

## **ORDINANCE 2020-005**

### **AN ORDINANCE TO ADOPT REGULATIONS FOR SMALL CELL TECHNOLOGY FACILITIES IN THE CITY OF ASHVILLE, ALABAMA**

**WHEREAS**, The City Council of the City of Ashville, Alabama seeks to facilitate the availability of reliable, personal wireless services for its citizens and the public by permitting the placement of Small Cell Technology Facilities and associated Support Structures along the Rights-Of-Way and on private properties in the City; and

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

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

**WHEREAS**, as provided in this Ordinance, the City seeks to mandate, where feasible, the co-location of Small Cell Technology Facilities on existing poles and other Support Structures as opposed to installation of new Structures; and

**WHEREAS**, the above-noted co-location and other provisions of this Ordinance are intended to be consistent with the Act and its associated regulation; 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.

**THEREFORE, BE IT ORDAINED, BY THE MAYOR AND CITY COUNCIL OF  
THE CITY OF ASHVILLE, ALABAMA AS FOLLOWS:**

#### **Section 1. Definitions.**

The following definitions shall apply in the interpretation of this Ordinance:

- A. *Abandonment* or *Abandons* means that, following the placement of Small Cell Technologies Facilities (and associated Accessory Equipment) or Support Structures in the City pursuant to a permit issued to a Provider or an Applicant, any of the following has occurred: (a) for any reason the Facilities cease to be used to transmit signals, data, or messages or otherwise be used for their intended purposes for a period of one hundred eighty (180) days; (b) the City revokes the permit for placement and

use of those Facilities due to nonpayment of applicable fees, the failure of the Provider or Applicant to comply with conditions in the permit or in this Ordinance concerning them, or other valid reason; or (c) the Provider or Applicant fails to perform any of its responsibilities, obligations and requirements in this ordinance or in a permit that relate to the installation, construction, maintenance, use or operation of the Facilities, Accessory Equipment or Support Structures, and that breach remains uncured for a period of sixty (60) days after the City provides written notice of the breach to the Provider or Applicant.

- B. *Accessory Equipment* means any equipment other than an antenna that is used in conjunction with Small Cell Technology Facility arrangements to offer or provide personal wireless services. This equipment may be attached to or detached from a Small Cell Technology Wireless Support Structure, and includes, but is not limited to, cabinets, optical converters, power amplifiers, radios, DWDM and CWDM multiplexers, microcells, radio units, fiber optic and coaxial cables, wires, meters, pedestals, power switches, and related equipment on or in the immediate vicinity of a Support Structure.
- C. *Antenna* means communications equipment that transmits and receives electromagnetic radio signals, is attached to a Small Cell Technology Wireless Support Structure and is used to communicate wireless service.
- D. *Applicant*, whether singular or plural, means a personal wireless service provider, an entity that is authorized by a personal wireless service provider to apply for or receive a permit to install, construct, modify or maintain a Small Cell Technology Facility and related Accessory Equipment or Support Structure in the City, or an entity certificated by the Alabama Public Service Commission to provide telecommunication service.
- E. *Application* means a formal request submitted by a personal wireless service provider, provider, or entity authorized by a personal wireless services provider or provider, to the City for a permit to install, construct, modify or maintain a Small Cell Technology Facility and related Accessory Equipment or Support Structure.
- F. *City* means the City of Ashville, Alabama.
- G. *City Council* means the City Council of the City of Ashville, Alabama.
- H. *Inspector* means the Building Inspector or other person appointed by the City Council to perform the responsibilities and ensure the compliance with the terms of this Ordinance.
- I. *Co-location* means the placement or installation of a new Small Cell Wireless Technology Facility or related Accessory Equipment on an existing pole or other Support Structure that is owned, controlled or leased by a utility, the City or other person or entity.
- J. *Personal Wireless Service Provider or Provider* means an entity that provides personal wireless services, as defined in 47 U.S.C. 332, to the public or citizens of the City on a commercial basis and is authorized by the FCC to provide those services.
- K. *Private Property* means real property located within the corporate limits of the City that does not lie within the Right-of-Way.
- L. *Provider* – see Personal Wireless Service Provider.
- M. *Right-Of-Way or Rights-Of-Way*, whether singular or plural, means the surface and space in, upon, above, along, across, over and below any public streets, avenues, highways, roads, courts, lanes, alleys, boulevards, ways, sidewalks and bicycle lanes,

including all public utility easements and public service easements within those places, as the same now or may hereafter exist, that are within the City's corporate boundaries and under the jurisdiction of the City. This term shall not include county, state, or federal Rights-of-Way or any property owned by any person or entity other than the City.

- N. *Small Cell Technology Facility(ies) or Facilities*, whether singular or plural, means and includes the following types of facilities when used to offer or provide personal wireless services: (a) antenna; and (b) associated Accessory Equipment. Photographs and illustrations of the types, relative dimensions and scale of these Facilities that are currently contemplated by this ordinance are attached as Exhibit A to the permanent record of this ordinance that is maintained by the City Clerk.
- O. *Small Cell Technology Wireless Support Structure, Support Structure or Structure*, whether singular or plural, means a freestanding structure designed or used to support, or capable of supporting, Small Cell Technology Facilities, including, but not limited to, electric utility distribution poles, street light poles, traffic signal structures, rooftops, attics, or other enclosed or open areas of a building or accessory structure, a sign, or a flag pole. These terms do not include any electric utility transmission pole or decorative and architecturally significant street light poles that are inappropriate for use as a Support Structure as determined by the Inspector.
- P. *Stealth Technology* means one or more methods 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 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 are attached as Exhibit B to the permanent record of the ordinance that is maintained by the City Clerk.

## **Section 2. Permit Required to Place Small Cell Technology Facilities in Rights-Of-Way.**

- A. Provider or Applicant must obtain a permit from the City before placing, installing, or constructing any Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located on the Right-Of-Way, or substantially modifying the position or characteristics of any such existing Facility thereon.
- B. The Inspector will review and administratively process any request for a permit to determine whether, in the exercise of the Inspector's reasonable discretion, it should be issued for the location and in the manner requested by the Applicant. In this process, the burden is on the Provider or Applicant to demonstrate that the placement of the proposed Small Cell Technology Facility and associated Accessory Equipment or Support Structure on the Right-of-Way is the minimal physical installation which will achieve the goal of enhancing the provision of personal wireless service when considering all pertinent factors discussed in the provision immediately below. Except

as set forth in this section this permitting process will be administrative and not require the approval of any City Board or City Official other than the Inspector. The factors, requirements and guidelines that the Inspector may consider and will apply when determining whether to issue a permit for placement of Small Cell Technology Facilities and associated Structure on the Right-Of-Way include, but are not limited to, the following:

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 Structure 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 or Provider's network coverage objective and whether the Applicant or Provider should use available or previously unconsidered alternative locations to place the Support Structures or Facilities;
7. Co-location. 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 co-location 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 co-location 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 co-location in the requested location or area, that the Applicant has perused but been denied access to all potential co-location sites in the subject area (and the reasons for any such denial(s)), and otherwise show that the Applicant is unable to co-locate on an existing Support Structure;
  - b. The Inspector must recommend the placement of a new Support Structure in the Right-of-Way; and
  - c. The City Council must approve the recommendation of the Inspector to issue a permit that includes the placement of a new Support Structure in the Right-of-Way. The City Council will consider whether to approve any such new Structures at a regular Council meeting that will be conducted as soon as practical after the Inspector's recommendation is made.
8. Subject to 47 USC 332 (c)(3)(B)(iv), prohibiting consideration of environmental effects of radio frequency emissions to the extent the same

comply with the FCC's regulations governing the same, whether the proposed installation could cause harm to the public or pose any undue risk to public safety;

9. Whether the proposed installation may interfere with vehicular traffic, passage of pedestrians, or other use of the Right-Of-Way by the public; and
10. 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.

Notwithstanding anything to the contrary, the City shall not discriminate among providers of functionally equivalent services and shall not prohibit the provision of personal wireless services. Any denial of any request by an Applicant shall be in writing and supported by substantial evidence contained in a written record as required by 47 USC 332 (c)(3)(B)(iii).

#### C. Application Process.

1. At a minimum, each application for a permit shall contain all of the following:
  - a. Engineering drawings depicting the type of Facilities, Support Structure, and means and points at which such Facilities and associated Accessory Equipment will be attached to a Support Structure;
  - b. Map(s) designating with specificity the location(s) of the requested Facilities;
  - c. If the Facilities will be located on a Support Structure on the Right-Of-Way that is owned by any entity other than the City or the Applicant, a copy of any license, lease, agreement or other documentation evidencing that the owner of that Support Structure authorizes the Facilities to be attached thereto or agrees in principle to authorize that attachment, provided that, if a representation is made to the City that the attachment has been authorized in principle by the owner of the Support Structure but the Applicant subsequently fails to furnish the City documentation that finalizes any such agreement, the City may refuse to issue the requested permit until that documentation is provided, or, if the City issues the requested permit before receiving such final documentation, the subject permit may be revoked and any license to use that part of the Right-Of-Way be rescinded.
  - d. If the Applicant requests permission to place Facilities on a new Support Structure, the justification therefor required by Section 2, Paragraph B-7 of this ordinance.
  - e. 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 ten (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 ten (10) days following its receipt, the application is deemed complete.

2. 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:
  - a. 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 Support Structure; and
  - b. Ninety (90) calendar days from the date an application for a permit is filed with respect to a request to attach Facilities to a new Support Structure.

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 ten (10) days after that submission.

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

1. Prior to installing the Facilities or Support Structures, the Applicant shall provide the City a certificate(s) of insurance evidencing that it has obtained and will maintain the following types of insurance in connection with its operations on or use of the Right-Of-Way:
  - a. 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 the 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
  - b. Workers Compensation Insurance as required by statute.

The General Liability coverage shall list the City of Ashville, Alabama 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. On an annual basis following initial installation, the Applicant also shall furnish the City a Certificate indicating that the above-noted coverage remains and will remain in effect. The City shall allow the applicant to provide a certificate of self-insurance in lieu of these provisions and must affirm adequate financial security on the part of the self-insured entity.

2. 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.
3. Following the installation of any Facilities and associated Support Structures, the Provider or Applicant, upon reasonable request and for good cause, shall furnish the 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 regulation, 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 Inspector 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.
4. The Facilities and associated Support Structures must at all times be maintained in good and safe condition. On no more frequent than a triennial basis, the Inspector 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 Support Structures are in sound condition. Should that engineer deem those Structures unsound, the Provider or Applicant shall furnish to the Inspector a plan to remedy any unsafe conditions or structural defect(s) and take that remedial action at the Provider or Applicant's expense.
5. Each Applicant or Provider that applies for a permit to place Facilities (including the Accessory Equipment) and Support Structures on the Right-Of-Way and installs and utilizes those Structures shall defend, indemnify and hold the City and its employees or officials, harmless from all demands, losses, expenses (including attorney's fees and court costs), claims for personal injury or property damage, judgments or liabilities of any type that may be filed, alleged or otherwise brought or claimed against the City (or its employees or officials) by any third person, firm or entity that arise out of or relate in any manner to the following: 1) the installation, construction, maintenance, use or operation of the permitted Facilities, Accessory Equipment or any Support Structure on or about the Right-Of-Way; and 2) the failure of the Provider or Applicant to perform any of their respective responsibilities, obligations, and permit requirements in this ordinance. Notwithstanding the foregoing, the Provider or Applicant shall not be obligated to indemnify the City for claims resulting from the sole negligence or willful acts of the City (or its representatives).

6. 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 no more than five (5) feet above the height of that structure; provided that, in the event that the Applicant demonstrates that National Electric Safety Code regulations or other factors create an undue hardship in complying with this height requirement, the Inspector may permit a Facility to extend up to ten (10) feet above the height of such Support Structure;
  7. The Accessory Equipment shall, if reasonably possible, be placed at least ten (10) feet above the ground;
  8. The color of Antenna and Accessory Equipment shall be compatible with that of the Support Structure;
  9. The Facility (including the Accessory Equipment) shall not be illuminated;
- E. Permit and License Fees. The Applicant for a permit to place Facilities and associated Support Structures on the Right-of-Way shall pay the following types of fees and in the amounts depicted in Exhibit A attached hereto as the same may be amended from time to time:
1. A permit application and review fee to be paid when an application is submitted;
  2. A permit issuance fee for each Support Structure on the Right-of-Way contemplated for attachment; and
  3. An annual license fee per each Support Structure on the Right-of-Way pertaining to the ongoing use of public property.
- F. Removal, Relocation or Modification of Small Wireless Facility in the Right-of-Way.
1. Ninety (90) 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:
    - a. 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
    - b. 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
    - c. 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
    - d. to protect or preserve the public health or safety.
    - e. 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 with issues of cost and expense being negotiated and agreed upon between



the parties and pursuant to all applicable rules and regulations of the Alabama Public Service Commission or other applicable law. 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 of suitable replacement of Applicant's Facilities with issues of cost and expense being negotiated and agreed upon between the parties and pursuant to all applicable rules and regulations of the Alabama Public Service Commission or other applicable law, including decorative streetlight poles; and Applicant agrees that if reasonably required by the Inspector 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.

2. 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.

### **Section 3. Placement of Small Cell Technology Facilities on Private Property.**

- A. A Provider or Applicant must obtain a permit from the City before placing, installing, or constructing any Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located on private property, or substantially modifying the position or characteristics of any such existing Facility thereon.
- B. The Inspector will review and administratively process any request for a permit to determine whether, in the exercise of the Inspector's reasonable discretion, it should be

issued for the location and in the manner requested. In this process, the burden is on the Applicant to demonstrate that the placement of the proposed Small Cell Technology Facility and associated Accessory Equipment or Support Structure on private property is the minimal physical installation which will achieve the technological goal of enhancing the provision of personal wireless services. Except as set forth in this section, this permitting process will not require the approval of any City Board or City official other than the Inspector. The factors, guidelines and requirements that the Inspector 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:

1. The factors and requirements set forth in Section 2 of this Ordinance
2. Co-location. The guidelines in Section 2 of this Ordinance to utilize existing poles and Support Structures for the placement of Facilities and Accessory Equipment are also applicable when considering whether to permit the installation of those Facilities and Support Structures on private property, provided that City Council approval is not required before a permit is issued to place a new pole or other Support Structure on private property if that action is appropriate.
3. The Provider or Applicant shall use Stealth Technology when installing the Facilities and associated Accessory Equipment on any building or accessory to that building that is located on private property. Further, Stealth Technology should be used when placing Facilities on other types of Support Structures on private property unless the Applicant can reasonably demonstrate that, given the nature of the requested application, the use of such Technology is (a) unnecessary; or (b) impractical.
4. If Facilities are placed on an existing or new building or accessory to that building, the following dimensional regulations shall apply:
  - a. Façade-mounted antennas shall not extend above the face of any wall or exterior surface of the building.
  - b. Roof-mounted antennas and Accessory Equipment may be permitted on buildings in accordance with the following table:

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

- c. 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.

- d. Accessory Equipment must be located in an equipment cabinet, equipment room in an existing building or in an unmanned equipment building. If the equipment building is freestanding, it shall conform to the all local laws including the Ashville Zoning Ordinance with respect to building setbacks as approved by the City's Planning and Zoning Director, it shall not exceed 400 square feet, and its overall height shall be limited to 15 feet (if located on the ground) measured from the finished grade. Further, if an equipment building or cabinet is located in a residential zone, or the nearest adjoining property is in a residential zone, that building or cabinet shall be surrounded by landscaping to provide a screen of the same height as the building or cabinet.

C. Application Process. Except as provided in paragraphs 1 and 2 immediately below, the same application process that is set forth in Section 2(C) will be utilized when processing any request for a permit to place Facilities or Support Structures on private property, except that:

1. City Council approval to install a new Support Structure on private property is not a condition for a permit to place Facilities thereon; and
2. If the Facilities are located on private property that is not owned or exclusively used by the Applicant, instead of providing the documentation contemplated in Section 2(c)(1)(c), the Applicant shall present a license, lease, agreement or other documentation indicating that owner of said property authorizes the Applicant the Rights to place the Facilities thereon and access thereto, or that such owner agrees in principle to grant the Applicant those Rights; provided that, if a representation is made to the City that the owner of private property has agreed in principle to grant those Rights but the Applicant subsequently fails to furnish the City documentation that finalizes any such agreement, the City may refuse to issue the requested permit until the documentation is provided, or, if the City issues the requested permit before receiving such final documentation, the subject permit and license may be revoked.

D. Additional Requirements. Any Provider or Applicant to whom a permit is issued and that places Facilities and associated Support Structures on private property also shall comply with the following requirements as long as those Facilities and Support Structures are located thereon:

1. All Facilities and Support Structures shall be installed, erected, and maintained in compliance with applicable federal and state laws and regulations, including, but not limited to, regulations of the FCC, the National Electric Safety Code, the National Electric Code, and any policies and procedures required of Support Structure owners.
2. At least triennially following the installation of the Facilities or associated Support Structures, upon reasonable request and for good

cause, the Applicant shall furnish the Inspector a written certification from a professional engineer licensed in the State of Alabama indicating that those Structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals, along with the requirements of the National Electric Safety Code and the National electric Code, as applicable. 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, regulations, and codes, or otherwise pose a hazard to the public. If those Structures fail at any time to comply with said laws, regulations, and codes, the Provider or Applicant shall cause those Structures to be brought into compliance with said laws, regulations, and codes, within fifteen (15) days of the date of any written notice to either of them of such non-compliance, or cease all personal wireless communications operations related to those Structures until the Provider or Applicant comes into full compliance with applicable laws and regulations.

3. The Facilities and associated Support Structures on private property must at all times be maintained in good and safe condition.
4. The Accessory Equipment shall, if reasonably possible, be placed at least ten (10) feet above the ground;
5. The color of Antenna and Accessory Equipment shall be compatible with that of the Support Structure;
6. The Facility (including the Accessory Equipment) shall not be illuminated;

E. Permit and License Fees. The Applicant for a permit to place Facilities and associated Support Structures on private property shall pay the following types of fees and in the amounts depicted in Exhibit A attached hereto as the same may be amended from time to time:

1. a permit application and review fee to be paid when an application is submitted; and,
2. a permit issuance fee per each Support Structure on private property contemplated for attachment.

#### **Section 4. Abandonment of Facilities on Right-of-Way.**

If a Provider or Applicant abandons any Facility (including the Accessory Equipment) or an associated Support Structure (collectively "Facilities" for purposes of this Section) that is located on the Right-Of-Way, the following rights and obligations shall exist. The City may require the Provider or Applicant, at their expense, to remove and reclaim the abandoned Facilities within sixty (60) days from the date of written notice of Abandonment given by the City to them and to reasonably restore the condition of the property at which the Facilities are located to that existing before they were installed. If the Provider or Applicant fails to remove and reclaim its

abandoned Facilities within such 60-day period and the Facilities are located on the Right-Of-Way, the City shall have the rights to:

1. remove them and charge its expense of any such removal operation to the account of the Provider or Applicant,
2. purchase all abandoned Facilities at the subject location from the Provider or Applicant in consideration for \$1.00,
3. at the City's discretion, either resell the abandoned Facilities to a third party or dispose and salvage them; provided that the proceeds of any resale of abandoned Facilities by the City to a third party shall be credited to the account of the Applicant or Provider that used those Facilities before the abandonment, and
4. charge any expense incurred by the City to restore the Right-of-Way to the account of the Provider or Applicant.

### **Section 5. Public Real Property**

The City owns certain parcels of real property (the "City's Parcels"). Nothing herein shall be construed so as to require the City to allow Small Cell Technology Facilities and Small Cell Technology Wireless Support Structures on the City's Parcels.

### **Section 6. Co-location.**

To promote the public interest that is served by co-locating Facilities and associated Accessory Equipment on existing Support Structures and thereby mitigating the installation of additional Support Structures throughout the City, no person or entity (including any Provider, Applicant, utility, or franchisee) that utilizes an existing Support Structure that is located on Right-of-Way or on private property in the City and has space available thereon may deny a Provider or Applicant the Right to use or access an existing Support Structure for purposes of attaching Facilities permitted by this ordinance without sound operational, technological or other good reason. Notwithstanding the above, nothing herein shall be construed to grant mandatory access rights to an Applicant or Provider to attach to any pole or Support Structure of an electric utility where such access rights are not already granted by federal law; however, the electric utility must act in a commercially reasonable manner, and any decision to deny access rights to such pole or Support Structure may not be arbitrary and capricious. Nothing in this Ordinance shall affect or be construed to affect any existing pole attachment agreement between any Applicant or Provider and any owner, lessor, or controller of a Support Structure or Structure.

### **Section 7. Non-Applicability.**

- A. 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:
  - i. Amateur radio service that is licensed by the FCC if the Facilities related thereto are not used or licensed for any commercial purpose; and
  - ii. Facilities used by any federal, state or local government or agency to provide safety or emergency services. Further, the provisions in this Article are supplemental to, and not intended to alter, affect or modify the provisions in Article II of Chapter 16.5 pertaining to the placement or use of macro Telecommunications Towers.

B. Other than the co-location provisions in Section 6, nothing in this Ordinance shall be construed to apply to the attachments, equipment, facilities, or business activities of an electric utility that is regulated by the Alabama Public Service Commission (or its parents, affiliates or subsidiaries when acting in support of the utility) ; provided that this exemption shall be revoked for any electric utility that meets the definition of "Personal Wireless Service Provider."

#### **Section 8. Appeal**

Any Applicant that desires reconsideration of an administrative decision by the Inspector to deny a request for a permit to place a Facility or Support Structure on the Right-Of-Way or private property or any other decision made pursuant to this Ordinance may seek review, modification or reversal of that decision by the City Council by submitting a request for reconsideration with the City Clerk within fifteen (15) calendar days following the Inspector's decision. That request for reconsideration will be considered by the City Council at a regular Council meeting that will be conducted as soon as practical after the request for reconsideration is made. If no request of reconsideration is submitted, the decision of the Inspector will be final.

Additionally, the Applicant, within thirty (30) days following a decision by the City Council to deny his / her request for reconsideration may appeal said decision by the City Council to the Circuit Court of St. Clair County, Alabama.

#### **Section 9. Penalties**

Any violation of this Ordinance will be deemed a Class C Misdemeanor and may be prosecuted in the Municipal Court of the City of Ashville. Any person convicted of violating this Ordinance shall be fined in an amount not to exceed Five Hundred and No/100 Dollars (\$500.00) per violation nor sentenced to more than six (6) months incarceration. Nothing herein shall be deemed as a waiver of any other remedies the City may have available in law or in equity to enforce the provisions of this Ordinance.

#### **Section 10. Repealer.**

All Ordinances or parts of ordinances heretofore adopted by the City Council of the City of Ashville, Alabama that are inconsistent with the provisions of this Ordinance are hereby expressly repealed.


#### **Section 11. 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 12. Effective Date.**

This ordinance shall become effective immediately upon adoption and posting/publication as provided by Alabama law.

**DONE, ORDERED, APPROVED and ADOPTED** this the 17 day of August, 2020.

  
Derrick Mostella,  
Mayor

ATTESTED BY:

  
Chrystal St. John,  
City Clerk

**CERTIFICATION:**

I, Chrystal St. John, as City Clerk of the City of Ashville, Alabama, hereby certify that the above and foregoing copy of Ordinance 2020-005 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Ashville on the 17 day of August, 2020, as same appears in the official records of said City.

GIVEN UNDER MY HAND AND CORPORATE SEAL of the City of Ashville, Alabama, this 17 day of August, 2020.

  
City Clerk



**Exhibit A**

**SMALL CELL TECHNOLOGY FACILITIES FEE STRUCTURE**

<b>DESCRIPTION</b>	<b>FEE</b>
<b>Permits to Place and Operate Facilities on Public Right-of-Way</b>	
Permit Application and Review Fee-The First five small wireless facilities included in a single application (Ord. No. ____)	\$500.00
Permit Application and Review Fee- Each Additional small wireless facility in excess of the above initial five included in one application (Ord. No. ____)	\$100.00
Permit Application and Review Fee – For installation of a new pole together with the mounting or installation of an associated small wireless facility in the right-of-way.	1,000.00
Annual License Fee per Support Structure (Ord. No. ____)	\$270.00
<b>Permits to Place and Operate Facilities on Private Property</b>	
Permit Application and Review Fee- The First five small wireless facilities included in a single application (Ord. No. ____)	\$500.00
Permit Application and Review Fee- Each Additional small wireless facility in excess of the above initial five included in one application (Ord. No. ____)	\$100.00