

**CITY OF ELBA, ALABAMA
ORDINANCE NO. 04272020**

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

WHEREAS, the Telecommunications Act of 1996 affirmed the City of Elba, Alabama’s (“the City”) authority concerning the placement, construction, and modification of wireless telecommunications facilities and authorized local governments to enact responsible regulations for the placement, expansion, height, and maintenance of Small Cell Technologies Facilities and associated Support Structures; and

WHEREAS, pursuant to Section 11-45-1 of the *Code of Alabama* (1975), municipal corporations may adopt resolutions and ordinances to provide for the safety, preserve the health, promote the prosperity, and improve the welfare, order, comfort, and convenience of the inhabitants of the municipality; and

WHEREAS, the City Council of the City of Elba, Alabama (“the City Council”) finds that installation of small wireless telecommunications facilities without City review and permitting may pose significant concerns to the health, safety, public welfare, character, and environment of the City and its inhabitants; and

WHEREAS, the installation, expansion, and maintenance of Small Cell Technology Facilities and associated Structures on or along the Right-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 Right-of-Way by the public; and (3) properties and property values in the City in areas where such Structures are placed; and

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

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

THEREFORE, BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF ELBA, ALABAMA, AS FOLLOWS:

Article I. The City Council hereby adopts the following regulations pertaining to Small Cell Technology Facilities:

Sec. 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:

- (1) 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;
- (2) 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 lawful reason; or
- (3) the Provider or Applicant fails to perform any of its responsibilities, obligations, or 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. 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 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. *Appropriate Municipal Official* means the person who is authorized to approve or deny building permits within the limits of the City. The Appropriate Municipal Official includes any agent, officer, or employee of the City or other person designated by the Mayor to perform the responsibilities of this Ordinance.

G. *Colocation* 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.

H. *Decorative pole* means a pole that is specially designed and placed for aesthetic purposes or is otherwise architecturally significant and on which no appurtenances or attachments, other than a small wireless facility, lighting, specially designed informational or directional signage, or temporary holiday or special event attachments, have been placed or are permitted to be placed.

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

J. *Private Property* means real property located within the corporate limits of the City that does not lie within the Right-of-Way.

K. *Right-of-Way* or *Rights-of-Way*, whether singular or plural, mean 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 (a) any county, state, or federal Right-of-Way or any property owned by any person or entity other than the City nor (b) any non-Right-of-Way property owned by the City, such as a park or building.

L. *Small Cell Technology Facility(ies)* or *Facilities*, whether singular or plural, has the same definition as "small wireless facilities," as that term is defined by Federal Communications Commission ("FCC") Rule, 47 C.F.R. Section 1.6002, as it may be amended over time, and includes both the:

- (1) antenna; and
- (2) associated Accessory Equipment.

Photographs and illustrations of the types, relative dimensions, and scale of these Facilities that are permitted by this Ordinance are attached as Exhibit A to the permanent record of the Ordinance adopting this Ordinance that is maintained by the City Clerk.

M. *Small Cell Technology Wireless Support Structure* or *Support 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, utility 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.

N. *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 permitted by this Ordinance are attached as Exhibit B to the permanent record of the Ordinance adopting this Ordinance that is maintained by the City Clerk.

O. *City* means the City of Elba, Alabama.

P. *City Council* means the City Council of the City of Elba, Alabama.

Sec. 2. Permit Required for Small Cell Technology Facilities.

A. A Provider or Applicant must obtain a permit from the City:

- (1) before placing, installing, or constructing any Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located in the Right-of-Way;
- (2) before placing, installing, or constructing any Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located on City-owned property;
- (3) before substantially modifying the position or characteristics of any existing Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located in the Right-of-Way and/or that is located on City-owned property;
- (4) 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
- (5) before substantially modifying the position or characteristics of any existing Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located on private property.

Sec. 3. Permit Application Submission.

- A. At a minimum, each application for a permit shall contain all of the following:
- (1) Engineering drawings depicting the type of Facilities, Support Structures, and means and points at which such Facilities and associated Accessory Equipment will be attached to a Support Structure;
 - (2) Engineering drawings that are sufficient to allow the Appropriate Municipal Official to determine whether the proposed Facilities and Support Structures comply with the requirements for Small Cell Technology Facilities and Support Structures set forth in Sec. 6.
 - (3) Map(s) designating with specificity the location(s) of the requested Facilities;
 - (4) The geographic coordinates of the requested Facilities;
 - (5) 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;
 - (6) If the Facilities are located on private property that is not owned or exclusively used by the Applicant, 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;
 - (7) If the Applicant requests permission to place Facilities on a new Support Structure (i.e., not co-located), the substantiation required by Sec. 4.C. of this Article;

- (8) Proof of payment of all applicable permit fees;
- (9) A written indemnification agreement executed by the Applicant in favor of the City according to the terms of this Ordinance; and
- (10) Proof that the Applicant has satisfied or, prior to the commencement of the work authorized by a permit, can satisfy the insurance requirements of this Ordinance.

B. Unless another date is specified in a written agreement between the City and the Applicant or the date as told as provided in this Section, 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 (“the shot clock date”):

- (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 Support Structure;
- (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 Support Structure;
- (3) Ninety (90) calendar days from the date an application for a permit is filed with respect to a request to attach a mix of the deployments described in Subparagraphs (1) and (2) of this Paragraph B.

The date calculations in this Paragraph are determined by counting forward, beginning on the day after the date when the Application was submitted, by the number of calendar days of the period identified in this Paragraph; provided, that if the date calculated in this manner is a legally recognized federal, State of Alabama, or City holiday, the date is the next business day after such date.

C. For an initial application to deploy Small Cell Technology Facilities, if the Appropriate Municipal Official notifies the Applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.

D. For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from -

- (1) The day after the date when the Appropriate Municipal Official notifies the Applicant in writing that the Applicant’s supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the Appropriate Municipal Official’s original request under Paragraph C. of this Section; until

- (2) The date when the Applicant submits all the documents and information identified by the Appropriate Municipal Official to render the application complete;
- (3) But only if the notice pursuant to Paragraph D.(1) of this Section is effectuated on or before the 10th day after the date when the Applicant makes a supplemental submission in response to the Appropriate Municipal Official's request under Paragraph C. of this Section.

Sec. 4. Permit Application Evaluation.

A. The Appropriate Municipal Official will review and administratively process any request for a permit to determine whether, in the exercise of the Appropriate Municipal Official's reasonable discretion, the permit 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 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 this Ordinance. Except as set forth in this Ordinance and as provided for in the case of appeals in the City's Zoning Ordinance, this permitting process will be administrative in nature and not require the approval of any City board or City official other than the Appropriate Municipal Official.

B. If the Appropriate Municipal Official denies a request to place, construct, or modify personal wireless service facilities, the Appropriate Municipal Official's determination shall be in writing and supported by substantial evidence contained in a written record.

C. The factors, requirements, and guidelines that the Appropriate Municipal Official 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) Whether the proposed Facilities and Support Structures comply with the requirements for Small Cell Technology Facilities and Support Structures set forth in Sec. 6;
- (2) Whether denial of the application would prohibit or have the effect of prohibiting the provision of personal wireless service or telecommunications service;
- (3) Whether the proposed installation could cause harm to the public or pose any undue risk to public safety, except that no permit may be denied on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions;
- (4) Whether the proposed installation may interfere with vehicular traffic, passage of pedestrians, or other use of the right-of-way by the public; and

- (5) If the proposed installation will disturb conditions on the right-of-way, whether the applicant has agreed in writing that it will restore the subject area to its pre-existing condition following installation.

D. 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 commercially reasonable or technically feasible colocation 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:

- (1) The applicant must certify in writing to the City that it was unable to collocate on an existing Support Structure for reason(s) such as i) lack of an existing Structure; ii) lack of a Structure meeting the technical needs of the Provider; or iii) not being able to secure an attachment agreement with the owner of an existing Structure.;
- (2) The Appropriate Municipal Official must find that the placement of a new Support Structure in the Right-of-Way complies with the City's Zoning Ordinance, Technical Codes, and Traffic Codes, but the recommendation of the Appropriate Municipal Official is not required for the placement of a new Support Structure on private property;
- (3) If an applicant does not have a current and valid franchise agreement that provides for Support Structure installation in the City's Right-of-Way, then the City Council must review the recommendation of the Appropriate Municipal Official to issue a permit that includes the placement of a new Support Structure in the Right-of-Way and consider whether to approve any such new structure at a meeting that will be conducted as soon as practical after the Appropriate Municipal Official's recommendation is made, but approval of the City Council is not required for the placement of a new Support Structure on private property; and
- (4) A provider may not collocate on or replace a decorative pole unless such collocation or decorative pole replacement conforms to the design aesthetics of the original decorative pole(s).

Sec. 5. Permit Expiration.

Permits issued pursuant to this Ordinance shall expire three hundred sixty-five (365) days after issuance. A Facility must be fully operational within that time, or the Applicant must apply for a new permit.

Sec. 6. Requirements for Small Cell Technology Facilities and Support Structures.

A. 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.

B. All Facilities and associated Accessory Equipment that are placed in the City on a Support Structure must satisfy the following requirements:

- (1) If a Facility is attached to a utility pole or other Support Structure in the Right-of-Way, no antenna or other part of the Facility shall extend more than 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 Appropriate Municipal Official may permit a Facility to extend up to ten (10) feet above the height of such Support Structure;
- (2) The Accessory Equipment shall, if reasonably possible, be placed at least ten (10) feet above the ground;
- (3) If technologically feasible, the color of Antenna and Accessory Equipment shall be compatible with that of the Support Structure;
- (4) The Facility (including the Accessory Equipment) shall not be illuminated; and

C. If Facilities are placed on an existing or new building or accessory to a building, the following additional requirements shall apply:

- (1) Facade-mounted antennas shall not extend above the face of any wall or exterior surface of the building.
- (2) Roof-mounted antennas and Accessory Equipment may be permitted on buildings in accordance with the following table:

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

- (3) 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 Ordinance are met.
- (4) Accessory Equipment must be located in an equipment cabinet, in an equipment room in a building, or in an unmanned equipment building. If the equipment building is freestanding:
 - (a) The building shall conform to the City's Zoning Ordinance with respect to building setbacks;
 - (b) The building shall not exceed four hundred (400) square feet;
 - (c) The building's overall height shall be limited to fifteen (15) feet (if located on the ground) measured from the finished grade; and
 - (d) If an equipment building or cabinet is located in a residential zone or if 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.

D. 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.

E. The Provider or Applicant shall utilize Support Structures or Facilities that adhere to the following aesthetic requirements:

- (1) The Facilities and Support Structures shall be designed to blend into the surrounding environment and complement existing streetscape elements or structures through the use of color, camouflaging, and architectural treatment;
- (2) Equipment mounted to Support Structures shall match the support structure in color and general design unless different colors are required for public safety or service and reliability reasons;
- (3) Facilities shall be designed to utilize stealth and camouflaging siting techniques so that they are substantially invisible to the extent that is technologically or commercially practicable (specific designs in Exhibit B)

and match the color and texture of a building or support structure as closely as possible;

- (4) Facilities shall not incorporate lighting, unless lighting is required for public safety or service and reliability reasons;
- (5) Facilities shall not increase the height of the building or structure to which it will be mounted, unless an applicant certifies that this requirement would prohibit service;
- (6) Facilities shall match the aesthetic character of the area in which the Structures are requested, including surrounding buildings, properties, and uses, including whether the facilities and Structures are consistent with the historic nature and characteristics of the requested location.

Sec. 7. Maintenance and Inspection of Small Cell Technology Facilities.

A. Facilities and associated Support Structures must at all times be maintained in good and safe condition.

B. Following the installation of any Facilities and associated Support Structures, the Provider or Applicant, upon reasonable request and for good cause, shall furnish the Appropriate Municipal Official a written certification from a licensed professional engineer in the State of Alabama stating that those Facilities and Structures have been inspected and are in good working order and repair in compliance with 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 Appropriate Municipal Official 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.

C. On no more frequent than a triennial basis, the Appropriate Municipal Official 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 have been inspected and are in good working order and repair in compliance with applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals. Should that engineer deem those Structures unsound, the Provider or Applicant shall furnish to the Appropriate Municipal Official a plan to remedy any unsafe conditions or structural defect(s) and take that remedial action at the Provider or Applicant’s expense.

Sec. 8. Ninety (90) Days Removal, Relocation or Modification of Small Cell Technology Facility in the Right-of-Way.

A. Whenever the City reasonably determines that relocation is needed as described below, then following written notice from the City, the Applicant shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change, or otherwise alter the position of any Small Cell Technology Facilities and/or Support Structures within the Right-of-Way whenever the City has determined that such removal, relocation, change, or alteration, is reasonably necessary for (excluding beautification-only projects), as follows:

- (1) 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 Right-of-Way; and/or

- (2) Because the Small Cell Technology 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
- (3) To comply with traffic and public safety codes; and/or
- (4) To protect or preserve the public health or safety.

B. In the case of any removal, relocation, change, or alteration pursuant to this Section, the City shall make reasonable efforts to afford Applicant a reasonably equivalent alternate location.

C. If a Provider has not complied with an order under this Section within ninety (90) days of the issuance of a written order, the City, without further notice to the Provider and at sole cost and expense to the Provider, may relocate any Small Cell Technology Facilities and/or Support Structures as ordered by the City.

D. If the City determines that any utility Support Structures upon which the Applicant has installed Facilities (including upon City-owned Support Structures) should be relocated, Applicant and the City will cooperate in good faith on the design and installation, at Applicant's costs, of suitable replacement of Applicant's Facilities, including decorative poles; and Applicant agrees that if reasonably required by the Appropriate Municipal Official or his designee or as ordered pursuant to an administrative review as set forth in this Article by the City Council in order to ensure appropriately even and level lighting within a previously unlighted area, additional Facilities, which may include decorative poles beyond or more numerous than those required for Applicant's Facilities, shall be installed. Applicant agrees that decorative poles may be required by the City in the future in the place of initially-installed standard-design poles, in which replacement of the Applicant's Facilities and Equipment on decorative poles that were initially installed standard-design 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 Technology 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.

Sec. 9. Emergency Removal or Relocation of Facilities.

The City retains the right and privilege to cut or move any Small Cell Technology Facility or related structure located within the Right-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, in the City's judgment, 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 Cell Technology Facility.

Sec. 10. 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 may, at its option, exercise any of the following rights alone or in combination:

- (1) Remove and dispose of the Facilities and charge the City's expense of any such removal and disposal 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) Resell the abandoned Facilities to a third party, provided that the proceeds of any resale of abandoned Facilities by the City to a third party (less the costs associated with the sale, which shall be credited to the City) shall be credited to the account of the Applicant or Provider that used those Facilities before the abandonment;
- (4) Salvage the abandoned Facilities to a third party, provided that the proceeds of any salvaging of abandoned Facilities by the City to a third party (less the costs associated with the salvaging, which shall be credited to the City) shall be credited to the account of the Applicant or Provider that used those Facilities before the abandonment; and/or
- (5) Charge any expense incurred by the City to restore the Right-of-Way to the account of the Provider or Applicant.

Sec. 11. Indemnification Requirements.

A. A Provider shall indemnify and defend the City and its elected and appointed officials, employees, and authorized agents, or their insurers, and hold them harmless from and against any and all claims, demands, actions, suits, or proceedings in equity or law asserted by third parties for damages, losses, liabilities, or costs of any kind, including, without limitation, reasonable attorney's fees and costs, as and when incurred that arise from:

- (1) a material breach by a Provider or any of its officers, employees, volunteers, or authorized agents of any obligations set forth in this Ordinance; or
- (2) for any claims for the alleged negligence, wantonness, willfulness, recklessness, or claims of any other alleged wrongful acts or omissions of the Provider or its officers, agents, contractors, sub-contractors, employees, or other representatives relative to the design, location, placement, construction, maintenance, and operation of Small Cell Technology Facilities, including Accessory Equipment and/or Support Structures, in the City's Right-of-Way, on City property, or on the City's infrastructure.

B. A Provider has no obligation to indemnify or hold harmless against any liabilities and losses due to or caused by the sole negligence or willful misconduct of the City or its employees or agents.

Sec. 12. Insurance Requirements.

A. Prior to installing the Facilities or Support Structures and during the period in which the Small Cell Technology Facilities of a Provider are located on or attached to the City's assets, including its poles, Right-of-Way, or other City property, the Provider shall be required to do both of the following:

- (1) Carry, at the Provider's sole cost and expense, the following types of third-party insurance furnished by insurers who are reasonably acceptable to the City and who are authorized to transact business in the State of Alabama:
 - (a) Property insurance for the replacement cost of all Small Cell Technology Facilities.
 - (b) Workers' compensation insurance, as required by law.
 - (c) Commercial general liability insurance of at least two million dollars (\$2,000,000) per occurrence, with respect to the Provider's activities in, on, or around the City's improvements, City property, or Right-of-Way, including coverage for bodily injury and property damage. The General Liability coverage may be provided through a combination of a primary and umbrella policies.
 - (d) Environmental insurance.
- (2) Include the City and its officers, officials, agents, contractors, and employees as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the City in a commercial general liability policy as reasonably required by the City.

B. In lieu of the requirements of Subparagraphs (1) and (2) of Paragraph A., during the period in which the Small Cell Technology Facilities of a Provider are located on or attached to the City's assets, including its poles, City property, or Right-of-Way, the Provider may provide a certificate of self-insurance, to the extent that the same is reasonably acceptable to the City, that demonstrates that the Provider has adequate resources to self-insure in the amounts set forth in Subparagraph (1) of Paragraph A. A provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the naming of additional insureds under this Section.

C. On an annual basis following initial installation, the Provider shall furnish the City a certificate indicating that the above-noted coverage remains and will remain in effect.

Sec. 13. Preservation of Availability for Colocation.

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.

Sec. 14. Non-Applicability.

The placement of an antenna(s), Facilities, or equipment related to the following types of wireless communication services are exempt from regulation under this Ordinance:

- (1) Amateur radio service that is licensed by the FCC if the Facilities related thereto are not used or licensed for any commercial purpose;
- (2) Facilities used by any federal, state, or local government agency to provide safety or emergency services; and
- (3) Macro Telecommunications Towers otherwise regulated by other ordinances, rules, or regulations of the City.

Sec. 15. Appeals.

Where it is alleged there is any error in any order, requirement, decision, or determination of the Appropriate Municipal Official related to the administration of this Article, the aggrieved party may petition the City Council for an administrative review of the same by submitting a written request with the City Clerk within fifteen (15) calendar days following the order, requirement, decision, or determination of the Appropriate Municipal Official. That review will be considered by the City Council at a meeting that will be conducted as soon as practical after the request for reconsideration is made. The City Council may then reverse or affirm in whole or in part, or may modify the order, requirement, decision, or determination reviewed. The City Council may subsequently make such order, requirement, decision, or determination as ought to be made, and to that end, shall have the powers of the Appropriate Municipal Official whose decision is reviewed. If petition for administrative review of the Appropriate Municipal Official’s decision is not made within fifteen (15) days from the date of the decision, the decision of the Appropriate Municipal Official will be final.

Article 2. Permit and License Fees.

A. The following fees shall apply to the applications and permits set forth in this Ordinance:

DESCRIPTION	FEE
Permit Application and Review Fee –non-recurring fee for a single up-front application for colocation that includes up to five Small Cell Technology Facilities	\$500.00
Permit Application and Review Fee – non-recurring fee for each additional Small Cell Technology Facility in excess of the above initial five included in one application	\$100.00

Permit Issuance Fee – non-recurring fee for the modification or replacement of an existing pole together with the mounting or installation of an associated Small Cell Technology Facility in the Right-of-Way or on City-owned property	\$250.00
Permit Issuance Fee – non-recurring fee for installation of a new Support Structure together with the mounting or installation of an associated Small Cell Technology Facility in the Right-of-Way or on City-owned property	\$1,000.00
Annual License Fee – recurring fee per Small Cell Technology Facility in the Right-of-Way or on City-owned property	\$270.00
Permit Issuance Fee – non-recurring fee for installation of a new Support Structure together with the mounting or installation of an associated Small Cell Technology Facility on private property.	\$500.00

B. This Ordinance regulates the placement of Small Cell Technology Facilities (and associated Accessory Equipment) on or in the immediate vicinity of Support Structures, including those that are located or proposed to be located on the Right-of-Way. No provision in 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 Support Structures or between any other points on the Right-of-Way. In the event any such provider or applicant desires to place telecommunications equipment or facilities along the Rights-of-Way at points not regulated by this Ordinance, the City requires the Provider, unless otherwise lawfully authorized, to install such Facilities in the Right-of-Way, to apply for a franchise agreement with the City that authorizes use of other locations on or along the Right-of-Way.

Article 3. Repealer.

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

Article 4. Severability.


If any part, article, section, paragraph, subparagraph, 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.

Article 5. Effective Date.

This Ordinance shall become effective on April 30, 2020.

ADOPTED AND APPROVED THIS THE 27th DAY OF APRIL 2020

APPROVED: 
Mickey L. Murdock, Mayor

ATTEST: 
Sally Bane, City Clerk

CERTIFICATION OF CITY CLERK

I, Sally Bane as City Clerk of the City of Elba, Alabama, hereby certify that the above and foregoing copy of Ordinance No. 04272020 is a true and correct copy of such Ordinance that was duly adopted by the City Council of Elba, Alabama, on the 27th day of April, 2020, as same appears in the official records of said City.

Posted at Elba City Hall and at www.elbaalabama.net/code-of-ordinances on this the 27 day of April, 2020.


Sally Bane, City Clerk