

Having previously been introduced at the December 11, 2017, council meeting, Council Member Rakestraw moved the adoption of the following Ordinance, which was seconded by Council Member Ellis:



SUMMARY: TO ADOPT A SMALL CELL TOWER ORDINANCE FOR THE CITY OF ALABASTER, ALABAMA

ORDINANCE NO. 180122-054

THE PUBLIC GOOD REQUIRING IT, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALABASTER, ALABAMA AS FOLLOWS:

Section 1. There is hereby added the following **Sections 111-161** through **111-166** to the City of Alabaster Zoning Ordinance.

Sec. 111-161. - Definitions.

The terms below have the following meanings for purposes of this chapter.

Abandonment or *abandon(s)* 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 90 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 chapter concerning them, or other valid reason; or
- (3) The provider or applicant fails to perform any of its responsibilities, obligations and requirements in this chapter 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 60 days after the city provides written notice of the breach to the provider or applicant.

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.

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.

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 state public service commission to provide telecommunication service.

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.

City means the City of Alabaster, Alabama.

City council means the city council of the city of Alabaster, Alabama.

City manager means the person appointed by the city council as the city manager of the city. The city manager includes any employee of the city or other person designated by that manager to perform the responsibilities in this chapter.

Collocation 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.

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.

Private property means real property located in the city that does not lie within the right-of-way.

Right-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.

Small cell technology facility(ies) or facilities, whether singular or plural, means and includes the following types of structures:

- (1) Antenna; and
- (2) Associated accessory equipment.

Photographs and illustrations of the types, relative dimensions and scale of these facilities that are currently contemplated by this chapter are attached as attachment A to the permanent record of the ordinance from which this chapter is derived that is maintained by the city clerk.

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. These terms do not include the city's decorative and architecturally significant street light poles as those decorative lights are inappropriate for use as a support structure.

Stealth technology means a method(s) of concealing or minimizing the visual impact of a small cell technology facility (and associated accessory equipment) and support structure by incorporating features or design elements which either totally or partially conceal such facilities or equipment. The use of these design elements is intended to produce the result of having said facilities and associated structures blend into the surrounding environment and/or disguise, shield, hide or create the appearance that the facilities are an architectural component of the support structure. Photographs and illustrations of examples of the types of stealth technology that may be used when buildings are utilized as support structures and other applications of stealth technology that are currently contemplated are attached as attachment B to the permanent record of the ordinance from which this chapter is derived that is maintained by the city clerk.

Sec. 111-162. - Permit required to place small cell technology facilities in right-of-way.

- (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 the right-of-way, or substantially modifying the position or characteristics of any such existing facility thereon.
- (b) The city manager will review and administratively process any request for a permit to determine whether, in the exercise of the city manager'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 services 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 city manager.

The factors, requirements and guidelines that the city manager may consider and will apply when determining whether to issue a permit for placement of small cell technology facilities and associated structures 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 structures or facilities in the subject area;
- (3) The character of the area in which the structures are requested, including surrounding buildings, properties and uses;
- (4) Whether the appearance and placement of the requested structures is aesthetically consistent with the immediate area;
- (5) Whether the structures are consistent with the historic nature and characteristics of the requested location;
- (6) The applicant's 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) *Colocation.* 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 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:
- a. 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 has taken all commercially reasonable actions to achieve colocation in the requested location or area, that the applicant 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 is unable to co-locate on an existing support structure;
 - b. The city manager 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 city manager 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 structure at a regular council meeting that will be conducted as soon as practical after the city manager's recommendation is made.
- (8) If a facility is attached to a utility pole or other support structure in the right-of-way, no antenna or other part of the facility shall extend more than five 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 city manager may permit a facility to extend up to ten feet above the height of such support structure;
- (9) The accessory equipment shall, if reasonably possible, be placed at least ten feet above the ground;
- (10) The color of antenna and accessory equipment shall be compatible with that of the support structure;
- (11) The facility (including the accessory equipment) shall not be illuminated;
- (12) Whether the proposed installation could cause harm to the public or pose any undue risk to public safety;
- (13) Whether the proposed installation may interfere with vehicular traffic, passage of pedestrians, or other use of the right-of-way by the public; and
- (14) If the proposed installation will disturb conditions on the right-of-way, whether the applicant can demonstrate its ability and financial resources to restore the subject area to its pre-existing condition following installation.
- (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. The geographic coordinates of all antenna and other proposed facilities;
 - d. 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.
 - e. If the applicant requests permission to place facilities on a new support structure, the substantiation therefor required by section 111-162(b)(7) in this chapter.

An application shall not be deemed complete until the applicant has submitted all documents, information, forms and fees specifically enumerated in this chapter that pertain to the location, construction, or configuration of the facilities or support structures at the requested location(s). Within 30 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 30 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 chapter and advise the applicant in writing of that determination:

- a. Sixty 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 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 30 days after that submission.

(3) *Reconsideration/Appeal.* Any applicant that desires reconsideration of an administrative decision by the city manager to deny a request for a permit to place a facility or support structure on the right-of-way may seek review, modification or reversal of that decision by the city council by submitting a request for reconsideration with the city clerk within 21 calendar days following the city manager'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 for reconsideration is submitted, the decision of the city manager will be final.

Additionally, the applicant, within 30 days following a decision by the city council to deny either:

- a. A request for reconsideration; or
- b. A decision by the city council to not approve the placement of a new support structure on the right-of-way;

may appeal either of those decisions by the city council to the county court. If no appeal of those decisions of the city council is made, those will be deemed final.

(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 facility or support structure placed on or along the right-of-way by the applicant (or any of their contractors) with minimum limits of \$1,000,000.00 per occurrence; and
 - b. 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. 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.
- (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 city manager a written certification from a licensed professional engineer in the state stating that those structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals. For purposes of this provision, "good cause" shall mean circumstances have arisen that indicate the facilities and associated support structures have been damaged, are not functioning in compliance with applicable laws and regulations, or otherwise pose a hazard to the public. If those support structures should fail at any time to comply with applicable laws and regulations, the provider or applicant, at either of their

expense, shall cause those structures to be brought into compliance with said laws and regulations within 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.

- (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 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 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 city manager 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 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:
 - a. 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
 - b. The failure of the provider or applicant to perform any of their respective responsibilities, obligations and permit requirements in this chapter. 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).
- (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 that are enumerated in chapter 14 of the Code, as amended:
 - (1) A permit application and review fee to be paid when an application is submitted;
 - (2) A permit issuance fee per 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) *Franchise agreements for other uses of right-of-way.* This section 111-162 regulates the placement of small cell technology facilities (and associated accessory equipment) on or in the immediate vicinity of support structures that are located or proposed to be located on the right-of-way. No provision in this section 111-162 or elsewhere in this chapter 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 right-of-way at points not regulated by this chapter, the city may enter into franchise or similar agreement that authorize, govern and apply to such use of other locations on or along the right-of-way.

Sec. 111-163. - 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 city manager will review and administratively process any request for a permit to determine whether, in the exercise of the city manager'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 city manager.

The factors, guidelines and requirements that the city manager 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 111-162(b)(1)-(11);
- (2) *Colocation.* The guidelines in section 111-162(b)(7) to utilize existing poles and support structures for the placement of facilities and accessory equipment are also applicable when considering whether to permit the installation of those facilities and support structures on

private property, 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 a 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

- c. The antenna component of the facilities shall be limited to a maximum height of three feet and a maximum width of two feet; provided that authorization to install antenna up to six 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 section of the Code with respect to building setbacks, that building 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.
- (5) *Application process.* Except as provided in subsections a. and b., immediately below, the same application process that is set forth in section 111-162(c) will be utilized when processing any request for a permit to place facilities or support structures on private property, except that:
 - a. City council approval to install a new support structure on private property is not a condition for a permit to place facilities thereon; and
 - b. 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 111-161-2(c)(1)d., 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 that documentation is provided, or, if the city issues the requested permit before receiving such final documentation, the subject permit and license may be revoked.
- (6) *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:
 - 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. 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 city manager a written certification from a professional engineer licensed in the state 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. 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 structures fail at any time to comply with said laws and regulations, the provider or applicant shall cause those structures to be brought into compliance with said laws and regulations within 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.
 - c. The facilities and associated support structures on private property must at all times be maintained in good and safe condition.
- (c) *Permit and license fees.* The provider or applicant for a permit to place facilities and associated support structures on private property shall pay the following types of fees that are enumerated in chapter 14 of the Code, as amended:
- (1) A permit application and review fee of \$300 to be paid when an application is submitted; and,
 - (2) A permit issuance fee of \$100 per each support structure on private property contemplated for attachment; and
 - (3) An annual license fee of \$500 per support structure. Structures erected after July 1 of each year shall pay one half the annual license fee for that year.

Sec. 111-164. - 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 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 111-165. - 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 chapter without sound operational, technological or other good reason.

Section 111-166. - 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 chapter:

- (1) amateur radio service that is licensed by the FCC if the facilities related thereto are not used or licensed for any commercial purpose; and
- (2) facilities used by any federal, state or local government or agency to provide safety or emergency services. Further, the provisions in this chapter are supplemental to, and not intended to alter, affect or modify the other provisions in Article V pertaining to the placement or use of macro telecommunications towers.

Section 2. This Ordinance shall become effective immediately upon its enactment and publication as required by law.

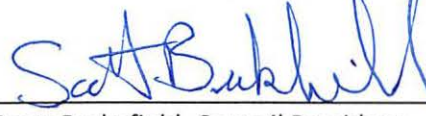
ADOPTED AND APPROVED THIS 22nd DAY OF JANUARY, 2018.

ATTEST:



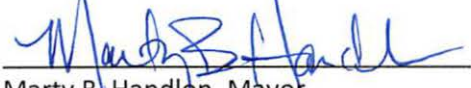
Brian Binzer, City Manager/Clerk

CITY OF ALABASTER, ALABAMA



Scott Brakefield, Council President

APPROVED:



Marty B. Handlon, Mayor