider that applies for a permit to place Facilities (including the accessory equipment) and Poles on the Right of Way and installs and utilizes those structures shall defend, indemnify and hold the City and its employees or officials, harmless from all demands, losses, expenses (including attorney's fees and court costs), claims for personal injury or property damage, judgments or liabilities of any type that may be asserted or claimed against the City (or its employees or officials) by any third person, firm or entity that arise out of or relate in any manner to the following: (1) the installation, construction, maintenance, use or operation of the permitted Facilities, Accessory Equipment or any pole on or about the Right of Way; and (2) the failure of the Provider or Applicant to perform any of their respective responsibilities, obligations and permit requirements in this ordinance. Notwithstanding the foregoing, the Provider or Applicant shall not be obligated to indemnify the City for City claims resulting from the sole negligence or willful acts of the City (or its representatives).

#### **Section 6. Aesthetic Requirements**

- a. Applicants and Providers shall make every effort to provide a reasonable location, contest, color, stealth and concealment necessary to maintain the character and style of the surrounding areas so as to minimize the visibility and environmental impact.
- b. The City hereby adopts the illustrations of examples of the types of acceptable colocation, stealth technology, and other design aesthetics attached hereto as Exhibit A. These examples are to be known as the "City of Auburn Small Cell Wireless Infrastructure Aesthetic Standards" and shall be housed in the City's Design and Construction Manual and shall be reviewed annually and updated as necessary to be consistent with the current character, visions and goals of the City.

#### **Section 7. Safety Requirements.**

- a. All Providers shall at all times and without exception comply with the most current editions of the National Electrical Safety Code (NESC), the National Electrical Code (NEC) and the Occupational Safety and Health Act (OSHA). Any changes in or amendments to these codes and Ordinance shall be deemed to have been automatically adopted by the City with respect to this Ordinance, unless expressly rejected by the City Council.
  - b. In cases involving safety issues related to utility poles, including the requirement to regularly inspect the System and facilities for violations of the NESC, including but not limited to issues of minimum clearances or impermissible contact of the facilities of two occupants of the poles, and where there is a question as to which party caused the violation, the Provider may be required to provide the following, as applicable under the circumstance:
    1. a copy of the request for make-ready for the situation at that location showing the date of the request; or
    2. a copy of the signed and dated work order showing the date of installation for the particular subscriber or address; or
    3. a copy of the signed and dated work order for the latest service call for the particular subscriber or address.
  - c. To provide for the protection of the health and safety of persons and property in the City to the maximum extent reasonably possible, the City deems it necessary to adopt a policy of "zero" (0) tolerance of safety-related violations associated with any System or the provision of any Service in the City, excepting those caused by Subscribers, Users or the public and which the Provider was not aware of or could not reasonably have been aware existed. Notwithstanding the preceding exception, it shall always be the responsibility of the Provider to remedy and eliminate any safety-related violations associated with its System or facilities as such may be found or reported, or if caused by a third party to diligently pursue the remedy and elimination of the violation.
  - d. To enable the City to take any needed action or precaution to alert or otherwise protect persons and property in the City, it shall be the responsibility and obligation of any Provider to report to the City any violation of safety codes, regulations or requirements or the construction or construction-related requirements of this Ordinance that is identified and is not able to be remedied within twenty-four (24) hours of the time of its identification, or if caused by a Subscriber or User, and due to the location on private property is not able to be remedied within the required twenty-four (24) hours. For purposes of this subsection, unless impracticable, the notice to the City shall be required to be done the same day by phone, and the next day in writing.
  - e. It shall be the immediate and primary responsibility of the Provider to place appropriate and effective warning signs and protective devices or barriers at the site of any situations that could reasonably be expected to cause personal injury or property damage.
- Notwithstanding anything to the contrary in the Section of this Ordinance entitled Fines and Penalties, there shall be no Fine or Penalty assessed or imposed for construction or construction-related or safety or safety-related violations that are of the Provider's own accord and volition reported to the City in accordance with the subsection (d) of this Section prior to any injury or harm having been caused, and provided that the report of a situation occurs prior to or on the same day as a third party report that the City receives that is relevant to this Section, and if the violation is eliminated within twenty-four (24) hours, or in such time-frame as may otherwise be approved by the City Council or the City Manager.

#### **Section 8. Abandonment of Facilities in Right of Way.**

- a. A Provider shall notify the City in writing within thirty (30) days after a decision to remove from service a Small Cell Wireless Facility located in the Right-of-Way.
- b. Within sixty (60) days after the notification in subsection (a) of this Section, Provider shall remove that portion of a Small Cell Wireless Facility that is no longer needed for service and located in Right-of-Way at the sole cost and expense of the Provider and shall, at its sole cost and expense, reasonably restore the condition of the property at which the Facilities are located to that existing before they were installed.
- c. If the Provider 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 to draw on any bond posted by Provider, (b) purchase all abandoned Facilities at the subject location from the Provider in consideration for \$1.00, (c) at the City's discretion, either resell the abandoned Facilities to a third party or dispose and salvage them; provided that the proceeds of any resale of abandoned Facilities by the City to a third party shall be credited to the account of the Provider that used those Facilities before the abandonment, and (d) the City reserves the right to charge any expense incurred by the City to restore the Right of Way to the account of the Provider or to draw on any bond posted by Provider. The provisions of this subsection (c) shall also apply in the event a Provider fails to provide the City the notice specified in subsection (a) of this Section and the City concludes that a Small Cell Wireless Facility, or portion thereof, has been abandoned in place.

d. Until a Small Cell Wireless Facility that is located in Right of Way is removed entirely from the Right of Way, a Provider shall pay the Right of Way Use and Occupancy Fee to the City for such Facility, regardless of whether a Facility is operational.

#### Section 9. Fees.

a. A Provider or Applicant for a permit to place Facilities and associated Poles on the Right of Way shall pay the following fees upon submission of an application:

1. Five Hundred Dollars (\$500) non-recurring fee for a single up-front application containing up to five (5) Small Cell Wireless Facilities, plus an additional One Hundred Dollars (\$100) per additional Small Cell Wireless Facility over five (5).
2. One Thousand Dollars (\$1,000) non-recurring fee for the installation of a new pole or structure to support one or more Small Cell Wireless Facilities.

b. All Providers with Facilities in the Right-of-Way shall pay to the City an annual Right-of-Way Use and Occupancy Fee of \$270 per Small Cell Wireless Facility located in the Right of Way, whether or not such Facility is actively providing Wireless Service.

c. Notwithstanding anything to the contrary in this Section, the City may negotiate with a Provider for the in-kind provision of Services or other valuable consideration in lieu of all or a portion of the amount that would otherwise be required to be paid. However, the City shall not be obligated to grant this option to any Provider, so long as it applies this authority in a manner among like or similar Providers that is non-discriminatory and competitively neutral in effect with respect to the value received by the City.

d. All payments of Right-of-Way Use and Occupancy Fee shall be quarterly on a calendar year basis, unless otherwise expressly set forth in the Franchise.

e. Nothing herein shall be deemed to be a waiver of the City's rights under Applicable Law to impose greater or additional fees on Small Cell Wireless Facilities.

#### Section 10. Retention and Submission of Reports and Records; Right to Inspect a System or Facilities and to Review Documents.

a. A Provider shall maintain, and upon request by the City, provide records as are reasonably necessary for the City to determine compliance with the provisions of this Ordinance, and to determine the Provider's or System owner's or operator's legal, technical, financial and character qualifications as may be needed from time to time to administer this Ordinance.

b. A Provider shall keep complete and accurate books of accounts and records of the business and operations in connection with the operation of the System and/or the provision of Service in the City, including records of inspection and maintenance activity in sufficient detail to ascertain the diligence and adequacy of the inspection and maintenance program.

c. In order to verify that a Provider constructs, rebuilds, upgrades, maintains and repairs the System and facilities in the manner required by this Ordinance, the City shall have the right to inspect all portions and facets of a Provider's facilities, including the construction, placement, operation, repair and maintenance of the facilities in the City.

d. The City shall have the right to require the delivery to the City or its designee, true, accurate and unexpurgated copies of any and all records and documents related to any tests and inspections conducted by the Provider for purposes of review and analysis as may be deemed necessary to administer and enforce this Ordinance.

e. The City shall pay for its costs associated with any physical inspections of the system or its components, or for document reviews. Notwithstanding the preceding, the City may require reimbursement of its fully-allocated costs for those circumstances occasioned by a Provider refusing to provide the information requested under subsection (b) of this Section, or the refusal to cooperate with the City in an inspection, or that is occasioned by the identified failure in a significant portion of the City to construct, install, maintain, repair, rebuild or upgrade any part or portion of the Provider's System or facilities in the manner specified and required by this Ordinance.

f. If a failure to construct, install, maintain, repair, rebuild or upgrade the System or facilities as required by this Ordinance is identified, except for that which would reasonably be deemed of a de minimus number of situations and of de minimus effect, and after ordering the remedy or elimination of the failures and providing a period of time to comply with the order, the City may order a re-inspection in order to verify the resolution or elimination of any failure or problem by a Provider.

g. In instances involving reimbursement under subsection (c) of this Section, at the discretion of the City Council or the City Manager, the Provider may be required to reimburse the City for all of the actual fully-allocated costs that are incurred by the City to obtain the necessary information, or that are incurred to conduct or have conducted any needed re-inspection. If, upon re-inspection, all failures to construct, install, maintain, repair, rebuild or upgrade any portion of the Provider's System or facilities have been eliminated, the City Council or the City Manager may, at their discretion, waive the reimbursement requirement.

h. The reimbursable costs as described in this Section are deemed reimbursable because either the costs were precipitated by the unreasonable or non-compliant behavior of the Provider, or because the costs are related to actions of enforcement for violations or breaches committed, neither of which is a part of the normal administrative function of this Ordinance, and are extraordinary costs that would not have been incurred were it not for the impermissible action or violation by the Provider.

#### Section 11 Fines and Penalties.

a. This Ordinance may be enforced by the City Attorney, the City Manager and if applicable, the City Council. In addition to all other rights and powers vested in and possessed by the City, if required by State or federal law, the City reserves the right to seek fines and/or penalties in the lowest Court of competent jurisdiction in the City.

b. Notwithstanding the preceding subsection (a) of this Section, and if permitted by State and federal law, the City reserves for itself the right to assess fines and/or penalties for any violation of this Ordinance, or any attempt to evade or avoid compliance with the requirements of this Ordinance, or for the failure of a Provider to comply with any applicable time-related or performance-related requirements, or for the violation of any federal, state, or local law, rule, or regulation that is not specifically pre-empted from local enforcement, and, in the event such violation, evasion, avoidance or failure has not been remedied pursuant to procedures set forth in this Ordinance, to impose and assess fines or penalties as set forth in this Section.

c. Any imposition of fines or penalties shall be preceded by written notice of the violation, and shall set forth the amount of time allowed for the elimination of the violation, if any, before the imposition of fines or penalties. Violations of the same or of a similar type and of a substantive number, but occurring at different locations or affecting different Persons, Subscribers or Users, shall not require individual notification, but may be referenced by type of violation.

d. Absent good and just cause, including the provision of evidence of good faith efforts to comply with the requirements of this Ordinance, the failure by a Provider to comply with any time-related or performance-related requirement of this Ordinance, or an act of evasion or avoidance of the requirements of this Ordinance, will subject the Provider to the assessment and imposition of fines or penalties as set forth in this section. Once imposed, any fines or penalties shall continue to accrue, including during any appeals process, until such time as the payment of the fine and/or penalty is received by the City or is otherwise specifically waived by the City Council.

e. Failure to pay fines and/or penalties within the time provided shall be a material violation of this Ordinance and shall be cause to proceed against either a letter of credit, or bond or other surety as may have been required. Failure to pay any fines under this section shall also constitute cause to revoke any Franchise or other use, occupancy or operating authority granting permission to provide Service in the City.

f. Unless prohibited by State or federal law, the City reserves the right to fine and penalize any Provider found to be in violation of this Ordinance. The City Council adopts the following schedule of fines and penalties for the violations listed:

1. For failure to obtain a permit as required by Section 3; an amount not to exceed Five Hundred dollars (\$500).
2. For failure to provide any data, documents, reports or information required by this Ordinance, or that is needed to monitor or determine compliance with and to administer this Ordinance, an amount not to exceed One Hundred dollars (\$100).
3. For failure to test, analyze and report on the performance of the System following a written request to do so; an amount not to exceed Two Hundred dollars (\$200).
4. For refusal to cooperate with the City on any matter involving an inspection of the System and its components and facilities; an amount not to exceed Five Hundred dollars (\$500).
5. For failure to comply with any requirements regarding Completion, cleanup and proper installation as set forth in this Ordinance; an amount not to exceed Two Hundred dollars (\$200).
6. For failure to meet any construction or safety-related requirements of this Ordinance, including fire and electrical codes; an amount not to exceed Two Hundred Fifty dollars (\$250) per violation.

i. For reasons of impracticability and excessive, unreasonable and unnecessary cost to the City, in the event that a substantial number of safety-related violations are found during an inspection of a System within the City, such being defined as more than ten (10) in one (1) continuous or contiguous mile of the System within the City, the City shall not be required to notify a Provider of each and every individual safety or safety-related violation. Rather, in such an instance the City may reasonably assume the findings to be prima facie evidence that the situation is City-wide and order the entire System to be inspected by the Provider for either construction or safety-related violations, and order that all such violations found shall be eliminated within thirty (30) days of the date of notification by the City.

ii. In the event of a situation described in subsection (f)(6)(i) of this section, any fines imposed shall be calculated using the following formula:

Total Violations=

Number of Violations Found/Wireless Facilities Inspected      x      Total Wireless Facilities in the City

iii. As these issues are of paramount concern to the City, and as non-compliance with these requirements is normally deliberate, if the City is forced to notify a Provider of construction or safety-related violations, the mere elimination of such violations within the required period of time contained in the notice shall not relieve an offending Provider from the payment of fines imposed under this section. Fines for construction and safety-related violations shall accrue starting forty-eight (48) hours after notification by the City of the existence of the violations, and shall continue until the Provider certifies to the City in writing that all construction and safety-related violations associated with its System in the City have been eliminated.

iv. In the event a subsequent re-inspection reveals that specific previously identified violations still exist, the fines may be doubled and shall accrue from the date of the first notice required pursuant to subsection (f)(6)(iii) of this Section until the elimination of the violation is verified.

v. Notwithstanding the subsection (f)(6)(iii) of this Section, no fine or penalty shall be imposed on a Provider for any construction or safety-related violation where it is proven that the violation was caused by the actions of a third party, provided that proof is provided of a demand by the Provider to the party having caused the violation to eliminate the situation, including a diligent pursuit of the demand if necessary.

vi. In order to verify and assure continued compliance with all applicable construction and safety-related requirements, within a reasonable amount of time after the period of time set forth in the City's notice for the elimination of all construction or safety-related violations, but in no case sooner than thirty-five (35) days after the date of the notice of violation, the City shall have the System within the City re-inspected by a party experienced in such inspections and that has no affiliation of any kind with any member of the industry.

vii. As the cost of inspection under subsection (f)(6)(vi) of this Section is an extraordinary expense to the City caused by the impermissible actions of a Provider, and is not deemed a normal cost of administering this Ordinance, to prevent the taxpayers from having to bear the financial burden, the City may require the Provider to place on deposit with the City an

amount deemed to be reasonably sufficient to cover the cost of re-inspecting twenty percent (20%) of the System within the City on a random sample basis and generating a written report on the findings of the inspection. The amount of the deposit shall not be less than Ten Thousand dollars (\$10,000), and any amount not expended shall be promptly returned to the Provider.

viii. For failure to pay the full and complete amount of any money owed the City, including any interest that may be owed, an amount not to exceed One Hundred dollars (\$100).

7. For failure or refusal to place or restore Performance and Completion securities as required, an amount not to exceed Two Hundred dollars (\$200).

8. For failure to comply with any other Section, subsection, or provision of this Ordinance, or a Franchise, an amount not to exceed Fifty dollars (\$50).

g. Each instance or occurrence may be deemed a separate violation, and each day or part thereof following written notification by the City and the expiration of any period of time allowed for the elimination, remedy or cure of the violation that the violation continues or is not eliminated, remedied or cured as prescribed by the City Council, may be deemed a separate violation, punishable separately. The imposition and payment of fines and penalties as set forth in this Section shall not serve to extinguish or eliminate any other rights of prosecution the City may have under Ordinance, nor are they deemed to be recompense for any damages that may be suffered.

h. Notwithstanding anything in the preceding subsections of this Section or any other Section of this Ordinance, unless otherwise formally granted relief or a waiver by the City Council or the City Manager, or unless a longer period of time is permitted after the initial forty-eight (48) hours following notification by the City to the Provider that a violation exists, each day that a violation continues shall constitute and be deemed a separate violation and may be treated as a separate offense.

i. Provider shall not be subject to penalties, fines, forfeitures, revocation or involuntary termination of a Permit or Franchise for a Technical Violation of this Ordinance or a Technical breach of a Franchise. For purposes of this Ordinance, Technical Violations or breaches include the following:

1. Instances or matters where a violation of this Ordinance or, where applicable a Franchise, was a good faith error that resulted in no negative impact on the residents, Subscriber or Users within the City, or on the City itself, or where such violation resulted in de minimus effect on any of the preceding Persons or the City; or

2. Instances or circumstances that are reasonably beyond the control of a Provider, including Force Majeure situations, and that prevent a Provider from complying with this Ordinance or the Franchise.

j. In the event of an appeal arising out of the enforcement of this Section, or in the event of litigation arising out of a dispute regarding the enforceability of any action taken by the City under this Section, the Provider shall not be excused from the prompt and timely payment of fines and/or penalties as set forth in this Section during the course of such proceeding. Payment of fines and/or penalties in such an instance shall be placed in an escrow account by the City, pending the resolution and decision of the adjudicating entity.

k. Notwithstanding anything in this Section, or any other Section of this Ordinance, a Provider may not use the payment of fines and/or penalties to evade or avoid compliance with this Ordinance or any Section of this Ordinance. An attempt to do so shall subject the Provider to termination and loss of the Franchise, and a fine of Five Hundred dollars (\$500).

## Section 12. Complaint Procedures.

a. The City is hereby granted the authority to implement procedures for the filing and resolution of complaints.

b. The City shall have the authority to adjust, settle or compromise any controversy arising from the operations of any Provider, either on behalf of the City or any Subscriber or User, in accordance with the best interests of the public and the City. Any Person aggrieved by a decision of the City Council may appeal the matter for a hearing and determination in the Circuit Court of Lee County within 30 days. Nothing herein shall be construed to grant the City Council jurisdiction over a dispute between an Applicant or Provider and an electric utility regulated by the Alabama Public Service Commission.

c. The City Council reserves the right, at all times, on behalf of the City, or a Subscriber or User, to accept, reject or change any decision of the City Council, and may adjust, settle or impose a compromise regarding any controversy arising from the operation of Provider that is subject to this Ordinance in whole or in part, or from any provision of this Ordinance.

## Section 13. Miscellaneous Provisions.

a. No provision of this Ordinance is intended to permit, regulate or authorize the placement by a Provider or Applicant of fiber optic lines, coaxial cable, switches, pedestals or networking equipment of any type that is used to transport telecommunication signals, data or messages between poles or support structures or between any other points on the Right of Way. In the event such Provider or Applicant desires to place telecommunications equipment or Facilities along the Right of Way at points not regulated by this Ordinance, the City may enter into a Franchise or similar agreement that authorizes, governs and applies to such use of other locations on or along the Right of Way.

b. In the event of any conflict or ambiguity between the requirements of this Ordinance and any Franchise subject to this Ordinance, this Ordinance shall control, unless the requirement or provision is expressly pre-empted by federal or State law, rule or regulation, or unless the issue is expressly addressed in the Franchise in the context of relief from this Ordinance.

c. This Ordinance shall not be deemed to, nor shall it, change, impair or repeal the terms or conditions of any Franchise, agreement or contract granted prior to the effective date of this Ordinance to the extent that such expressly contains a lesser or less stringent obligation, requirement or commitment that are expressly enumerated in the existing Franchise, agreement or contract, as regards the expressly stated and intended purpose and use of the City's property or rights-of-way with respect to the service provided.

d. When a Franchise agreement, contract or use and occupancy authority granted prior to the effective date of this Ordinance is silent on a matter addressed in this Ordinance, and absent express language to the contrary or limiting the City's right to adopt additional regulatory requirements regarding the regulation of the commercial use and occupancy of the City's property, streets and rights-of-way in the Franchise, agreement or contract, the applicable provisions of this Ordinance shall apply.

e. Any Applicant or Provider shall be required to comply with the safety requirements and provisions of this Ordinance, unless the Franchise Agreement, contract or other operating authority granted prior to the effective date of this Ordinance states otherwise.

f. Unless a Franchise or other operating authority granted prior to the effective date of this Ordinance expressly states otherwise, all Providers shall abide by the construction and construction-related requirements and provisions of this Ordinance when performing any construction, rebuild, upgrade, repair, change or replacement of equipment or facilities.

g. Any individual, corporation, association or other business entity shall not use City Right of Way, including co-locating on existing Right of Way infrastructure, without first obtaining a franchise from the City.

h. This Ordinance shall be construed in accordance with applicable federal and State laws and rules and in accordance with any applicable rules and regulations of the Federal Communications Commission and the Public Service Commission, or any successor agency or authority.

i. This Ordinance shall apply within the geographical limits of the City, including any areas subsequently annexed by the City, unless State or federal law prescribes otherwise, or unless State or federal law in some fashion restricts or alters the effect of this Ordinance to a subsequently annexed area of the City.

j. It being a reasonable assumption that responsible persons of good intent will comply with Ordinances, and to prevent the City from having to constantly monitor compliance with each and every aspect of a Provider's every action, a Provider shall not be excused from complying with any of the requirements of this Ordinance, or any subsequently adopted amendments to this Ordinance, by any failure of the City on any one (1) or more occasions to seek or insist upon prompt compliance with such requirements or provisions.

k. A Provider shall not be held in violation, material breach, default or non-compliance of this Ordinance or a Franchise, nor suffer any penalty related thereto, including, where applicable, involuntary termination, cancellation or revocation of a Franchise, where such violation, breach, default or non-compliance was caused by a natural disaster or any other event that is reasonably beyond a Provider's ability to anticipate and control, or that is of a devastating nature or effect on the Facilities. Force Majeure situations shall also include strikes, riots, wars, and armed insurrections, as well as work delays caused by having to wait for third party Providers or system owners or operators to service or monitor their own poles on which a Provider's cables, wires' facilities and/or equipment is attached, as such may be necessary for the Provider to comply with this Ordinance.

l. If any word phrase, sentence, part, section, subsection, or other portion of this Ordinance, or any application thereof to any Person, entity or circumstance is declared 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 and all applications thereof not having expressly been declared void, unconstitutional or invalid, shall remain in full force and effect.

m. Any prior resolution, ordinance, code or City Ordinance which, in part or in whole, is directly inconsistent with this Ordinance, is hereby deemed unenforceable to the extent of the inconsistency as regards Providers subject to this Ordinance.

n. In any case of an actual inconsistency between any provision or section of this Ordinance and any provision or section of an applicable federal or State law, rule or regulation which expressly supersedes or pre-empt local authority on the matter, but only to the extent that it expressly does so, then the federal or State law, rule or regulation shall supersede the effect of the applicable provision of this Ordinance, and shall control in any local application.

o. Where there is a conflict, whether actual or perceived, between this Ordinance and a Franchise granted subsequent to the effective date of this Ordinance, this Ordinance shall control, unless judicially determined to be invalid or unenforceable by a court of competent jurisdiction.

## Section 14. Effective Date.

This Ordinance shall become effective upon adoption, approval, publication and filing as required by Ordinance, and shall be codified in the Ordinances of the City of Auburn, Alabama.

**Adopted and approved** by the City Council of the City of Auburn, Alabama, this the 21st day of April, 2020.

/s/ Ron Anders, Jr.,  
Mayor

ATTEST:  
/s/ James C. Buston, III,  
City Manager

**The Villager**  
**April 23, 2020**