

MUNICIPAL BUILDING, MOBILE, ALABAMA, MARCH 2, 2021

The Council of the City of Mobile, Alabama met remotely via virtual meeting on Tuesday, March 2, 2021, at 9:00 a.m.

Present:

Councilmembers: Richardson, Small, Williams, Daves, Rich and Gregory
Absent: Manzie

The meeting was called to order. The Council reviewed and discussed the agenda for their meeting to be held today at 10:30 a.m.

Approved:

COUNCIL VICE PRESIDENT

CITY CLERK

MUNICIPAL BUILDING, MOBILE, ALABAMA, MARCH 2, 2021

The City Council of the City of Mobile, Alabama met remotely via virtual meeting on Tuesday, March 2, 2021, at 10:30 a.m., in regular meeting.

The meeting was called to order by City Clerk Lisa C. Lambert.

Councilmember Richardson, District 1, offered the invocation.

The Presiding Officer led the Pledge of Allegiance.

Present on Roll Call:

Chairman: Small
Councilmembers: Richardson, Williams, Daves, Rich and Gregory
Absent: Manzie

STATEMENT OF RULES BY PRESIDING OFFICER:

The Presiding Officer provided an overview of the City Council rules of procedure, to include special provisions to facilitate social distancing because of the Covid-19 virus.

APPROVAL OF MINUTES:

The minutes of the meeting of February 23, 2021, were approved as submitted.

COMMUNICATIONS FROM THE MAYOR:

Mayor Stimpson announced rehabilitation plans for Bienville Square.

Mayor Stimpson thanked Infirmary Health for administering over 30,000 vaccines to Mobile and Baldwin County.

Mayor Stimpson stated that applications will be accepted for the YES (Youth Empowered for Success) initiative until March 12th.

Mayor Stimpson stated that he had the opportunity to visit the Egyptian Mummies: An Eternal Life Exhibit at the History Museum.

MINUTES OF MARCH 2, 2021

Mayor Stimpson reported that two new companies, Ray-Mont Logistics and Ren Seafoods, have recently opened in Mobile and will create 100 jobs.

Mayor Stimpson commended Real Estate Asset Management and Public Works employees for refurbishing and re-installing the broken iron gates leading into the Africatown Welcome Center.

Mayor Stimpson said that the opening of the intersection at Springhill and Broad Streets was delayed because of inclement weather.

MONTHLY FINANCE REPORTS

Celia Sapp, Interim Executive Director of Finance, presented the Council with the monthly finance report for January and February 2021.

ADOPTION OF THE AGENDA:

Councilmember Daves moved to adopt the agenda and to declare the items on the agenda Essential/Covid-19 related, which move was seconded by Councilmember Williams and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

The vote was then announced by the City Clerk whereupon the Presiding Officer declared the agenda adopted and all items declared Essential/Covid-19 related.

APPEALS

Request of Saraland High School Jazz Band for a waiver of the Noise Ordinance in Cooper Riverside Park on March 30, 2021, from 5:00-8:30 p.m. (District 2).

Councilmember Daves moved to grant the waiver, which motion was seconded by Councilmember Richardson and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

The vote was then announced by City Clerk, whereupon the Presiding Officer declared the waiver granted.

Request of Cottage Hill Baptist Church, 4255 Cottage Hill Road, for a waiver of the Noise Ordinance on April 4, 2021, from 5:00-11:00 a.m. (District 4).

Councilmember Daves moved to grant the waiver, which motion was seconded by Councilmember Richardson and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

The vote was then announced by City Clerk, whereupon the Presiding Officer declared the waiver granted.

Request of Larry Seals, 2110 Crawford Place, for a waiver of the Noise Ordinance on March 14, 2021, from 4:00-10:00 p.m. (District 1).

Councilmember Daves moved to grant the waiver, which motion was seconded by Councilmember Richardson and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

MINUTES OF MARCH 2, 2021

The vote was then announced by City Clerk, whereupon the Presiding Officer declared the waiver granted.

PUBLIC HEARINGS

PUBLIC HEARING TO REZONE PROPERTY LOCATED AT 5001 & 5009 COTTAGE HILL ROAD (SOUTHWEST CORNER OF COTTAGE HILL ROAD AND NORTH DEMETROPOLIS ROAD) FROM R-1 AND B-2 TO B-2 (DISTRICT 4).

The Presiding Officer announced that today was the day for the public hearing to rezone property located at 5001 and 5009 Cottage Hill Road (southwest corner of Cottage Hill Road and north Demetropolis Road) from R-1 and B-2 to B-2 and asked if there was anyone present to speak for or against this matter.

No one appeared.

The Presiding Officer declared the hearing concluded and that the necessary resolution authorizing the proper action would be introduced at a later date.

PUBLIC HEARING TO FIX THE COSTS FOR THE DEMOLITION OF THE STRUCTURE AT 2056 GENERAL GORGAS DRIVE NORTH, \$3,850.00 (DISTRICT 1).

The Presiding Officer announced that today was the day for the public hearing to fix the costs for the demolition of the structure at 2056 General Gorgas Drive North asked if there was anyone present to speak for or against this matter.

Willie Smith, 2062 Eslava Lane, requested information on a payment plan.

The Presiding Officer declared the hearing concluded and that the necessary resolution authorizing the proper action would be introduced at a later date.

PUBLIC HEARING TO FIX THE COSTS FOR THE DEMOLITION OF THE STRUCTURE AT 374 DUNBAR STREET, \$3,850.00 (DISTRICT 2).

The Presiding Officer announced that today was the day for the public hearing to fix the costs for the demolition of the structure at 374 Dunbar Street and asked if there was anyone present to speak for or against this matter.

No one appeared

The Presiding Officer declared the hearing concluded and that the necessary resolution authorizing the proper action would be introduced at a later date.

PUBLIC HEARING TO FIX THE COSTS FOR THE DEMOLITION OF THE STRUCTURE AT 1220 DR. MARTIN LUTHER KING AVENUE, \$5,980.00 (DISTRICT 2).

The Presiding Officer announced that today was the day for the public hearing to fix the costs for the demolition of the structure at 1220 Dr. Martin Luther King Avenue and asked if there was anyone present to speak for or against this matter.

No one appeared

The Presiding Officer declared the hearing concluded and that the necessary resolution authorizing the proper action would be introduced at a later date.

PUBLIC HEARING TO FIX THE COSTS FOR THE DEMOLITION OF THE STRUCTURE AT 613 BELSAW AVENUE, \$2,200.00 (DISTRICT 2).

The Presiding Officer announced that today was the day for the public hearing to fix the costs for the demolition of the structure at 613 Belsaw Avenue and asked if there was anyone present to speak for or against this matter.

MINUTES OF MARCH 2, 2021

No one appeared

The Presiding Officer declared the hearing concluded and that the necessary resolution authorizing the proper action would be introduced at a later date.

PUBLIC HEARING TO FIX THE COSTS FOR THE DEMOLITION OF THE STRUCTURE AT 800 HOLCOMBE AVENUE, \$4,183.00 (DISTRICT 5).

The Presiding Officer announced that today was the day for the public hearing to fix the costs for the demolition of the structure at 800 Holcombe Avenue and asked if there was anyone present to speak for or against this matter.

No one appeared

The Presiding Officer declared the hearing concluded and that the necessary resolution authorizing the proper action would be introduced at a later date.

PRESENTATIONS OF PETITIONS AND OTHER COMMUNICATIONS TO THE COUNCIL:

AGENDA ITEMS:

1. Burton Leflore, 2216 Rue De Le Flore Street, asked that his property be removed from Weed Lien Group #1610.
2. Reggie Hill, 1007 Center Street, addressed Ordinance 34-003, Resolutions 21-127, 38-105, 65-107, 03-138, 21-141 and 31-130 and the demolition of structures in District 2.

NON-AGENDA ITEMS:

None

ESSENTIAL/COVID-19 ITEMS HELD OVER:

ORDINANCE TO AMEND CHAPTER 34 OF THE CITY CODE TO INCLUDE THE REAL PROPERTY BUSINESS PRIVILEGE TAX APPLICABLE TO LESSORS OF RESIDENTIAL BUILDINGS AND DWELLINGS TO THE SCHEDULE OF LICENSES. The following ordinance, which was introduced and read at the regular meeting of January 26, 2021 and held over until the meetings of February 2 & 17 and March 2, 2021, was called up by the Presiding Officer.

ORDINANCE: 34-003-2021

Sponsored by: Mayor Stimpson

AN ORDINANCE TO AMEND THE MOBILE CITY CODE BY INCLUDING THE REAL PROPERTY BUSINESS PRIVILEGE TAX APPLICABLE TO LESSORS OF RESIDENTIAL BUILDINGS AND DWELLINGS TO THE SCHEDULE OF LICENSES

WHEREAS, the City of Mobile, by and through its City Council, has heretofore adopted Ordinance 34-074, AN AMENDMENT TO ARTICLE VII OF CHAPTER 34 (LICENSES) OF THE MOBILE CITY CODE OF 1965, adopted October 6, 1987; Ordinance 34-091, AN ORDINANCE TO AMEND ORDINANCE NO. 34-074 (1987), TO PROVIDE FOR A BUSINESS LICENSE UNDER ARTICLE VII OF CHAPTER 34 OF THE MOBILE CITY CODE OF 1965, adopted November 24, 1987; Ordinance 34-033, AN ORDINANCE TO AMEND ORDINANCE 34-091 ADOPTED November 24, 1987, ENTITLED "AN ORDINANCE TO AMEND ORDINANCE NO. 34-074 (1987) TO PROVIDE FOR A BUSINESS LICENSE UNDER ARTICLE VII OF CHAPTER 34 OF THE MOBILE CITY CODE OF 1965," adopted March 8, 1988, and; Ordinance 34-070, AN ORDINANCE TO AMEND SECTION 3 OF ORDINANCE 34-033 ADOPTED MARCH 8, 1988 "ENTITLED AN ORDINANCE TO AMEND ORDINANCE NO. 34-074 ADOPTED OCTOBER 6, 1987

MINUTES OF MARCH 2, 2021

TO PROVIDE FOR A BUSINESS LICENSE UNDER ARTICLE VII OF CHAPTER 34 OF THE MOBILE CITY CODE OF 1965,” adopted June 21, 1988; and,

WHEREAS, the City wishes to clarify the license fees and requirements for persons engaging in the business of leasing residential buildings and dwellings by adding to the Schedule of Licenses in Mobile City Code, Chapter 34, a listing for Lessors of Residential Buildings and Dwellings; and,

WHEREAS, the City desires to revoke the current exemption for owners of ten or less dwelling units that do not qualify for an owner-occupied exemption; and,

WHEREAS, this Ordinance is enacted to accomplish said goals.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MOBILE, ALABAMA, that the following Ordinance is adopted to amend the “2008 Schedule of Licenses” found in the Mobile City Code, Chapter 34 as follows:

(1) Change the title of “2008 Schedule of Licenses” as follows:

The title of “2008 Schedule of Licenses” found in the Mobile City Code, Chapter 34, shall be deleted and replaced by the following:

“Schedule of Licenses”

(2) To levy a license fee on and against lessors of residential buildings and dwellings by amending the Schedule of Licenses located in Mobile City Code, Chapter 34, to include the following section:

MINUTES OF MARCH 2, 2021

NAICS	Code	Title	License Rate
531110	412	Lessors of Residential Buildings and Dwellings	0.002672
531110	412	All owners of real property who engage in renting or leasing of ten or more dwelling units for residential purposes, in addition to any other applicable taxes or fees imposed for owning, renting, or leasing such property. If any location has more than one owner, each owner is jointly and severally responsible for the license fee. A license is required for each separate location. Lessors of Residential Building and Dwellings: All owners of real property who engage in renting or leasing <u>less than ten</u> dwelling units for residential purposes, in addition to any other applicable taxes or fees imposed for owning, renting, or leasing such property. If any location has more than one owner, each owner is jointly and severally responsible for the license fee. A license is required for each separate location. Definitions for the purposes of this license: “dwelling unit” is a single-family residence and each separate family apartment or housing accommodation in multiple-family building. “location” is a parcel as assessed for ad valorem taxes. “owner” is any person who is the holder of record title of any real property, and any assignee thereof. “residential purposes” is a residential occupancy for hire not subject to City Lodging Tax under Article IV of this Chapter. Exemptions: (1) Owner-occupied buildings or owner-occupied dwellings in which there are not more than three (3) dwelling units offered for rent or lease at the same location. A building or	\$25.00 per dwelling unit

MINUTES OF MARCH 2, 2021

		dwelling is owner-occupied only if it is the principal residence of the owner. (2) Residential properties assessed to the Mobile Housing Board Authority. Any owner claiming an exemption under the owner-occupied status, the Mobile Housing Board Authority exemption, or an exemption pursuant to Section 34-65(b), shall file an affidavit with the City Revenue Department which provides the name and address of the owner and property manager (if applicable) for said property, along with a detailed factual basis for the exemption.	

Repealer. The City hereby repeals Ordinance 34-074 adopted October 6, 1987; Ordinance 34-091 adopted November 24, 1987, Ordinance 34-033 adopted March 8, 1988, and Ordinance 34-070 adopted June 21, 1988. Additionally, all other City Code Sections and ordinances or part of any City Code Sections and ordinances in conflict are hereby repealed.

Conflicts. All ordinances and laws, or parts thereof, that are in conflict with the provisions of this Ordinance, are hereby repealed.

Severability. The provisions of this Ordinance are severable. If any part of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, that declaration shall not affect the part or parts that remain.

Publication. That the City Clerk of the City of Mobile is hereby authorized and directed to advertise the adoption of this Ordinance as required by law.

Effective Date. This Ordinance shall be in full force and effect from and after its adoption and publication as required by law.

The ordinance was read by the City Clerk; whereupon Councilmember Daves moved that the ordinance be held over until the regular meeting of March 16, 2021, which was seconded by Councilmember Williams and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the ordinance held over.

ORDINANCE TO AMEND CHAPTER 57 ARTICLE VIII OF THE CITY CODE AND TO ADD A NEW ARTICLE IX, SMALL CELL FACILITIES ON PUBLIC RIGHTS-OF-WAY.

The following ordinance, which was introduced and read at the regular meeting of February 9, 2021 and held over until the meetings of February 17 & 23, and March 2, 2021, was called up by the Presiding Officer.

ORDINANCE: 57-009-2021

Sponsored by: Mayor Stimpson

WHEREAS, pursuant to Ordinance 57-026-2017, adopted 12-12-17, the City Council of the City of Mobile adopted an amendment to Chapter 57, Article VIII, to address the permitting of small wireless facilities and poles in the City rights of way; and,

MINUTES OF MARCH 2, 2021

WHEREAS, said Ordinance 57-026-2017 is codified in Sections 57-231 through 236, Appendix A and Appendix B, of the Code of the City of Mobile, Alabama 1991 ("Code"); and,

WHEREAS, subsequent to the adoption of that ordinance, federal law changed, and the City Council desires to repeal certain provisions adopted in 2017 and substitute therefore a new Chapter 57, Article IX to be in compliance with applicable federal laws, orders and regulations relating to the permitting of small wireless facilities in public rights-of-way; and,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, as follows:

ARTICLE 1. Chapter 57, Article VIII, is hereby amended to repeal the following provisions:

A. Section 57-232. – "Definitions" is amended to delete the following definitions as they appear unnumbered therein:

- i. "Transmission Equipment"
- ii. "Wireless Communications Services"
- iii. "Wireless Facilities"

B. Section 57-234. – Right-of-Way Permits is amended to delete subsection (e) in its entirety.

C. Section 57-236. – Wireless facilities findings and requirements is deleted in its entirety.

D. Appendix A. Schedule of Fees is amended to delete the following items:

Non-refundable application fee per each, Major Project (up to 20 antennas can be applied for under one major project)	\$500.00 each
Non-refundable application fee per each Minor Project	\$250.00 each
Non-refundable, additional application fee, per each antenna over the 20 antennae contained in Major Project application	\$ 25.00 each

E. Appendix B is amended to delete Section 1.3 in its entirety.

ARTICLE 2. A new Chapter 57, Article IX, Small Cell Facilities on Public Rights-of-Way is adopted as follows:

CHAPTER 57

ARTICLE IX.

SMALL CELL FACILITIES ON PUBLIC RIGHTS-OF-WAY

Section 1. Purpose and scope.

(a) The purpose of this article is to amend and modify the current City of Mobile ordinance relating to the permitting of small wireless facilities and poles in the rights of way in order to be in compliance with applicable federal laws, orders and regulations relating to the permitting of small wireless facilities in public rights of way and, in particular, with *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv.*, 33 FCC Rcd. 9088 (2018), *review granted in part and vacated in part sub nom. City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), *reh'g en banc denied*, No. 18-72689 (9th Cir. Oct. 22, 2020), from which the deadline for filing a petition for certiorari with the United States Supreme Court has not yet expired.

(b) Adopted under the powers and authorities of the City, including its police powers, this Article is intended to:

MINUTES OF MARCH 2, 2021

- (1) Prevent interference with the use of streets, sidewalks, alleys, parkways, and other public ways and places by pedestrians, vehicular traffic, and utilities;
- (2) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (3) Prevent interference with the facilities and operations of facilities lawfully located in rights-of-way, or installed on public infrastructure;
- (4) Protect against environmental damage, including damage to trees;
- (5) Preserve the character of areas with existing or proposed decorative poles, and to support Citywide street beautification initiatives; and
- (6) Facilitate the deployment of small cell facilities to provide the benefits of wireless services to City residents and businesses.
- (7) Protect other important City interest, including the public health, safety, aesthetics and local property values while establishing an orderly process for siting small cell wireless facilities in the right-of-way.
- (8) It is not the purpose or intent of this article to: prohibit or have the effect of prohibiting wireless communication services; unreasonably discriminate among providers of functionally equivalent wireless communication services; regulate the placement, construction or modification of small cell facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the wireless communications facility does or will comply with applicable FCC regulations; or prohibit or effectively prohibit collocations or modification that the City must approve under state or federal law.

Section 2. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Abandon, including its derivations, means that, following the placement of small cell facilities or support structures in the City pursuant to a SCF permit issued to a grantee, any of the following has occurred: (1) for any reason the small cell facilities or support structure ceases to be used to transmit signals, data or messages or otherwise be used for their intended purposes for a period of 180 days without the grantee otherwise notifying the City and obtaining City approval; (2) the City revokes the SCF permit for placement and use of those facilities or the support structure due to nonpayment of applicable fees, the failure of the grantee to comply with conditions in the SCF permit or the requirements of this article or other City law, or other valid reason; or (3) the grantee fails to perform any of its responsibilities, obligations and requirements in this article, any franchise, use agreement, license, or SCF permit that relates to the installation, construction, maintenance, use or operation of the small cell facilities or support structures, and that breach remains uncured for the applicable cure period.

Accessory equipment or *equipment* means any equipment, other than an antenna, that is used in conjunction with a small cell facility. This equipment must be attached to or in the immediate vicinity of a small cell support structure, and includes cabinets, optical converters, power amplifiers, radios, DWDM and CWDM multiplexers, radio units, fiber optic and coaxial cables, wires, meters, pedestals, power switches, and related equipment.

Affiliate or *affiliated person* means any person, directly or indirectly, controlling, controlled by, or under common control with a grantee or applicant; provided, however, that affiliate shall not include any limited partner or shareholder holding an interest of less than 15 percent of grantee or applicant, or any creditor of a grantee or applicant solely by virtue of its status as a creditor and which is not otherwise an affiliate by reason of owning a

MINUTES OF MARCH 2, 2021

controlling interest in, being owned by, or being under common ownership, common management, or common control with, a grantee or applicant.

Annual license fee means the rental amount and annual fee pursuant to this article.

Antenna means communications equipment that transmits or receives electromagnetic radio signals, electromagnetic waves, radio or other wireless signals used in the provision of wireless communication services, is attached to a small cell support structure and is used to communicate wireless service. The use of the term 'antenna' shall also refer to the antenna concealment enclosure when such concealment enclosure is required by this article or the applicable design standards. A concealment element otherwise will not count against the volumetric cap for an antenna when determining if a facility qualifies as a "small cell facility" under this article.

Applicable codes mean the duly adopted technical codes of the City, including the building, fire, electrical, plumbing, or mechanical codes, which are adopted by reference from the codes of a national code organization, including any local amendments made thereto at any time and from time to time, or codes that are otherwise applicable in the City. The term includes the regulations of the FCC and the Occupational Safety and Health Administration, as well as any local standards or regulations governing the use of rights-of-way, including article 2 of this article.

Applicable law means any or all Federal, State, or City statutes, ordinances, rules, regulations, standards, and other laws, that are now existing or hereafter adopted, as such laws are amended or as they may be from time to time amended or superseded, which apply to an applicant's or grantee's communications services, its facilities, or the matters covered by this article, including City laws. Where reference is made to a specified law, including a specified City law, the United States Code, and the Code of Federal Regulations, it shall mean and include such laws as amended or as may be from time to time amended or superseded.

Applicant means a wireless provider that has applied for a license or SCF permit pursuant to this article, and upon issuance of the license or SCF permit, the term shall include those wireless providers that have been issued same.

Application means an application for a license or SCF permit issued under this article.

Application fee means a SCF permit application fee assessed pursuant to this article for the City's review of a small cell site application.

City means the City of Mobile, Alabama.

City laws mean the duly adopted laws and legislation of the City including the Code of Ordinances of the City and any codes, regulations, standards, or specifications adopted by reference; and shall also include the subarticle regulations and any other such rules or regulations that departments, agencies, commissions, boards, or bureaus of the City are authorized to establish; all of which are as amended or as may from time to time be amended or superseded.

City Manager is the City representative delegated responsibility for management of the right-of-way.

City-owned pole means (i) a pole owned by the City in the right-of-way that provides street lighting functions, including light poles, (ii) traffic signal poles and stanchions owned by the City, and (iii) a pole or similar structure owned or operated by the City in the right-of-way that supports only wireless facilities. Notwithstanding the foregoing, the term does not include the utility facilities owned by public utilities.

City-owned structure means any facility, structure or infrastructure located in the rights-of-way to which the City holds title, including City-owned poles, towers, and communications infrastructure.

MINUTES OF MARCH 2, 2021

City-owned support structure means a City-owned pole or City-owned structure that is available or approved for collocation or attachment of a small cell facility.

Collocate, or its derivations, means to place or install a small cell facility on an existing support structure that is owned, controlled, or leased by a utility, the City, or other person or entity, including applicant; or the modification or replacement of such a structure for the purpose of such placement or installation.

Distributed antenna system or *DAS* means a network or facility that distributes radio frequency signals to provide wireless services and consisting of: (1) remote antenna nodes deployed throughout a desired coverage area; (2) a high-capacity signal transport medium connected to a central hub site; and, (3) equipment located at the hub site to process or control the radio frequency signals through the antennas and meets the height and size characteristics of a small cell facility.

Emergency means a condition that (1) constitutes an immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause substantial damage to the right-of-way or to facilities in the right-of-way, or adjacent thereto.

FCC means the Federal Communications Commission of the United States or any successor agency.

City Manager means the person authorized, assigned, or delegated the responsibility to administer and enforce this article on behalf of the City, and that person's designee.

Grantee means an applicant that is granted a license under this article.

Historic District – geographically definable area designated by the City Council as a historic district, including properties along Government Street from Water Street to the intersection of Government Street and Dauphin Island Parkway, and the Downtown Development District (bounded by Canal Street, Broad Street, Beauregard Street, and Water Street).

Include, or its derivations, does not limit a term to its specified example.

Install, or its derivations, means to install, construct, place, locate, collocate, relocate, replace, or modify a small cell facility or support structure in the rights-of-way.

License means the franchise or authorization granted by the City to an applicant pursuant to this article allowing applicant to install and operate small cell facilities or support structures in the rights-of way. The term does not include a business license issued by the City to conduct business in the city.

Make-ready work means work that an authority reasonably determines to be required to accommodate a wireless provider's installation on a City-owned support structure under this article and to comply with all applicable standards. The work may include repair, rearrangement, replacement and construction of poles; inspections; engineering work and certification; permitting work; tree trimming (other than tree trimming performed for normal maintenance purposes); site preparation; and electrical power configuration. The term does not include a wireless provider's routine maintenance.

Private property means real property located in the City that does not lie within the right-of-way, including such appurtenances or easements attached to or associated with such property, and that is not owned by the City, State, or other public body.

Replacement means installing a new small cell support structure of comparable or smaller proportions and of comparable or shorter height to a preexisting small cell support structure in order to accommodate collocation of small cell facilities, and the associated removal of the preexisting small cell facilities or support structure. To qualify as a replacement, the replacement support structure must be installed no more than five feet of the location of the existing support structure that it will replace.

MINUTES OF MARCH 2, 2021

Rights-of-way means the surface of and the space on, above, and below any public street, public road, public highway, public freeway, public lane, public way, public alley, public sidewalk, public boulevard, public parkway, public drive, public right-of-way, or public utility easement immediately adjacent to and parallel with any such street, road, highway, lane, alley, or sidewalk (to the extent of the City's interest or authority), now or hereafter held by the City which shall, within its proper use and meaning, entitle grantee to the use thereof for the purpose of installing and operating its facilities and providing its wireless communications services. This term shall not include any state or federal rights-of-way or any property owned or controlled by any person other than the City, except as provided by applicable law or pursuant to an agreement between the City and any such governmental entity or person. The term shall also not include property, such as City parks, City buildings, City property, public works facilities, or public utility facilities owned or leased by the City that is not used or is not typically used as rights-of-way for vehicular or pedestrian transport or the installation of utility distribution facilities.

Separate property means real property, whether private property or property publicly owned or controlled, that does not lie in the rights-of-way.

SCF permit means a permit issued by the City Manager to a granted small cell wireless facility in the City right-of-way in accordance with this article.

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

Small cell support structure or *support structure* means a freestanding structure designed or used to support, or capable of supporting, small cell facilities. The term includes utility poles, street light poles, and similar structures, which are located solely in the rights-of-way. The term does not include the City-owned poles or City-owned structures that are not available or approved for collocation or attachment of a small cell facility.

Stealth technology or *stealth* means a method of concealing or minimizing the visual impact of a small cell facility and support structure by incorporating features or design elements which either totally or partially conceal such small cell facilities. All wiring associated with the small cell facilities shall be shrouded or concealed in shrouding on the facility. The use of these design elements is intended to produce the result of having such facilities blend into the surrounding environment or disguise, shield, hide or create the appearance that the small cell facilities are an architectural component of the support structure.

Technically feasible means that by virtue of engineering or spectrum usage the proposed placement for a small cell facility, or its design, concealment measure, or site location can be implemented without a material reduction in the functionality of the small cell facility.

Transmission media refers to the point within a small cell facility or its support structure at which radio waves are guided along a physical path; examples of guided media include

MINUTES OF MARCH 2, 2021

twisted pair cables, coaxial cables, and optical fibers, all of which shall be shrouded or concealed within the facility or support structure.

Utility pole means a pole or similar structure located in the right-of-way that is used in whole or in part to provide landline telecommunications services or for electric distribution or a similar utility function. The term does not include such a pole or similar structure 15 feet in height or less unless the City has granted a waiver to permit its use for small cell facilities.

Wireless communications services or *wireless services* mean communications services made available to subscribers through wireless facilities, including any FCC licensed or unlicensed radio communications services, whether used for transmission or reception of voice, video, or data, including, wireless fidelity ("WiFi") and personal wireless services as defined by the Communications Act, which includes FCC licensed commercial wireless telecommunications services, including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and similar services that currently exist or that may in the future be developed. The term does not include broadcast radio or television services, private business radio services, or amateur radio services.

Wireless facilities mean equipment at fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, DAS, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term does not include: (1) the structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated; (2) wireline backhaul facilities; or (3) coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider means any person, including a person authorized to provide telecommunications service in the state, that builds or installs small cell facilities or support structures, but that is not a wireless services provider.

Wireless provider means a wireless infrastructure provider or a wireless service provider. "Wireless provider" does not include utility companies that provide gas, electricity, water, or sewer services that install wireless facilities that are used exclusively for internal utility company communications related to the provision of utility services, such as (a) advanced metering infrastructure (also known as "smart metering" systems), (b) monitoring the security of utility sites and network systems, or (c) monitoring network usage, capacity, or performance. However, if a utility company or any of its affiliates use any such facility to provide services within the definition of "wireless communications services," or if a utility company or any of its affiliates engages in activities that would make it a "wireless infrastructure provider," then it shall be considered a "wireless provider" to the extent of its provision of such services or engagement in such activities.

Wireless service provider means a person 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.

Section 3. Grant of authority; license.

(a) (1) *Grant*. Upon application by a wireless provider on forms provided by the City, the City may grant a non-exclusive franchise or license to construct, maintain, and operate small cell facilities or support structures in the rights-of-way in accordance with and subject to the provisions of this article, applicable law, and any acceptable additional terms as negotiated by the City or permitted by applicable law. The grant of a non-exclusive franchise or license shall be approved by the City Council. Approval of installation of facilities at specific locations or on specific support structures will be administered through the SCF permit process set forth in this section.

(2) Each license shall contain the following certifications by the grantee:

MINUTES OF MARCH 2, 2021

a. Grantee is a _____, duly organized, validly existing, and in good standing under the laws of the State of _____, is qualified to do business under the laws of the State of Alabama, and has the power and authority to own its properties, to carry on its business as now being conducted, to execute and deliver the acceptance of this license, to carry out the transactions contemplated hereby, and to perform and carry out all obligations on its part to be performed under and pursuant to this license.

b. Grantee, as of the date of the grant of the license, has adequate financial resources to install the small cell facilities or support structures in accordance with the provisions of chapter 57, article VIII, of the City Code, and knows of no technical or legal impediment which would prevent it from performing as contemplated in said article.

c. Grantee is not prohibited by any agreement or applicable law from executing and accepting a license.

d. All corporate actions and consents required on grantee's part to execute and deliver the acceptance of the license have been completed.

The foregoing certifications are material to the grant of the license. A breach of any of the certifications above shall constitute a non-curable default under the license, and shall entitle the City to immediately revoke the license for cause. A breach of the certification contained in subsection d. shall constitute a curable default under the license, wherein following written notice, grantee will have reasonable time to cure such default.

(3) *Nonexclusive.* Grantee's use of the rights-of-way pursuant to this article shall be nonexclusive. The City specifically reserves the right to grant, at any time and from time to time, such additional franchises, licenses, use agreements or other rights to use the rights-of-way for any purpose as determined by the City, and to any other person, including itself, as it deems appropriate, subject to applicable law.

(4) *No title.* The grant of a license shall not convey title, equitable or legal, in the rights-of-way, and the rights granted by the license do not excuse the grantee from obtaining appropriate access or attachment agreements before locating its facilities on any support structures or City support structures in the rights-of-way.

(b) *Term of license.*

(1) *Term.* Subject to termination or revocation in accordance with this article, the license granted pursuant to subsection (a) shall be valid for a period of five years from its effective date and shall be subject to renewal as provided in this subsection. Upon a grantee's written certification to the City Manager within 30 days of the expiration of the license that grantee remains in compliance with the provisions of this article, including its license and each SCF permit, then the license will be automatically renewed for an additional five year term without further action required by the City.

(2) *Operation after termination; holding over.* Notwithstanding anything to the contrary contained in this article, in the event a grantee, at the sufferance of the City, holds over beyond the term of its license and continues to operate all or any part of its small cell facilities, provide all or any of its wireless communications services, or otherwise exercise all or any of the rights granted under the license, after the term of the license, then grantee shall continue to comply with and be subject to all applicable provisions of this article, including all fee and other payment provisions, throughout the period of such holding over, provided that any such holding over shall in no way be construed as a renewal or other extension of the license. In the event the term of a license has expired and the parties are in the process of re-negotiating, applying for, or processing an application for a renewal of the license or a new license, or as they may otherwise agree, the license shall continue on a month-to-month basis, unless either party gives 30-days' advance written notice to the other that they desire to terminate the lease.

(c) *Franchise or use agreements for other uses of rights-of-way.*

MINUTES OF MARCH 2, 2021

(1) The license granted pursuant to this article only relates to, and only grants a grantee authority with respect to, the placement of small cell facilities on or in the immediate vicinity of support structures, including fiber optic cable for up to 10 feet on either side of the support structure, that are located or proposed to be located in the rights-of-way. No provision in this article is intended to permit, regulate or authorize the placement by a grantee or applicant of wire or fiber optic lines, coaxial cable, switches, pedestals or networking equipment of any type that is used to transport communication signals, data or messages between support structures or between any other points in the rights-of-way. In the event a grantee or applicant desires to place communications equipment or other facilities along the rights-of-way of a kind not authorized by the license, it will need to obtain a separate franchise or similar authorization from the City that would authorize, govern and apply to the construction of other kinds of facilities or use of other locations on or along the rights-of-way.

(2) If a grantee or applicant desires to use any of its small cell facilities for the purpose of providing any services other than the provision of telecommunications or information service, such as cable service, other subscription multichannel video programming services, utility, or other non-utility services to existing or potential subscribers or resellers, or by providing any other use of small cell facilities to existing or potential consumers, an applicant shall seek such additional and separate franchise, use agreement or authorization from the City and other authority as may be required by applicable law.

(d) *Only small cell facilities allowed.* No wireless facilities, other than small cell facilities or small cell support structures, shall be allowed or permitted in the rights-of-way.

(e) *Compliance with law.* A grantee shall at all times comply with and abide by all applicable laws.

(f) *Records and reports.* Grantee shall cooperate with the City with respect to the administration of this article and to this end, shall furnish or make available to the City upon request, at no cost to the City, such records, reports, and other information reasonably necessary, as determined by the City, for the administration and enforcement of this article and in such form and manner as prescribed by the City.

(g) *Revocation.* The City may revoke a license in accordance with this article.

Section 4. Notice of transfer, sale or assignment.

(a) *Notice of transfer.* A grantee shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, its facilities in the rights-of-way without providing the City with prior written notice: (1) identifying the person (hereinafter referred to in this section as "successor in interest") that will acquire control of the grantee, or the facilities; (2) a summary of the proposed transaction; and (3) a statement from a person with authority to bind the successor in interest certifying under penalty of perjury that the successor in interest agrees to and accepts, and is able to meet the terms and conditions of, this article.

(b) *Notice of consummation.* Within 45 days after the closing of the transaction, or such additional time as the City Manager may allow, grantee's successor in interest shall submit to the City: (i) a written certification, executed by an authorized representative of the successor in interest, certifying under penalty of perjury that (1) the successor in interest accepts and agrees to be bound by, and to assume all liabilities and obligations of its predecessor under this article, and (2) all required licenses, consents, certificates of public convenience and necessity, or other governmental authorizations issued by the FCC, the Alabama Public Service Commission or any other agency with jurisdiction over the successor in interest's acquisition of an interest in the grantee's facilities have been obtained; (ii) proof of insurance and the posting of any required security in accordance with this article; and (iii) the names and addresses of those persons to whom notice should be sent in accordance with this section. In the event the applicant/licensee has outstanding compensation, other payments or other liabilities due to the City that have not been paid or satisfied prior to close of the transaction, both the grantee and its successor in interest shall be jointly and severally liable to the City for same. The post-transaction

MINUTES OF MARCH 2, 2021

notice requirements of this subsection (b) shall also apply to transfers or mergers with an affiliated person.

Section 5. SCF permits when required.

(a) *Requirement.*

(1) *Pre-application review.* Prior to the submission of an application, the applicant is encouraged to have a voluntary pre-application meeting with the City Manager to review preliminary documents and graphic exhibits of the proposed facilities or support structure and discuss the application, location, and design requirements for the proposed facilities. The primary purposes of the review are to streamline application processing and reduce site plan and design revisions, as well as the multiple reviews associated therewith. Any applicant desiring a pre-application review will agree in writing that the applicable timeline for application review will be tolled during such review period.

(a) A SCF permit application must be submitted for each small cell facility or new support structure on a form, paper or electronic, provided by the City. If the applicant has a good faith belief that any information submitted is proprietary or confidential, then the applicant must so mark each page prior to submittal. An application packet will be maintained by the City Manager.

(b) *When SCF permit not required.* Subject to Article VIII of Chapter 57 concerning right-of-way construction, a SCF permit and the one-time application fee shall not be required for small cell facilities and support structures previously awarded a SCF permit in the following instances:

(1) For routine maintenance or repairs.

(2) For replacements or modifications that do not appreciably change position, characteristic, size, or appearance of the existing facility, unless such change would violate a provision of this article, the license, or the SCF permit.

(c) *Emergency.* Where a facility has been installed without a SCF permit due to an emergency, a SCF permit shall be required after-the-fact within ten days if a SCF permit would have originally been required to perform the work undertaken in the right-of-way in connection with the emergency. Once the emergency is abated, the small cell facilities in question must be removed unless SCF permitted without the emergency as a basis for the SCF permit.

(d) *Inspection and Notice of Completion.* In addition to any inspections that may be required in connection with building and electrical permitting, the City reserves the right to inspect all small cell facility or support structure work to ensure compliance with this article, including applicable SCF permits. Upon completion of a facility or support structure installation, the applicant or grantee shall provide a written notice and certification of compliance, as required by the City Manager, that the facilities or support structure were constructed in accordance with the approved specifications. No operation at the facility shall occur unless the City Manager, should he elect to do so, has conducted a final inspection and issued a certificate of completion, provided that if the City Manager elects not to inspect the site, the certificate of completion will be deemed issued within 14 days of the applicant's submission of its notice and certification of compliance, or upon any required final inspections and approvals required under applicable building and electrical permitting, whichever is later.

Section 6. Fees – Applications for SCF permits and Annual License Fees.

(a) *One-time application fees.* Unless otherwise provided by law, all applications for SCF permits pursuant to this article shall be accompanied by a nonrefundable fee for actual, direct, and reasonable costs incurred by the City to process and review the application, in the following amounts:

MINUTES OF MARCH 2, 2021

(1) \$500.00 for an application seeking up to five small cell facilities attached to existing support structures, with an additional \$100.00 for each attached small cell facility in excess of five; or

(2) \$1,000.00 for an application to install a new pole or other support structure (i.e., not a collocation) intended to support one or more small wireless facilities.

(b) Annual license fee.

(1) As compensation for the installation of its facilities and support structures in the rights-of-way, a grantee shall pay in advance an annual license fee of \$270 per facility, new pole or other support structure.

(2) Notwithstanding the foregoing, the City may increase the amount of the foregoing annual license fee as long as the increased fee is either:

a. (i) a reasonable approximation of the City's objectively reasonable costs associated with or allocable to applicant's use and occupancy of the rights-of-way, or

(ii) no higher than the fees charged to similarly situated competitors for their installation of similar communications facilities in the rights-of-way.

b. otherwise consistent with applicable law.

(3) License fee computation and payment; report.

a. The license fee (or contingent license fee, as applicable) shall be due the January 1st following issuance of an SCF permit and last payable without penalty on January 30th.

b. The license fee shall be due and paid annually thereafter no later than January 30 for each succeeding year. Each annual license fee payment shall be accompanied by a report, certified as true and accurate by an officer of applicant, setting forth the basis for the computation of that year's annual license fee and listing the location of each of applicant's facilities and support structures in the rights-of-way during the preceding calendar year.

(4) Inspection and audit; verification.

a. Subject to subsection (4)b. below, the City shall have the right to inspect and audit, upon reasonable written notice and no more frequently than every year, at grantee's offices where such records are located, all business records relevant to calculating the license fee in the form and manner as reasonably prescribed by the City to verify compliance with the license fee or other payment requirements of this article.

b. Should grantee's business records be located in another city or state, applicant shall, upon the written request of the City, make such records or information available to the City at a convenient location in the city within a time agreed to by the City and the grantee. The City and grantee shall each pay its own costs and expenses incurred in connection with any such audit, except in the event there is an underpayment of five percent or more of the amount that was due and payable to the City, in which case, in addition to making full payment of the relevant obligation, grantee will promptly pay to the City the actual costs and expenses incurred by the City associated with the audit, including attorneys' fees and the professional services of the auditor to perform the audit; provided, however, grantee's obligations to pay such costs and expenses shall be capped at \$15,000.00 for any one audit. The City may not retain any person or entity to perform the audit whose compensation for performing the audit is dependent in any manner upon the outcome of any such audit, including the audit findings, the recovery of fees, or the recovery of any other payments.

c. Any additional amount due to the City as a result of the audit, including any applicable interest, shall be paid by grantee within 30 days after grantee receives a written notice

MINUTES OF MARCH 2, 2021

from the City accompanied by a copy of the audit report and any other supporting document necessary to determine the alleged amount due is correct.

(5) *Final payment.* In the event grantee quits its operations or facilities within the City, whether by transfer or otherwise, it shall make a final payment of any amounts owed to the City within 90 calendar days thereof, and shall provide a report for the calendar year through the date of cessation of the operations or facilities, which report shall contain the information and certification required.

(6) *Evasion of license fee prohibited.* Any transactions which have the effect of circumventing grantee's payment of the license fee, including evasion of payment of the license fee by non-reporting of facilities, or grantee constructed or owned support structures, or by granting title to the facilities or support structures to any entity other than grantee, or any other means which evade the City's collection of license fee revenues, are prohibited. For a violation of this section, the City may, in addition to other remedies it may have under this article or applicable law, require the grantee to remove, at its sole expense and risk, any non-reported facility or support structure and pay a penalty of three times the annual license fee that would be due, without any proration. The removal of the non-reported facility or support structure shall be subject to the removal, repair and restoration requirements contained in this article, including article 3 which is incorporated herein by reference.

(7) *Affiliate facilities.* Facilities or support structures owned by any affiliate of grantee shall be included in the calculation of the license fee unless a fee is paid to the City by such affiliate for the use contemplated by this article.

(8) *No waiver of City rights.* No acceptance of any payment by the City shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this article. All amounts paid shall be subject to audit and re-computation by the City in compliance with this article.

(9) *Application of interest.* In the event any payment is not made on the due date, interest on the amount due shall accrue from such date at the annual rate comparable to the then-current rate used by City for late payment of delinquent taxes.

(10) *City office for payment.* Unless the City permits electronic payments or provides another payment method, all remittances for the monies due according to the terms of this article are to be made payable to the City and mailed or delivered to the address provided by the City Manager. Such remittances shall clearly identify or reference the applicant and its license.

(11) *Removal fee may be applicable.* A fee for removal of small cell facilities or grantee's support structure may be applicable and is hereby authorized as necessary unless the removal does not hinder vehicular or pedestrian traffic or an ongoing City project or improvement, and the City incurs no additional cost to ensure safe removal.

(12) *Additional cost for make-ready work for attachment.* Grantee may be required to bear additional costs for any necessary make-ready work estimate or construction for attachment to City-owned support structures.

(13) *Escalation of fees.* Notwithstanding anything to the contrary contained in this section, the fees required under subsections (a) and (b) of this section may be adjusted (1) to recover a reasonable approximation of the City's actual and reasonable costs in administering and overseeing the small cell facilities and support structures installed pursuant to this article, or (2) as otherwise permitted, or not prohibited, by applicable laws.

Section 7. Application requirements.

(a) *Application requirements.* A right-of-way permit application filed pursuant to this article shall be made by the wireless provider or its duly authorized representative and shall contain the following:

MINUTES OF MARCH 2, 2021

- (1) A detailed deployment plan, pre-approved by the City for location, collocation, and pole placement, describing construction planned for a minimum 12-month period following the deployment plan submission including descriptions of the completed deployment;
 - (2) The applicant's name, address, telephone number, and e-mail address;
 - (3) The names, addresses, telephone numbers, and e-mail addresses of all duly authorized representatives and consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
 - (4) The most adjacent address and geographic coordinates (GPS) accurate to six (6) decimal places of the proposed small cell facility;
 - (5) A technical description of the proposed small cell facility including detailed diagrams with dimensions, volumes, materials, finishing, color, etc. and photo-simulations accurately depicting the antenna facility and associated pole(s), if applicable. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed;
 - (6) Site and elevation plans drawn to scale prepared and stamped by a professional engineer licensed in the State of Alabama identifying the proposed small cell facility, including the number, size, type of the antenna facilities and associated pole(s), conduit, cables, electrical power source, meter and disconnect, proximity to the other small cell facilities in the area, and surface and underground infrastructure existing and proposed;
 - (7) Structural plans and calculations for the pole and associated foundation prepared and stamped by a professional engineer licensed in the State of Alabama meeting all Applicable Codes including specifications on the loading, material strengths, height, depth, diameter, reinforcement;
 - (8) A certification from a licensed engineer that the small cell facility and any support structure will comply with all applicable codes and FCC rules and regulations;
 - (9) Letters of authorization; certification that applicant is a licensed wireless provider under this article authorized to construct, maintain and operate small cell facilities or support structures in the City's rights-of-way.
 - (10) A declaration signed by an authorized representative of the applicant stating that the information in the application is true and accurate and that the small cell facility and (if applicable) associated pole(s) will be built and/or erected in conformance with the specifications set forth in the application;
 - (11) In the case of a new pole, a statement relating to the new pole's ability to collocate additional small cell facilities;
 - (12) In the case of a new pole, documentation demonstrating collocation does not provide a feasible alternative for the provision of wireless services in the area;
 - (13) In the case of a proposed attachment to a City-owned facility or pole in the City rights-of-way, an executed attachment agreement with the City;
 - (14) In the case of a proposed attachment to an investor owned pole in the City rights-of-way, an executed attachment agreement or proof thereof with the pole owner; and
 - (15) In the case of ground mounted equipment, a concealment element plan.
- (b) *Information updates.* Any amendment to information contained in a permit application shall be submitted in writing to the City within 10 days after the change necessitating the amendment. Any amendment that materially changes the scope or nature of the application shall restart the timelines set forth in this article.

MINUTES OF MARCH 2, 2021

Section 8. Effect of SCF permit.

(a) *Authority granted; no property right or other interest created.* A SCF permit from the City authorizes an applicant to undertake only certain activities in accordance with this article. A SCF permit does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

(b) *Duration.*

(1) *For use in general.* No SCF permit issued to conduct construction, installation or other activities in the right-of-way shall be valid for a period greater than 180 days.

(2) *Limitations on construction.* When the SCF permit application is approved to undertake the activities described in this article, every SCF permit issued shall become invalid unless the work on the site authorized by such SCF permit is completed within 180 days after its issuance, or if the work authorized on the site by such SCF permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The City Manager is authorized to grant, in writing, one additional extension of time, for periods that collectively do not exceed more than 180 days, provided that any extension shall be requested in writing with justifiable cause demonstrated, and further provided that:

a. If no request for extension is received, then the SCF permit will become invalid;

b. If construction has not commenced by the 180th day of SCF permit issuance, then the applicant must re-apply and be subject to the same provisions of this article as if the applicant is applying for the first time; and

c. Nothing in this section shall be construed to give an applicant a period for use of the right-of-way greater than 12 months without applying for a new SCF permit.

(c) *No warranties.* The City makes no warranties or representations regarding the fitness, suitability, or availability of the City's right-of-way or City-owned support structures. A grantee's or applicant's use of the City's right-of-way or City-owned support structures for installation and operation of small cell facilities or for provision of wireless service is at its sole risk.

(d) *Revocation of SCF permits.* Revocation of SCF permits shall be governed by this article.

Section 9. Action on SCF permit applications subject to this article.

(a) The City Manager shall review an application for a right-of-way permit subject to this article considering its conformity with applicable provision of this article and shall issue a right-of-way permit on nondiscriminatory terms and conditions subject to the following requirements.

(b) The City may deny an application subject to this article if the proposed small cell facility, new pole, modified pole, or replaced pole:

(1) Interferes with the safe operation of traffic control equipment;

(2) Interferes with sight lines or clear zones for transportation, vehicular traffic, or pedestrians;

(3) Interferes with or fails to comply with the Alabama Department Transportation Utility Manual, as it may be applicable and amended;

(4) Fails to comply with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;

MINUTES OF MARCH 2, 2021

- (5) Fails to comply with American Association of State Highway Transportation Offices (ASHTO) or other applicable codes; or
- (6) Fails to comply with the provisions of this article, including but not limited to the requirements for the grant of a license or franchise or other applicable law.
- (7) Is proposed to be located closer than five feet from the street curb or edge of pavement if no curb is present, unless otherwise approved by the City Manager;
- (8) In the case of small cell facilities, being placed on any arms or any horizontal structure used to support or mount traffic control signals or other traffic control devices;
- (9) In the case of small cell facilities, interfering with electrical lines, cable lines, or their associated equipment, in that small cell facilities must be placed at least ten feet away from energized electrical distribution lines, unless otherwise approved by the electric utility;
- (10) In the case of small cell facilities, being hung from energized electrical lines; or
- (11) In the case of small cell facilities, being mounted on abandoned poles or poles to be removed in conjunction with the undergrounding of electrical utilities in a particular area.

Section 10. Application review; decisions; timeframes.

(a) *Standards for review.* Review of applications shall be in light of its conformity with applicable provisions of this article and the licenses issued hereunder, and shall be issued on a nondiscriminatory basis.

(b) *Review for completeness; notice of deficiency.* In the case of a small cell facility application, the City Manager will, within ten days after receiving the application, determine and notify the applicant by electronic mail to the email address provided in the application whether the application is complete. An application shall not be deemed complete until the applicant has submitted all documents, information, forms and fees specifically enumerated in this article that pertain to the location, construction, or configuration of the small cell facilities or support structures at the requested location(s). If an application is deemed materially incomplete, the City must specifically identify (i) the missing documents or information, and (ii) the specific rule, regulation or code provision creating the underlying obligation to provide same. If the applicant makes a supplemental submission to address or provide the missing information or documents identified by the City within 60 days of the notice sent by the City, the City shall have ten days from receipt of such supplemental submission to verify that the application is complete and, if not, notify the applicant in writing that the supplemental submission was not sufficient to render the application complete and specifically identify the missing documents or information that still need to be submitted pursuant to the City's original notice. The additional documents or information provided in the supplemental submission shall be limited to the deficiencies cited in the original notice from the City and no material changes shall be made to the original application other than those necessary to cure any identified deficiencies. If a supplemental submission includes material changes to the proposed small cell facilities identified in the original application, proposes or requests a small cell facility not identified in the original application, or otherwise includes or makes a material change to the original application other than as necessary to cure the deficiencies identified by the City, such supplemental submission shall be deemed a new application. If an applicant fails to submit sufficient documents or information to render the application complete within 60 days of the notice sent by the City, the original notice sent by the City shall serve as written notice of the denial of the application, and the application shall be deemed denied.

(c) *Timeline for action on applications.* Unless otherwise agreed to by the applicant and the City Manager, the City Manager will approve or deny an application for a SCF permit within the applicable time period set forth in this subsection, plus any tolling period(s) pursuant to subsection (c)(2) below.

(1) *General time period for action on application.* Subject to the tolling provisions set forth below, the City, by and through the City Manager, will make its final decision to approve

MINUTES OF MARCH 2, 2021

or deny the application(s) within the following time periods, unless the City Manager and the applicant agree to toll the applicable deadline:

- a. For an application(s) to collocate a small cell facility on an existing structure, within 60 days of receipt of such application(s); or
- b. For an application(s) to deploy a small cell facility on a new structure, within 90 days of receipt of such application(s); or
- c. For multiple applications or a single, consolidated application for a small cell facility network project which seeks approval of a mix of collocated small cell facilities and new structures (i.e., one or more of the applications is for a new structure), within 90 days of receipt of such applications.

(2) *Tolling period.* Unless otherwise agreed to in writing by the applicant and the City, the tolling period for an application, if any, shall be as follows:

a. If within ten days of receipt of an application for a SCF permit to install a small cell facility in the right-of-way, the City Manager notifies the applicant that an application is materially incomplete and specifically identifies (i) the missing documents or information and (ii) the specific rule, regulation or code provision creating the obligation to submit same to the City, the time period for action on an application shall reset and not begin until the applicant submits all of the documents and information identified by the City Manager to render the application complete (i.e., the date the applicant submits all of the documents and information identified by the City in the deficiency notice is day zero).

b. For resubmitted applications (or supplemental submissions) following a notice of deficiency from the City pursuant to subsection (c)(2) of this section, the tolling period shall be the number of days from:

(i) The day after the date the City sends written notice to the applicant that the applicant's supplemental submission is not sufficient to render the application complete and specifically identifies the missing documents or information that need to be submitted based on the City's original notice under subsection (c)(2)a. of this section, until

(ii) The date the applicant submits all the documents and information identified by the City to render the application complete, provided that such notice regarding the insufficiency of the supplemental submission is sent by the City to the applicant within ten days following the City's receipt of the supplemental submission in response to the City's original notice under subsection (c)(2)a. of this section.

(3) *Final decision.* The City Manager will inform the applicant in writing of his/her final decision and, if such final decision is to deny the application, provide the basis for such denial, including identifying the City Code, rule, regulation, or application form provision, or other applicable law on which the denial was based.

(4) *Effect of timelines.* The City's failure to issue a final decision within the processing timelines set forth shall not constitute, or be construed to constitute, a grant of an applicant's application(s). Upon expiration of these timelines, applicant may pursue whatever remedies are available to it under applicable law.

(d) *Consolidated applications.* An applicant may file a consolidated application and receive a single SCF permit for approval of up to five small cell facilities, provided that the proposed facilities are in reasonably close proximity to one another. If the application includes multiple facilities, then the City may separately address each facility for which incomplete information has been received or for which the application is denied.

(e) *Batched applications.* Applicants or their agents of record may submit applications for multiple facilities or locations with the following conditions:

- (1) No single batched submittal shall contain more than ten (10) applications;

MINUTES OF MARCH 2, 2021

(2) There must be a minimum of ten (10) calendar days between submittals of batched applications by the same applicant;

(3) No more than three (3) batched applications per applicant shall be accepted in any thirty-consecutive-day period.

(4) In the interest of time efficiency, the City reserves the right to negotiate the amount of batched applications that may be submitted by an applicant on large scale installations. The negotiation shall require the parties, the applicant and the City, to agree in writing to the process, time and the costs that will be required for the initial review of the project.

(f) *Burden of Proof.* The burden of proof shall at all times be on the applicant to establish compliance with requirement of applicable law.

(g) *Appeal of decision by City Manager.* Upon denial of its application by the City Manager, the applicant may, at its option, either seek review in a court of competent jurisdiction or file a written appeal to the City Clerk within 15 days for reconsideration by the City Council and placement on the next regularly scheduled agenda of the City Council. If the applicant appeals to the City Council, it may seek review of an adverse council decision in a court of competent jurisdiction.

Section 11. Small Cell Facilities in the Rights-of-Way; Collocation, Design, Concealment, and Aesthetic Requirements

(a) Collocation requirements. Small cell facilities and any new, modified, or replaced pole for the collocation of small cell facilities in the rights-of-way shall meet the following collocation requirements:

(1) Collocation First. Small cell facilities may be installed on new poles only if the applicant demonstrates that (i) no reasonable collocation opportunities exist in the area where the small cell facility is proposed to be placed; or (ii) attachment to a new structure will achieve a more visually appealing design, demonstrably, more effective service coverage, or some of the public benefit not achieved by collocation. The applicant must support its claim through written evidence including, but not limited to, affidavits, correspondence, engineering report, or other written information that demonstrates that the applicant has taken all commercially reasonable actions to achieve collocation in the requested location that the applicant has pursued but has received no response or has been denied access to all potential collocation sites in the subject area (and the reasons any such denial(s)), and otherwise show that the applicant is unable to co-locate on an existing support structure. Only entities granted a certificate of convenience and necessity by the state public service commission pursuant to Code of Ala., § 37-4-28 or licensed by the Federal Communications Commission may erect new poles in the City's right-of-way.

(2) New poles; collocation compatible design. New poles approved for the primary purpose of small cell facilities shall be designed to accommodate the collocation of multiple wireless providers' antennas and related equipment to the maximum extent feasible, but no less than one (1) similarly sized small cell facility.

(3) Secondary use. Where small cell facilities are collocated on existing poles, use of a pole for small cell facilities shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small cell facility becomes unnecessary, obsolete, and/or no longer in use, the pole shall not be retained for the sole purpose of accommodating the small cell facility and the small cell facility, all associated equipment, and the pole shall be removed promptly unless a SCF permit is obtained approving a new pole for the primary purpose of small cell facilities.

(4) Collocation on City street light poles or City traffic signal poles; additional requirements.

a. Small cell facilities are not permitted on traffic signal poles unless the applicant can demonstrate that denial of the SCF permit will effectively prohibit the provision of telecommunications service or personal wireless service in violation of any applicable law.

MINUTES OF MARCH 2, 2021

b. Before collocating on existing street light poles, the applicant must show structural evidence that the current pole and foundation design can meet current AASHTO design standards for wind loads with the addition of the small cell equipment.

c. If poles cannot meet AASHTO requirements for wind loads with the addition of the small cell equipment, the applicant has the option of replacing the current pole with a new pole capable of supporting the existing and proposed additions. Luminaires on new poles must maintain the same height as that replaced and/or adjacent luminaires and be of the same design as the existing luminaires.

d. The antenna shall be attached to the top of pole only. No mountings are allowed on the luminaire mast arms.

e. Accessory equipment shall not be mounted on the pole. Accessory equipment shall be located either within or as an extension of the pole, within an underground vault, or within an enclosure/cabinet adjacent to the pole camouflaged to appear as a public amenity as shown on the concealment element plan.

f. The pole design must be capable of accommodating a street light arm even if one is not installed initially.

g. The application must provide analysis that the proposed small cell facility will not cause any interference with the City traffic signal systems, emergency signal control devices, other smart City applications, other signal communication components, or any other unforeseen interferences.

h. Small cell facilities shall have their own power supply with disconnect and City workers and contractors shall have the ability to easily shut off radio signals and power while working on City street lights, signal system elements, poles or other facilities, if necessary.

i. Any fiber or power cables supporting the small cell facility shall be labeled and housed in its own conduit(s) separating them from City fiber or power cables.

(b) Pole construction, placement, height, and diameter requirements. Small cell facilities and any new, modified, or replaced pole for the collocation of small cell facilities in the rights-of-way shall meet the following requirements:

(1) Pole spacing. Poles shall be no less than 200 feet from any other pole considering only poles on the same side of the roadway.

(2) New poles. Any new pole shall be a metal pole.

(3) Pole setback. Poles shall be placed as far back from the roadway as technically feasible without any encroachment of the pole and antenna facilities onto private property unless alignment with other street poles, trees, features is more aesthetically desirable as determined by the City.

(4) Pole placement. Any new poles, replacement poles and/or antenna facilities shall be placed where they:

a. Do not obstruct the line of sight for transportation, vehicular, or pedestrian traffic;

b. Do not obstruct the clear zone or have a breakaway design;

c. Comply with the Americans with Disabilities Act (ADA) similar federal or state standards, City construction and sidewalk clearance standards and applicable laws, in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new pole must: be physically possible, comply with applicable traffic uniform warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public health, safety, or welfare; and

MINUTES OF MARCH 2, 2021

d. Any replacement pole shall be placed as close to the original pole as possible, and no more than five feet from the existing pole location.

(5) Pole heights. The height of poles above the ground including the antennas shall:

- a. Be fifty (50) feet or less in non-residentially zoned areas;
- b. Be forty (40) feet or less in residentially zoned areas with above ground power; and
- c. Be thirty-five (35) feet or less in residentially zoned areas with underground power.

(6) Metal pole construction requirements.

a. Structural/Foundation Design. The pole and pole foundation shall be designed in accordance with the most current version of American Association of State Highway Transportation Officials (AASHTO) Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals;

b. Material. The pole material shall be aluminum, hot dipped galvanized steel, or other corrosion resistant metal;

c. Diameter. The pole diameter shall be twelve (12) inches maximum at existing grade unless otherwise approved by the City not including the base of the pole; and

d. Pole Coloring. The pole shall be black in color unless another color scheme is determined to be more aesthetically desirable by the City.

(7) Wooden pole construction requirements for collocation:

a. The existing wooden pole diameter shall be sixteen (16) inches maximum at existing grade unless otherwise approved by the City; and

b. The grantee must show structural evidence that the existing wooden pole and foundation design can meet the current wind load requirements based on NESC extreme wind category with the addition of the small cell facilities.

(8) Decorative poles; additional requirements

a. Decorative poles shall be metal poles only;

b. Antennae shall be mounted on top of the pole only;

c. Accessory equipment shall not be mounted on the pole. Accessory equipment shall be located either within or as an extension of the pole, within an underground vault, or within an enclosure/cabinet adjacent to the pole camouflaged to appear as a public amenity as shown on the concealment element plan; and

d. Aesthetics. Pole shall match the design of decorative poles in the area.

(c) Antenna and accessory equipment size, location, and dimensional restrictions.

(1) General. The applicant shall minimize to the extent possible the antenna and accessory equipment space and shall use the smallest amount of enclosure possible to fit the necessary equipment.

(2) Vertical clearance. All antennae and accessory equipment shall be a minimum of ten (10) feet above the existing adjacent grade and shall not be not be installed in such a manner as to obstruct the line of sight or pedestrian paths

(3) Mounting/projection off pole. Unless the applicant can demonstrate that more space is needed to be technically feasible, all antennae and accessory equipment including the enclosure shall be as close to the pole as possible and shall be mounted no greater than

MINUTES OF MARCH 2, 2021

four (4) inches off the pole and the furthest point of all antennae and accessory equipment including the enclosure shall not project more than twenty-eight (28) inches from the face of the pole.

(4) Antenna size and dimensional restrictions. Unless the applicant can demonstrate that more space is needed to be technically feasible, the size of antennas shall:

- a. Be no greater than three (3) cubic feet;
- b. In the case of top mounted canister antennas, be no greater than six (6) feet in height and share a reasonably similar diameter as the top of the pole not to exceed sixteen (16) inches;
- c. In the case of omnidirectional antennas, be no greater than four (4) feet in height; and
- d. In the case of microwave dishes, be no greater than two (2) feet in diameter and no more than three (3) microwave dishes per pole.

(5) Accessory equipment size and dimensional restrictions. Unless the applicant can demonstrate that more space is needed to be technically feasible, the size of accessory equipment shall:

- a. Be no greater than twenty-eight (28) cubic feet total considering accessory equipment for all small cell facilities attached to the pole collectively not including the electrical equipment;
- b. Be designed to be long and narrow along the pole with a reasonably greater vertical dimension than horizontal; and
- c. Be no greater than twenty-four (24) inches in width.

(6) Antennas and accessory equipment shall not be illuminated except for security reasons, as required by a Federal or State authority, or unless approved as part of a concealment element plan.

(7) Antennas, equipment enclosures, and ancillary equipment, conduit and cable shall not dominate the structure or pole upon which they are attached.

(d) Concealment and objective aesthetic requirements. Small cell facilities and any new, modified, or replaced pole for the collocation of small cell facilities in the rights of way shall meet the following concealment and aesthetic requirements:

(1) Collocated replacement poles. Match neighboring pole design. Any pole replaced for the purposes of collocation shall substantially conform to the design of the pole it is replacing or the neighboring pole design standards utilized within the contiguous right-of-way.

(2) Special districts. In Historic Districts, any new or replacement poles shall be metal Poles. If the neighboring poles are decorative poles, then any new or replacement pole shall be decorative poles of matching dimensions and design.

(3) Pole material reservation. The City reserves the right to require or allow certain pole material types.

(4) Concealment within poles. With the exception of wooden poles, all conduit, cables, wires and fiber must be routed within the pole.

(5) Concealment outside of poles. The full concealment of antennae, accessory equipment, and all conduit, cables, wires and fiber is required and shall meet the following requirements:

- a. Accessory equipment shall be covered with an enclosure;

MINUTES OF MARCH 2, 2021

b. Canister antennae shall be placed to look as if it is an extension of the pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the pole;

c. Spools and/or coils of excess fiber optic or coaxial cables or any other wires shall not be stored on the pole except completely within the approved enclosures or cabinets; and

d. All cables, wires, and fiber associated with the small cell facility shall be flush-mounted to the support structure where internal installation is not feasible and shall be shrouded or encased in a cover or conduit.

(6) Antenna and accessory equipment coloring. The antenna, accessory equipment, and all visible attachments, equipment, and hardware shall be colored to match the pole unless another color scheme is determined to be more aesthetically desirable by the City.

(7) The preferred location of a small cell facility on a pole is the location with the least visible impact.

(8) Ground-mounted equipment in the rights-of-way is prohibited, unless such facilities are placed underground or the applicant can demonstrate that pole-mounted or undergrounded equipment is technically infeasible. If ground-mounted equipment is necessary, then the applicant shall submit a concealment element plan. Generators located in the rights-of-way are prohibited.

(9) The City may consider the cumulative visual effects of small cell facilities mounted on poles within the rights-of-way when assessing proposed siting locations so as to not adversely affect the visual character of the City. This provision shall not be applied to limit the number of permits issued when no alternative sites are reasonably available nor to impose a technological requirement on the applicant.

(10) These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function of the technology chosen by the applicant, alternative forms of concealment or deployment may be permitted which provide similar or greater protections from negative visual impacts to the streetscape.

(e) Electrical service and equipment requirements:

(1) All electronic service equipment shall be installed in accordance with the applicable provisions of the National Electrical Safety Code of the National Bureau of Standards and National Electrical Code of the National Board of Fire Underwriters.

(2) An electric meter, if required, will be support structure-mounted where feasible to the extent authorized by the support structure owner and electric utility.

(3) A separate electrical permit is required by the City for the electrical service.

(4) No equipment shall be operated so as to produce noise in violation of the City Code.

(f) Cable strung small cell facilities. Small cell facilities mounted on cables strung between existing utility poles shall conform to the following standards:

(1) Each strand-mounted facility shall not exceed three cubic feet in volume;

(2) Only one strand-mounted facility is permitted between any two existing poles;

(3) The strand-mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than five feet from the pole unless a greater distance is technically necessary or is required by the pole owner for safety clearance;

MINUTES OF MARCH 2, 2021

(4) No strand-mounted device shall be located in or above the portion of the roadway open to vehicular traffic;

(5) Ground-mounted equipment to accommodate a shared mounted facility is not permitted except when placed in preexisting equipment cabinets;

(6) Pole-mounted equipment shall comply with the all other requirements this section;

(7) Such strand-mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand); and

(8) Strand-mounted facilities are only permitted on poles that have existing overhead wirelines.

(g) Signage Requirements.

(1) A plate no larger than four inches by six inches with the location of the pole and the pole owner's name, contact information, and emergency telephone number shall be permanently affixed to the pole or shroud.

(2) No signage, message or identification other than the manufacturer's identification or such other identification required by applicable law is allowed to be displayed on any antenna or equipment enclosure. Any permitted signage shall be located on the equipment enclosures and be of the minimum amount possible to achieve the intended purpose (no larger than four by six inches); provided, that banners may be permitted as concealment element techniques where appropriate.

Section 12. Removal, relocation, or modification of small cell facility in the rights-of-way.

(a) *Notice.* Except as provided in paragraph (b), on 90 days prior written notice from the City, the grantee or applicant shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small cell facilities within the rights-of-way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for 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.

(b) *Emergency removal or relocation of facilities.* In the event of an emergency, as the City may determine to be necessary, appropriate or useful in response to any imminent danger to public health, safety, or property, the City retains the right and privilege, without prior notice, to cut, disconnect, remove, move, or relocate any small cell facility or structure located within the rights-of-way of the city. If circumstances permit, the City shall notify the grantee or applicant and provide the grantee or applicant an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the grantee or applicant promptly after cutting or removing a small cell facility.

(c) *Abandonment of facilities.* A wireless provider is required to notify the City at least 30 days prior to any intentional abandonment of a small cell facility. Absent non-usage arising from lack of commercial power or other circumstances beyond the grantee or applicant's control, a small cell facility shall be deemed abandoned if it remains unused for a period of more than one year. In the event of abandonment, the City may direct the grantee or applicant to remove all or any portion of the small cell facility that the City, or any of its departments, determines would be in the best interest of the public health, safety and welfare to remove. If the grantee or applicant fails to remove the abandoned facility within 90 days after such notice, the City may undertake to do so and recover the actual and reasonable expenses of doing so from the grantee or applicant, its successors or assigns.

(d) *Damage and repair.* The City may require a grantee or applicant to repair all damage to the rights-of-way directly caused by the activities of the grantee or applicant and return the rights-of-way to its functional equivalence before the damage. If the grantee or applicant fails to make the repairs within 120 days after written notice, the City may affect

those repairs and charge the applicable party the reasonable, documented cost of such repairs.

Section 13. Insurance and security.

(a) *Insurance.*

(1) *Commercial general liability.* A grantee or applicant shall, at its sole expense, maintain, throughout the term of its license and any extension or renewal thereof, and such other period of time during which the grantee or applicant operates or is engaged in the removal of its facilities or structures (hereinafter referred to as "coverage period"), commercial general liability insurance using carriers licensed, authorized or permitted to conduct business in the state of Alabama and maintaining a Best rating of not less than "A." Such insurance shall include coverage for premises and operations, underground, collapse and explosion, and products and completed operations, independent contractors, contractual liability and personal and advertising injury, and shall include as additional insureds the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, and employees. Such insurance shall be in the amount of \$2,000,000.00 per occurrence for bodily injury (including death) and property damage and \$3,000,000.00 general aggregate. The grantee or applicant shall insure any contractors and subcontractors providing services in connection with its license or permit maintain appropriate levels of insurance and that the City is included as an additional insured under each policy except workers compensation and employer's liability. Insurance will be written on an occurrence basis.

(2) *Commercial automobile liability.* A grantee or applicant shall, at its sole expense, maintain during the coverage period commercial automobile liability insurance with a limit of \$2,000,000.00 combined single limit for any one accident or loss for bodily injury, including death, and property damage covering owned, leased, non-owned, and hired automobiles used in conjunction with its operations under its license or permit. Such insurance shall include the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, and employees as additional insureds.

(3) *Workers' compensation and employer's liability.* A grantee or applicant shall, at its sole expense, maintain, during the coverage period, workers' compensation coverage as prescribed by the laws of the State of Alabama and employer's liability coverage in an amount of \$1,000,000.00 each accident/disease/policy limit.

(4) *Umbrella or excess liability.* A grantee or applicant shall, at its sole expense, maintain during the coverage period umbrella or excess liability insurance in the amount of \$2,000,000.00. Such insurance shall include the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, and employees as additional insureds.

(5) *Evidence of insurance; deductibles; approval; reservation.* On grant of a license pursuant to this article and upon each policy renewal thereafter, a grantee or applicant shall, at no cost to the City, furnish to the City certificates of insurance (or proof of self-insurance) evidencing all of the aforementioned types and limits of insurance to be in effect. The City reserves the right to require proof of self-insurance at any time and from time to time, at no cost to the City. A grantee or applicant has the right to maintain reasonable deductibles and the City reserves the right to review and approve such deductibles, which approval shall not be unreasonably withheld or delayed. The policies obtained by applicant and proof thereof, shall be subject to the City's reasonable approval. The City reserves the right to review these insurance requirements during the coverage period and upon prior written notice to, and review and acceptance by applicant, to adjust insurance coverages and their limits when deemed necessary and prudent by the City Manager, based upon changes in statutory law, court decisions, or the claims history of the industry, or a grantee or applicant.

MINUTES OF MARCH 2, 2021

(6) *Maintenance of insurance policies; grantee's coverage primary.* The liability insurance policies required under this section, if any, shall be maintained by applicant through the coverage period. Upon receipt of notice from its insurer(s), grantee or applicant shall provide the City with 30 days' prior written notice of cancellation or non-renewal of any required coverage to the City. Grantee or applicant's coverage shall be primary and non-contributory to any other insurance carried by the City, if applicable to a loss, is excess.

(7) *No limit of liability.* The legal liability of grantee or applicant to the City and any person for any of the matters that are the subject of the insurance policy(ies) required by this section, shall not be limited by said insurance policy(ies) or by the recovery of any amounts thereunder.

(8) *Certificate of insurance.* Certificates of insurance, if any, shall include the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions and employees as additional insureds, in the case of commercial general liability, commercial automobile liability, and umbrella or excess liability insurance. Worker's compensation and employer's liability insurance shall waive rights of subrogation in favor of the City. All subsequent notices or certificates shall be delivered to the City Manager and the City Attorney. All deductibles under said policy shall be the sole responsibility of the grantee or applicant.

(9) *Self-insurance.* Notwithstanding any other provision of this section to the contrary, a grantee or applicant is given the option, at any time throughout the term of its license, to self-insure any or all of the types or limits of insurance coverage described in this section. If a grantee or applicant elects to self-insure, it shall submit to the City with a statement certifying such self-insurance, and a request for the City to approve such self-insurance, together with sufficient information to show that it has sufficient financial resources to self-insure without posing additional risk to the City. Provided that the grantee or applicant provides adequate information concerning its financial resources, the City will not unreasonably withhold, condition, or delay its approval of grantee's or applicant's request to self-insure.

(b) Security.

(1) Subject to the following subsection (2), grantee or applicant shall obtain, maintain, and replenish, at its sole cost and expense, and file with the City Manager, an irrevocable standby letter of credit in favor of the City or surety bond in the amount of \$100,000.00, or in such other amount established by the City Manager, and suitable in form and content, including any amendments thereto, to the City Manager ("letter of credit", "bond", or "security"), both to guarantee the timely completion and faithful performance of all work required in connection with the license including the construction and operation of the facilities and to secure performance of grantee's or applicant's obligations and faithful adherence to all requirements of this article. Throughout the term of its license, and for 120 days thereafter, applicant shall maintain the required letter of credit or bond in the amount specified in accordance with this section. To the extent that the applicant maintains security under any separate franchise or its wireline right-of-way use agreement with the City, such security may, at grantee's or applicant's option, serve to fulfill its obligation under this subsection (b)(1), provided that said security shall refer to and include this article and shall be subject to the terms and conditions applicable to security under this article, including the right to increase the amount of security.

(2) Based on then-current factors, including the construction activity of the grantee or applicant, whether grantee or applicant is engaged in the removal of the facilities, applicant's history of compliance with this article, or such other factors which reasonably necessitate the contemplated action, the City Manager may, in his sole discretion, modify the obligations of the foregoing subsection (1). Such modifications may include: (i) upon the written request of grantee or applicant, a waiver of the requirement to post security, or a whole or partial release of the security posted; provided that at any time and from time to time the City Manager may require the posting of any security so waived or released; and (ii) upon the written notice to grantee or applicant, an increase in the amount of security posted. Grantee or applicant shall post the required security within 30 days or

MINUTES OF MARCH 2, 2021

such additional time as the City Manager may allow, without the right of an additional cure period, and the City Manager may delay any construction activity of applicant until the required security is posted.

(3) The letter of credit may be drawn on directly by the City at any time and from time to time for the payment of the following purposes but not before the expiration of any notice or cure provisions to the extent applicable:

a. To secure the faithful performance by grantee or applicant of all terms, conditions, and obligations of this article and any later enacted regulations and ordinances pertaining to the rights-of-way or their use, including the proper installation, maintenance, operation, and removal of the facilities;

b. To compensate the City for any loss or damage to any City-owned pole or structure or other property of the City, during the course of any construction of the facilities by grantee or applicant, its agents, or employees, or any contractors or subcontractors of applicant;

c. To compensate the City for any expenditure, damage, or loss incurred by the City occasioned by grantee's or applicant's non-compliance with the provisions of this article or default under any later enacted regulations and ordinances pertaining to the rights-of-way or their use, or its failure to comply with all rules, regulations, orders, permits, and other directives of the City, issued pursuant to this article or other present or future ordinances adopted by the City;

d. To secure the payments of premiums for the liability insurance required pursuant to this article; or

e. The payment to the City of any amounts for which applicant is liable that are not paid by grantee's or applicant's insurance.

(4) For the City to recover under this subsection (b) for any failure to properly construct or operate the facilities or any alteration, repair, maintenance, or restoration of City structures or property, in connection with such construction or operation, it is not necessary that the City first perform such work.

(5) The rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether provided for in this article or otherwise authorized by law; and no action, proceeding, or exercise of a right with respect to such letter of credit shall affect any other rights the City may have.

(c) *Right to require replacement of letter of credit or insurance.* If the financial condition of any company issuing a letter of credit pursuant to this section materially and adversely changes, the City may, at any time and from time to time, require that any such letter of credit be replaced with such other insurance policy or letter of credit consistent with the requirements set forth in this section.

(d) *Notice.*

(1) Each insurance policy shall contain a covenant or endorsement of the insurer to provide 30 days' advance written notice by certified mail of such insurer's intention to cancel, substantially change, or not to renew such policy to both the City Manager, City Attorney, and grantee or applicant; provided, however, in the event said policy fails to so contain such a notice provision to the City Manager and City Attorney, then grantee or applicant shall be responsible for providing notice to the City Manager or City Attorney. Grantee or applicant shall, in the event of any such notice, obtain, pay premiums for, and file with the City Manager and City Attorney written evidence of the issuance of replacement policies prior to the expiration of any such policy.

(2) In no event shall the letter of credit be canceled without 60 days' advance written notice by certified mail to both the City Manager and City Attorney. Grantee or applicant shall, in the event of any such cancellation, obtain and file with the City Manager and City Attorney

MINUTES OF MARCH 2, 2021

written evidence of the issuance of a replacement letter of credit that conforms to the requirements of this section prior to the expiration of any such letter of credit.

(3) Failure to carry or keep such insurance and letter of credit in force throughout the period set forth in this section shall constitute a violation of this article. The City, through its City Manager, reserves the right to stop any work related to the facilities until proper evidence of insurance and the letter of credit is furnished.

(e) *Commencement of work.* Grantee or applicant shall not commence any work in the rights-of-way, including the work of installing any facilities, until the insurance and letter of credit requirements of this section have been complied with.

Section 14. Damages and defense.

(a) *Hold harmless and indemnification.*

(1) Grantee by its acceptance of its license agrees to and does thereby indemnify, defend, and hold the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, and employees whole and harmless from and against all claims, costs, losses, expenses through appeal (including reasonable attorneys' fees, and costs or expenses incidental to the investigation of claims and lawsuits), demands, payments, suits, actions, recoveries, penalties, fines, liabilities, judgments, and damages, of any nature and description, including any suit or claim for personal injury, property damage, defamation, antitrust, errors and omission, theft, fire, royalties, license fees, or infringement of copyright or patent rights, resulting from or arising out of or by reason of: (1) grantee's actions pursuant to its license, and each SCF permit issued thereunder, and the rights awarded thereunder, or the procedures leading thereto, (2) any act or omission of grantee, its agents, employees, representatives, contractors, or sub-contractors, including in the construction, installation or operation of, or the provision of service over, the small cell facilities or support structure in the City, or any portion thereof, (3) any failure by grantee to comply with any applicable law or the terms and conditions of this article, its license and each SCF permit, (4) grantee's performance under its license and each SCF permit, (5) the use of portions of grantee's small cell facilities or support structures by other persons, including other communications service providers, or (6) the presence of any hazardous substance or environmental hazard brought into the rights-of-way by grantee or by any person acting on its behalf or under the rights granted under its license and SCF permits.

(2) The foregoing obligations of this subsection (a) shall survive the expiration, termination, or revocation of the license.

(b) *Notice.* In order for the City to assert its rights to be indemnified, defended, or held harmless, the City must notify grantee within a reasonable time of any claim or legal proceeding which gives rise to such right.

(c) *Defense.* With respect to all grantee's indemnity obligations set forth in this article, grantee shall provide the defense of any claims brought against the City by selecting counsel of grantee's choice to represent the City and defend the claim, subject to the consent of the City, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the City from cooperating with grantee and participating in the defense of any litigation by its own counsel at its own cost and expense. After consultation with the City, grantee shall have the right to defend, settle, or compromise, at its cost and expense, any claim or action arising hereunder, and grantee shall have the authority to decide the appropriateness and the amount of any such settlement, provided, however, that any such settlement shall include, at a minimum, a full and final release of all claims against the City and shall include a provision that the settlement does not constitute an admission of wrongful conduct by the City. In the event that the terms of any such settlement do not include a full and final release of the City, grantee shall not settle the claim or action raised against the City. All of grantee's right to enter a settlement shall entail only payment of monetary amounts by grantee or obligations to be performed fully by grantee, and under no circumstances shall grantee have the power to bind the City to any obligation to pay

MINUTES OF MARCH 2, 2021

any monetary amounts, perform any particular action, or refrain from performing any action (although the City may in its discretion independently agree to any such condition).

(d) *Indemnification not limited.* The indemnification obligations hereunder are not limited in any way by limitation of the amount or type of damages or compensation payable by or for grantee under worker's compensation, disability or other employee benefits acts, or the acceptance of insurance certificates required hereunder, or the terms, applicability, or limitations of any insurance held by grantee.

(e) *No waiver of City rights.* The City does not and shall not waive any rights against grantee which it may have by reason of grantee's indemnification, or because of the acceptance by the City of grantee's proof of insurance or deposit with the City of any insurance policies described herein.

Section 15. Limitation of liability; immunity.

Except to the extent expressly provided for otherwise in this article, the City shall be responsible for its own acts of negligence, or intentional or willful misconduct committed by the City for which the City is legally responsible, subject to defenses, immunities, and limitations of liability provided by applicable law; provided, however, notwithstanding anything to the contrary contained in this article and in no event shall the City, its present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, or employees be liable to grantee, its affiliates, officers, directors, agents, employees, customers, tenants, licensees, contractors, subcontractors, or assigns for any special, indirect, or consequential damages, including any loss, expense, or damage to profits, business, revenue, or income (whether arising out of the damage to or destruction of the small cell facilities or support structures, in whole or in part, transmission interruptions or problems, any interruption or degradation of service or otherwise), arising in any manner, including the City's negligence, and grantee shall indemnify, defend, and save harmless the City and its present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, and employees from and against any and all claims, costs, losses, expenses through appeal (including reasonable attorneys' fees, and costs or expenses incidental to the investigation of claims and lawsuits), demands, payments, suits, actions, recoveries, penalties, fines, liabilities, and judgments, of any nature and description, with respect to such special, indirect, or consequential damages. The foregoing obligations of this section shall survive the expiration, termination or revocation of the license.

Section 16. Applicability.

(a) *Amendments.* The City may, at any time and from time to time, amend this article, as it shall find necessary in the lawful exercise of its police powers and in the management of the rights-of-way or otherwise in the exercise of its control and authority over the rights-of-way and City property located therein. The provisions hereof shall be applicable to all small cell facilities and support structures placed in the rights-of-way on or after the effective date of the ordinance adopting or amending these provisions, as applicable. Further, to the full extent permitted by applicable law, the provisions hereof shall be applicable to all existing small cell facilities and support structures placed in the rights-of-way prior to the effective date of the ordinance adopting or amending these provisions, as applicable, except that any provision of this article regarding the design, size, composition, or location of small cell facilities shall not apply to any facilities lawfully placed within any right-of-way prior to the effective date of the ordinance from which such provision is derived.

(b) *Exemptions and non-applicability.* This article regulates the placement of small cell facilities and support structures located or proposed to be located on the rights-of-way. This article does not apply to the placement of such facilities or structures on City-owned property not located within the right-of-way, which placement will be allowed only through a lease or similar agreement with the City. The placement of an antenna, facilities or equipment related to the following types of wireless communication services are exempt from regulation under this article: facilities owned or controlled, or dedicated to primary

MINUTES OF MARCH 2, 2021

use by any federal, state or local government or agency to provide safety or emergency services. Further, the provisions in this article are not intended to alter, affect or modify the provisions of existing franchises, licenses, use agreements or ordinances relating to the franchising of cable systems, cable operators, or any landline telecommunications and related facilities, providers or services. No provision in this section or elsewhere in this article is intended to permit, regulate or authorize the placement by grantee or applicant or other wireless provider of fiber optic lines, coaxial cable, switches, pedestals or networking equipment of any type that is used to transport telecommunication signals, data, messages, or cable services between support structures or between any other points on the right-of-way. In the event any such grantee or applicant or wireless provider desires to place telecommunications or cable system equipment along the right-of-way at points not regulated by this article, it must obtain from the City a separate franchise or similar agreement or authorization that authorizes, governs and applies to such use of other locations on or along the right-of-way.

(c) *Existing agreements.* If a wireless provider has an existing franchise agreement, lease, right-of-way use agreement or other similar agreement with the City that addresses the placement of small cell facilities or support structures that was in effect prior to the enactment of this article, the existing franchise or agreement shall remain in force for its remaining term (but not for any extension or renewal thereof), and its provisions shall control over any conflicting provisions of this article. Thereafter, the wireless provider's small cell facilities or support structures shall be regulated by this article. Notwithstanding the foregoing, any such wireless provider with an existing franchise or agreement related to small cell facilities may, at its sole option, elect to terminate the franchise or agreement and become immediately subject to this article.

Section 17. Enforcement.

(a) *Notice of violation; opportunity to cure.*

(1) If the City Manager is of the opinion that a grantee is in violation of a provision of this article, including a license or a SCF permit issued under the authority of this article, he shall provide grantee with a written notice of violation describing the nature of the violation and requirements for correction.

(2) Within ten business days of receiving a notice of apparent violation, grantee shall present facts and arguments in refutation or excuse of the alleged violation, or present a plan for correction of the violation including an estimated schedule for completion of the corrective action. The City Manager shall thereafter determine whether the violation has been refuted or excused, or may approve the corrective plan in whole or part, or require changes thereto. The cure period for any corrective action shall be reasonably established by the City Manager, provided that the period shall not be less than 30 days in the case of any fees or other charges due and not less than 60 days in all other cases, except in the case of an emergency or except as otherwise expressly provided for in this article or the license or a SCF permit.

(3) During the cure period any action to prosecute the violation, including revocation of the license, shall be held in abeyance.

(b) *Revocation.*

(1) In addition to all other rights or remedies which the City has pursuant to law or equity or under this article or a license or SCF permit issued hereunder, and subject to applicable law, the City may revoke the license and all rights and privileges pertaining thereto including each and every SCF permit issued thereunder, or to revoke one or more SCF permits, in the event that:

a. Grantee is in violation of any material provision of this article, its license, or a SCF permit, and the violation is not capable of being cured or grantee has not, to the City's satisfaction, refuted or excused the failure to comply or has not complied with the cure provisions set forth hereinabove in subsection (a).

MINUTES OF MARCH 2, 2021

b. Grantee has engaged in an evasion or attempt to evade any material provision of this article, its license, or a SCF permit, and fails or refuses to cure it.

c. Grantee has perpetrated or attempted to perpetrate any fraud or deceit upon the City.

d. There is any material misrepresentation of fact by grantee in any permit application or report filed pursuant to this article.

(2) The City Manager shall have the authority to revoke a SCF license, subject to the right of appeal to the City Council provided that the grantee files a written notice of appeal with the City Manager within 30 days of the revocation. The City Council shall have the authority to revoke a license, which includes all SCF permits issued thereunder. Prior to revoking the license, the City Council shall schedule a hearing on the matter and grantee shall be given at least 30 days' advance notice of the date and time for the hearing and the grounds for revocation of the license. At such hearing, grantee shall have the right to be heard on the matter and may present evidence on its behalf, including proof refuting or excusing the violation.

(3) Within 30 days of the conclusion of the hearing, the City Council may adopt a resolution revoking the license or upholding the revocation of a license, where it finds that there is a basis to do so and grantee shall, thereafter, be notified in writing of the council's decision.

(c) Stop work order.

(1) The City Manager may, at any time and from time to time, issue a stop work order for construction of all or any portion of the facilities or a support structure when the City Manager determines, in his/her sole discretion: (1) that, subject to the cure provisions in subsection (a) of this section, the activity is being performed contrary to the provisions of the SCF permit issued for the site; or (2) that the activity has caused, or is likely to cause, a situation to exist that poses or would pose a clear and immediate danger: (i) to life or health, (ii) of a significant loss of property or services, or (iii) of significant damage to or destruction of the rights-of-way (there is no opportunity to cure in this instance). The order may be issued, at the City Manager's option, on site or to the provider's technical contact person. The City Manager will lift any such stop work order as soon as possible after he/she determines that the situation giving rise thereto no longer exists.

(2) It shall be a violation of this article for a provider, or those persons working on its behalf, to disobey a stop work order. Each day that the violation continues constitutes a separate offense, and is subject to the fines in Section 1-31, and 1-32, Schedule of Fines.

(d) Violation by wireless provider. Subject to the cure provisions set forth in subsection (a) of this section, it shall be a violation of this article for a wireless provider to fail to comply with this article and any terms or conditions of its license or a SCF permit. The penalty provisions of section 1-31 and 1-32 of this Code apply. Each day that the violation continues, after the applicable cure period, if any, constitutes a separate offense.

(e) Unauthorized facilities or support structure.

(1) It shall be a violation of this article for any person, its contractor, servant, agent, or employee, to construct, operate, or maintain, a small cell facility or support structure in the rights-of-way without having obtained a license from the City and a SCF permit for the particular location from the City Manager. The penalty provisions of section 1-31 and 1-32 of this Code apply. Each day a violation continues is a separate offense.

(2) In addition to prosecution of the violation in accordance with subsection (1) above, a wireless provider who has failed to obtain a SCF permit for a particular location shall pay an additional administrative fee of \$500.00 per month for each such location that does not have a SCF permit.

(f) The remedies and penalties set forth herein are nonexclusive and the exercise of one or more of such remedies or penalties shall not preclude the exercise of another.

MINUTES OF MARCH 2, 2021

(g) In addition to the other remedies previously set forth herein, the City may take all necessary civil action to enforce the provisions hereof and may seek appropriate legal or equitable remedies or relief, including injunctive relief. The remedies set forth in this section are in addition to and cumulative of all other remedies provided by law.

ARTICLE THREE:

No other portion of the Mobile City Code, Chapter 57, Streets and Sidewalks, Article VIII, Right-of-Way Construction and Administration, nor any other portion of said Chapter 57, shall be affected by this amendment.

ARTICLE FOUR:

Publication. A copy of this ordinance shall be published pursuant and according to law, after its adoption.

ARTICLE FIVE:

Repealer. All laws and all parts of laws in conflict with these provisions are hereby repealed. All other portions of said Chapter 57, including those portions of Article VIII not hereby expressly amended, shall continue in full force and effect.

ARTICLE SIX:

Severability. If any section, sentence, paragraph, clause, phrase or word of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holding of invalidity shall not affect the remaining portions of this ordinance, and it shall be construed to have been the intent of the City Council of Mobile to pass this ordinance without such unconstitutional, invalid, or inoperative part therein, and the remainder of this ordinance shall be deemed and held to be valid as if such parts had not been included therein.

ARTICLE SEVEN:

Separation Clause. If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Code. The City Council of the City of Mobile hereby declares that it would have passed this Code and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences or phrases be declared unconstitutional.

ARTICLE EIGHT:

Effect of Ordinance. This ordinance shall be effective following its adoption and publication as required by law. This Ordinance shall be in full force and effect within the City of Mobile and its police jurisdiction following said date.

The ordinance was read by the City Clerk; whereupon Councilmember Daves moved that the ordinance be adopted, which was seconded by Councilmember Gregory.

Councilmember Daves moved to amend the ordinance as follows:

AN ORDINANCE TO AMEND CHAPTER 57 ARTICLE VIII OF THE CITY CODE AND TO ADD A NEW ARTICLE IX, SMALL CELL FACILITIES ON PUBLIC RIGHTS-OF-WAY

WHEREAS, pursuant to Ordinance 57-026-2017, adopted 12-12-17, the City Council of the City of Mobile adopted an amendment to Chapter 57, Article VIII, to address the permitting of small wireless facilities and poles in the City rights of way; and,

WHEREAS, said Ordinance 57-026-2017 is codified in Sections 57-231 through 236, Appendix A and Appendix B, of the Code of the City of Mobile, Alabama 1991 ("Code"); and,

MINUTES OF MARCH 2, 2021

WHEREAS, subsequent to the adoption of that ordinance, federal law changed, and the City Council desires to repeal certain provisions adopted in 2017 and substitute therefore a new Chapter 57, Article IX to be in compliance with applicable federal laws, orders and regulations relating to the permitting of small wireless facilities in public rights-of-way; and,

NOW. THEREFORE. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, as follows:

ARTICLE 1. Chapter 57, Article VIII, is hereby amended to repeal the following provisions:

A. Section 57-232. - "Definitions" Is amended to delete the following definitions as they appear unnumbered therein:

I. "Transmission Equipment"

II. "Wireless Communications Services"

III. "Wireless Facilities"

B. Section 57-234. - Right-of-Way Permits Is amended to delete subsection (e) in its entirety.

C. Section 57-236. - Wireless facilities findings and requirements Is deleted In Its entirety.

D. Appendix A. Schedule of Fees Is amended to delete the following Items:

Non-refundable application fee per each. Major Project (up to 20 antennas can be applied for under one major project)	\$500.00 each
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Non-refundable application fee per each Minor Project	\$250.00 each
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Non-refundable, additional application fee, per each antenna Over the 20 antennae contained In Major Project application	\$ 25.00 each
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E. Appendix B is amended to delete Section 1.3 in its entirety.

ARTICLE 2. A new Chapter 57, Article IX, Small Cell Facilities on Public Rights-of-Way is adopted as follows:

CHAPTERS/

ARTICLE IX.

SMALL CELL FACILITIES ON PUBLIC RIGHTS-OF-WAY

Section 1. Purpose and scope.

(a) The purpose of this article is to amend and modify the current City of Mobile ordinance relating to the permitting of small wireless facilities and poles in the rights of way In order to be in compliance with applicable federal laws, orders and regulations relating to the permitting of small wireless facilities in public rights of way and, in particular, with Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv., 33 FCC Red. 9088 (2018), review granted in part and vacated in part sub nom. City of Portland v. United States, 969 F.3d 1020 (9th Cir. 2020), reh'g en banc denied, No. 18-72689 (9th Cir. Oct. 22, 2020), from which the deadline for filing a petition for certiorari with the Unites States Supreme Court has not yet expired.

(b) Adopted under the powers and authorities of the City, including its police powers, this Article is intended to:

MINUTES OF MARCH 2, 2021

- (1) Prevent interference with the use of streets, sidewalks, alleys, parkways, and other public ways and places by pedestrians, vehicular traffic, and utilities;
- (2) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (3) Prevent interference with the facilities and operations of facilities lawfully located in rights-of-way, or installed on public infrastructure;
- (4) Protect against environmental damage, including damage to trees;
- (5) Preserve the character of areas with existing or proposed decorative poles, and to support Citywide street beautification initiatives; and
- (6) Facilitate the deployment of small cell facilities to provide the benefits of wireless services to City residents and businesses.
- (7) Protect other important City interest, including the public health, safety, aesthetics and local property values while establishing an orderly process for siting small cell wireless facilities in the right-of-way.
- (8) It is not the purpose or intent of this article to: prohibit or have the effect of prohibiting wireless communication services; unreasonably discriminate among providers of functionally equivalent wireless communication services; regulate the placement, construction or modification of small cell facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the wireless communications facility does or will comply with applicable FCC regulations; or prohibit or effectively prohibit collocations or modification that the City must approve under state or federal law.

Section 2. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Abandon, including its derivations, means that, following the placement of small cell facilities or support structures in the City pursuant to a SCF permit issued to a grantee, any of the following has occurred: (1) for any reason the small cell facilities or support structure ceases to be used to transmit signals, data or messages or otherwise be used for their intended purposes for a period of 180 days without the grantee otherwise notifying the City and obtaining City approval; (2) the City revokes the SCF permit for placement and use of those facilities or the support structure due to nonpayment of applicable fees, the failure of the grantee to comply with conditions in the SCF permit or the requirements of this article or other City law, or other valid reason; or (3) the grantee fails to perform any of its responsibilities, obligations and requirements in this article, any franchise, use agreement, license, or SCF permit that relates to the installation, construction, maintenance, use or operation of the small cell facilities or support structures, and that breach remains uncured for the applicable cure period.

Accessory equipment or equipment means any equipment, other than an antenna, that is used in conjunction with a small cell facility. This equipment must be attached to or in the immediate vicinity of a small cell support structure, and includes cabinets, optical converters, power amplifiers, radios, DWDM and CWDM multiplexers, radio units, fiber optic and coaxial cables, wires, meters, pedestals, power switches, and related equipment.

Affiliate or affiliated person means any person, directly or indirectly, controlling, controlled by, or under common control with a grantee or applicant; provided, however, that affiliate shall not include any limited partner or shareholder holding an interest of less than 16 percent of grantee or applicant, or any creditor of a grantee or applicant solely by virtue of its status as a creditor and which is not otherwise an affiliate by reason of owning a

MINUTES OF MARCH 2, 2021

controlling interest in, being owned by, or being under common ownership, common management, or common control with, a grantee or applicant.

Annual license fee means the rental amount and annual fee pursuant to this article.

Antenna means communications equipment that transmits or receives electromagnetic radio signals, electromagnetic waves, radio or other wireless signals used in the provision of wireless communication services, is attached to a small cell support structure and is used to communicate wireless service. The use of the term 'antenna' shall also refer to the antenna concealment enclosure when such concealment enclosure is required by this article or the applicable design standards. A concealment element otherwise will not count against the volumetric cap for an antenna when determining if a facility qualifies as a "small cell facility" under this article.

Applicable codes mean the duly adopted technical codes of the City, including the building, fire, electrical, plumbing, or mechanical codes, which are adopted by reference from the codes of a national code organization, including any local amendments made thereto at any time and from time to time, or codes that are otherwise applicable in the City. The term includes the regulations of the FCC and the Occupational Safety and Health Administration, as well as any local standards or regulations governing the use of rights-of-way, including article 2 of this article.

Applicable law means any or all federal, state, or City statutes, ordinances, rules, regulations, standards, and other laws, that are now existing or hereafter adopted, as such laws are amended or as they may be from time to time amended or superseded, which apply to an applicant's or grantee's communications services, its facilities, or the matters covered by this article, including City laws. Where reference is made to a specified law, including a specified City law, the United States Code, and the Code of Federal Regulations, it shall mean and include such laws as amended or as may be from time to time amended or superseded.

Applicant means a wireless provider that has applied for a license or SCF permit pursuant to this article, and upon issuance of the license or SCF permit, the term shall include those wireless providers that have been issued same.

Application means an application for a license or SCF permit issued under this article.

Application fee means a SCF permit application fee assessed pursuant to this article for the City's review of a small cell site application.

City means the City of Mobile, Alabama.

City laws mean the duly adopted laws and legislation of the City Including the Code of Ordinances of the City and any codes, regulations, standards, or specifications adopted by reference; and shall also include the subarticle regulations and any other such rules or regulations that departments, agencies, commissions, boards, or bureaus of the City are authorized to establish; all of which are as amended or as may from time to time be amended or superseded.

City Manager is the City representative delegated responsibility for management of the right-of-way.

City-owned pole means (i) a pole owned by the City in the right-of-way that provides street lighting functions, including light poles, (ii) traffic signal poles and stanchions owned by the City, and (iii) a pole or similar structure owned or operated by the City in the right-of-way that supports only wireless facilities. Notwithstanding the foregoing, the term does not include the utility facilities owned by public utilities.

City-owned structure means any facility, structure or infrastructure located in the rights-of-way to which the City holds title, including City-owned poles, towers, and communications infrastructure.

MINUTES OF MARCH 2, 2021

City-owned support structure means a City-owned pole or City-owned structure that is available or approved for collocation or attachment of a small cell facility. Collocate, or its derivations, means to place or install a small cell facility on an existing support structure that is owned, controlled, or leased by a utility, the City, or other person or entity, including applicant; or the modification or replacement of such a structure for the purpose of such placement or installation.

Distributed antenna system or DAS means a network or facility that distributes radio frequency signals to provide wireless services and consisting of: (1) remote antenna nodes deployed throughout a desired coverage area; (2) a high-capacity signal transport medium connected to a central hub site; and, (3) equipment located at the hub site to process or control the radio frequency signals through the antennas and meets the height and size characteristics of a small cell facility.

Emergency means a condition that (1) constitutes an immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause substantial damage to the right-of-way or to facilities in the right-of-way, or adjacent thereto.

FCC means the Federal Communications Commission of the United States or any successor agency.

City Manager means the person authorized, assigned, or delegated the responsibility to administer and enforce this article on behalf of the City, and that person's designee.

Grantee means an applicant that is granted a license under this article.

Historic District- geographically definable area designated by the City Council as a historic district, including properties along Government Street from Water Street to the intersection of Government Street and Dauphin Island Parkway, and the Downtown Development District (bounded by Canal Street, Broad Street, Beauregard Street, and Water Street).

Include, or its derivations, does not limit a term to its specified example.

Install, or its derivations, means to install, construct, place, locate, collocate, relocate, replace, or modify a small cell facility or support structure in the rights-of-way.

License means the franchise or authorization granted by the City to an applicant pursuant to this article allowing applicant to install and operate small cell facilities or support structures in the rights-of-way. The term does not include a business license issued by the City to conduct business in the City.

Make-ready work means work that an authority reasonably determines to be required to accommodate a wireless provider's installation on a City-owned support structure under this article and to comply with all applicable standards. The work may include repair, rearrangement, replacement and construction of poles; inspections; engineering work and certification; permitting work; tree trimming (other than tree trimming performed for normal maintenance purposes); site preparation; and electrical power configuration. The term does not include a wireless provider's routine maintenance.

Private property means real property located in the City that does not lie within the right-of-way, including such appurtenances or easements attached to or associated with such property, and that is not owned by the "City, state, or other public body.

Replacement means installing a new small cell support structure of comparable or smaller proportions and of comparable or shorter height to a preexisting small cell support structure in order to accommodate collocation of small cell facilities, and the associated removal of the preexisting small cell facilities or support structure. To qualify as a replacement, the replacement support structure must be installed no more than five feet of the location of the existing support structure that it will replace.

Rights-of-way means the surface of and the space on, above, and below any public street, public road, public highway, public freeway, public lane, public way, public alley, public

MINUTES OF MARCH 2, 2021

sidewalk, public boulevard, public parkway, public drive, public right-of-way, or public utility easement immediately adjacent to and parallel with any such street, road, highway, lane, alley, or sidewalk (to the extent of the City's interest or authority), now or hereafter held by the City which shall, within its proper use and meaning, entitle grantee to the use thereof for the purpose of installing and operating its facilities and providing its wireless communications services. This term shall not include any state or federal rights-of-way or any property owned or controlled by any person other than the City, except as provided by applicable law or pursuant to an agreement between the City and any such governmental entity or person. The term shall also not include property, such as City parks, City buildings, City property, public works facilities, or public utility facilities owned or leased by the City that is not used or is not typically used as rights-of-way for vehicular or pedestrian transport or the installation of utility distribution facilities.

Separate property means real property, whether private property or property publicly owned or controlled, that does not lie in the rights-of-way.

SCF permit means a permit issued by the City Manager to a granted small cell wireless facility in the City right-of-way in accordance with this article.

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

Small cell support structure or support structure means a freestanding structure designed or used to support, or capable of supporting, small cell facilities. The term includes utility poles, street light poles, and similar structures, which are located solely in the rights-of-way. The term does not include the City owned poles or City-owned structures that are not available or approved for collocation or attachment of a small cell facility.

Stealth technology or stealth means a method of concealing or minimizing the visual impact of a small cell facility and support structure by incorporating features or design elements which either totally or partially conceal such small cell facilities. All wiring associated with the small cell facilities shall be shrouded or concealed in shrouding on the facility. The use of these design elements is intended to produce the result of having such facilities blend into the surrounding environment or disguise, shield, hide or create the appearance that the small cell facilities are an architectural component of the support structure.

Technically feasible means that by virtue of engineering or spectrum usage the proposed placement for a small cell facility, or its design, concealment measure, or site location can be implemented without a material reduction in the functionality of the small cell facility.

Transmission media refers to the point within a small cell facility or its support structure at which radio waves are guided along a physical path; examples of guided media include twisted pair cables,

MINUTES OF MARCH 2, 2021

coaxial cables, and optical fibers, all of which shall be shrouded or concealed within the facility or support structure.

Utility pole means a pole or similar structure located in the right-of-way that is used in whole or in part to provide landline telecommunications services or for electric distribution or a similar utility function. The term does not include such a pole or similar structure 15 feet in height or less unless the City has granted a waiver to permit its use for small cell facilities.

Wireless communications services or wireless services mean communications services made available to subscribers through wireless facilities, including any FCC licensed or unlicensed radio communications services, whether used for transmission or reception of voice, video, or data, including, wireless fidelity ("WiFi") and personal wireless services as defined by the Communications Act. Which includes FCC licensed commercial wireless telecommunications services, including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and similar services that currently exist or that may in the future be developed. The term does not include broadcast radio or television services, private business radio services, or amateur radio services.

Wireless facilities mean equipment at fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, DAS, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term does not include: (1) the structure or Improvements on, under, within, or adjacent to the structure on which the equipment is collocated; (2) wireline backhaul facilities; or (3) coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider means any person, including a person authorized to provide telecommunications service in the state, that builds or installs small cell facilities or support structures, but that is not a wireless services provider.

Wireless provider means a wireless Infrastructure provider or a wireless service provider. "Wireless provider" does not include utility companies that provide gas, electricity, water, or sewer services that install wireless facilities that are used exclusively for internal utility company communications related to the provision of utility services, such as (a) advanced metering infrastructure (also known as "smart metering" systems), (b) monitoring the security of utility sites and network systems, or (c) monitoring network usage, capacity, or performance. However, if a utility company or any of its affiliates use any such facility to provide services within the definition of "wireless communications services," or if a utility company or any of its affiliates engages in activities that would make it a "wireless infrastructure provider," then it shall be considered a "wireless provider" to the extent of its provision of such services or engagement in such activities.

Wireless service provider means a person 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.

Section 3. Grant of authority; license.

(a) (1) Grant. Upon application by a wireless provider on forms provided by the City, the City may grant a non-exclusive franchise or license to construct, maintain, and operate small cell facilities or support structures in the rights-of-way in accordance with and subject to the provisions of this article, applicable law, and any acceptable additional terms as negotiated by the City or permitted by applicable law. The grant of a non-exclusive franchise or is subject to approval by the City Council. Approval of installation of facilities at specific locations or on specific support structures will be administered through the SCF permit process set forth in this section.

(2) Each license shall contain the following certifications by the grantee:

MINUTES OF MARCH 2, 2021

a. Grantee is a _____, duly organized, validly existing, and in good standing under the laws of the State of _____, is qualified to do business under the laws of the State of Alabama, and has the power and authority to own its properties, to carry on its business as now being conducted, to execute and deliver the acceptance of this license, to carry out the transactions contemplated hereby, and to perform and carry out all obligations on its part to be performed under and pursuant to this license.

b. Grantee, as of the date of the grant of the license, has adequate financial resources to install the small cell facilities or support structures in accordance with the provisions of chapter 57, article VIII, of the City Code, and knows of no technical or legal impediment which would prevent it from performing as contemplated in said article.

c. Grantee is not prohibited by any agreement or applicable law from executing and accepting a license.

d. All corporate actions and consents required on grantee's part to execute and deliver the acceptance of the license have been completed.

The foregoing certifications are material to the grant of the license. A breach of any of the certifications above shall constitute a non-curable default under the license, and shall entitle the City to immediately revoke the license for cause. A breach of the certification contained in subsection d. shall constitute a curable default under the license, wherein following written notice, grantee will have reasonable time to cure such default.

(3) Nonexclusive. Grantee's use of the rights-of-way pursuant to this article shall be nonexclusive. The City specifically reserves the right to grant, at any time and from time to time, such additional franchises, licenses, use agreements or other rights to use the rights-of-way for any purpose as determined by the City, and to any other person, including itself, as it deems appropriate, subject to applicable law.

(4) No title. The grant of a license shall not convey title, equitable or legal, in the rights-of-way, and the rights granted by the license do not excuse the grantee from obtaining appropriate access or attachment agreements before locating its facilities on any support structures or City support structures in the rights-of-way.

(b) Term of license.

(1) Term. Subject to termination or revocation in accordance with this article, the license granted pursuant to subsection (a) shall be valid for a period of five years from its effective date and shall be subject to renewal as provided in this subsection. Upon a grantee's written certification to the City Manager within 30 days of the expiration of the license that grantee remains in compliance with the provisions of this article, including its license and each SCF permit, then the license will be automatically renewed for an additional five year term without further action required by the City.

(2) Operation after termination; holding over. Notwithstanding anything to the contrary contained in this article, in the event a grantee, at the sufferance of the City, holds over beyond the term of its license and continues to operate all or any part of its small cell facilities, provide all or any of its wireless communications services, or otherwise exercise all or any of the rights granted under the license, after the term of the license, then grantee shall continue to comply with and be subject to all applicable provisions of this article, including all fee and other payment provisions, throughout the period of such holding over, provided that any such holding over shall in no way be construed as a renewal or other extension of the license. In the event the term of a license has expired and the parties are in the process of re-negotiating, applying for, or processing an application for a renewal of the license or a new license, or as they may otherwise agree, the license shall continue on a month-to-month basis, unless either party gives 30-days' advance written notice to the other that they desire to terminate the lease.

(c) Franchise or use agreements for other uses of rights-of-way.

MINUTES OF MARCH 2, 2021

(1) The license granted pursuant to this article only relates to, and only grants a grantee authority with respect to, the placement of small cell facilities on or in the immediate vicinity of support structures, including fiber optic cable for up to 10 feet on either side of the support structure, that are located or proposed to be located in the rights-of-way. No provision in this article is intended to permit, regulate or authorize the placement by a grantee or applicant of wire or fiber optic lines, coaxial cable, switches, pedestals or networking equipment of any type that is used to transport communication signals, data or messages between support structures or between any other points in the rights-of-way. In the event a grantee or applicant desires to place communications equipment or other facilities along the rights-of-way of a kind not authorized by the license, it will need to obtain a separate franchise or similar authorization from the City that would authorize, govern and apply to the construction of other kinds of facilities or use of other locations on or along the rights-of-way.

(2) If a grantee or applicant desires to use any of its small cell facilities for the purpose of providing any services other than the provision of telecommunications or information service, such as cable service, other subscription multichannel video programming services, utility, or other nonutility services to existing or potential subscribers or resellers, or by providing any other use of small cell facilities to existing or potential consumers, an applicant shall seek such additional and separate franchise, use agreement or authorization from the City and other authority as may be required by applicable law.

(d) Only small cell facilities allowed. No wireless facilities, other than small cell facilities or small cell support structures, shall be allowed or permitted in the rights-of-way.

(e) Compliance with law. A grantee shall at all times comply with and abide by all applicable laws.

(f) Records and reports. Grantee shall cooperate with the City with respect to the administration of this article and to this end, shall furnish or make available to the City upon request, at no cost to the City, such records, reports, and other information reasonably necessary, as determined by the City, for the administration and enforcement of this article and in such form and manner as prescribed by the City.

(g) Revocation. The City may revoke a license in accordance with this article.

Section 4. Notice of transfer, sale or assignment.

(a) Notice of transfer. A grantee shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, its facilities in the rights-of-way without providing the City with prior written notice: (1) identifying, the person (hereinafter referred to in this section as "successor in interest") that will acquire control of the grantee, or the facilities; (2) a summary of the proposed transaction; and (3) a statement from a person with authority to bind the successor in interest certifying under penalty of perjury that the successor in interest agrees to and accepts, and is able to meet the terms and conditions of, this article.

(b) Notice of consummation. Within 45 days after the closing of the transaction, or such additional time as the City Manager may allow, grantee's successor in interest shall submit to the City: (i) a written certification, executed by an authorized representative of the successor in interest, certifying under penalty of perjury that (1) the successor in interest accepts and agrees to be bound by, and to assume all liabilities and obligations of its predecessor under this article, and (2) all required licenses, consents, certificates of public convenience and necessity, or other governmental authorizations issued by the FCC, the Alabama Public Service Commission or any other agency with jurisdiction over the successor in interest's acquisition of an interest in the grantee's facilities have been obtained; (ii) proof of insurance and the posting of any required security in accordance with this article; and (iii) the names and addresses of those persons to whom notice should be sent in accordance with this section. In the event the applicant/licensee has outstanding compensation, other payments or other liabilities due to the City that have not been paid or satisfied prior to close of the transaction, both the grantee and its successor in interest shall be jointly and severally liable to the City for same. The post-transaction notice

MINUTES OF MARCH 2, 2021

requirements of this subsection (b) shall also apply to transfers or mergers with an affiliated person.

Section 5. SCF permits when required.

(a) Requirement.

(1) Pre-application review. Prior to the submission of an application, the applicant is encouraged to have a voluntary pre-application meeting with the City Manager to review preliminary documents and graphic exhibits of the proposed facilities or support structure and discuss the application, location, and design requirements for the proposed facilities. The primary purposes of the review are to streamline application processing and reduce site plan and design revisions, as well as the multiple reviews associated therewith. If an applicant utilizes the pre-application review process the applicable timeline for application review will not begin until an application is submitted after the preapplication review period.

(2) A SCF permit application must be submitted for each small cell facility or new support structure on a form, paper or electronic, provided by the City. If the applicant has a good faith belief that any information submitted is proprietary or confidential, then the applicant must so mark each page prior to submittal. An application packet will be maintained by the City Manager.

(3) When SCF permit not required. Subject to Article VIII of Chapter 57 concerning right-of-way construction, a SCF permit and the one-time application fee shall not be required for small cell facilities and support structures previously awarded a SCF permit in the following instances:

(a) For routine maintenance or repairs.

(b) For replacements or modifications that do not appreciably change position, characteristic, size, or appearance of the existing facility, unless such change would violate a provision of this article, the license, or the SCF permit.

(c) Emergency. Where a facility has been installed without a SCF permit due to an emergency, a SCF permit shall be required after-the-fact within ten days if a SCF permit would have originally been required to perform the work undertaken in the right-of-way in connection with the emergency. Once the emergency is abated, the small cell facilities in question must be removed unless SCF permitted without the emergency as a basis for the SCF permit.

(d) Inspection and Notice of Completion. In addition to any inspections that may be required in connection with building and electrical permitting, the City reserves the right to inspect all small cell facility or support structure work to ensure compliance with this article, including applicable SCF permits. Upon completion of a facility or support structure installation, the applicant or grantee shall provide a written notice and certification of compliance, as required by the City Manager, that the facilities or support structure were constructed in accordance with the approved specifications. No operation at the facility shall occur unless the City Manager, should he elect to do so, has conducted a final inspection and issued a certificate of completion, provided that if the City Manager elects not to inspect the site, the certificate of completion will be deemed issued within 14 days of the applicant's submission of its notice and certification of compliance, or upon any required final Inspections and approvals required under applicable building and electrical permitting, whichever is later.

Section 6. Fees - Applications for SCF permits and Annual License Fees.

(a) One-time application fees. Unless otherwise provided by law, all applications for SCF permits pursuant to this article shall be accompanied by a nonrefundable fee for actual, direct, and reasonable costs incurred by the City to process and review the application, in the following amounts:

MINUTES OF MARCH 2, 2021

(1) \$500.00 for an application seeking up to five small cell facilities attached to existing support structures, with an additional \$100.00 for each attached small cell facility in excess of five; or

(2) \$1,000.00 for an application to install a new pole or other support structure (i.e., not a collocation) intended to support one or more small wireless facilities.

(b) Annual license fee.

(1) As compensation for the installation of its facilities and support structures in the rights-of-way, a grantee shall pay in advance an annual license fee of \$270 per facility, new pole or other support structure, provided only one annual license fee of \$270 will be charged at a single small cell facility site.

(2) Notwithstanding the foregoing, the City may increase the amount of the foregoing annual license fee as long as the increased fee is either:

a. (i) a reasonable approximation of the City's objectively reasonable costs associated with or allocable to applicant's use and occupancy of the rights-of-way, and (ii) no higher than the fees charged to similarly situated competitors for their installation of similar communications facilities in the rights-of-way; or.

b. otherwise consistent with applicable law.

(3) License fee computation and payment; report.

a. The license fee (or contingent license fee, as applicable) shall be due the January 1st following issuance of an SCF permit and last payable without penalty on January 30th.

b. The license fee shall be due and paid annually thereafter no later than January 30 for each succeeding year. Each annual license fee payment shall be accompanied by a report, certified as true and accurate by an officer of applicant, setting forth the basis for the computation of that year's annual license fee and listing the location of each of applicant's facilities and support structures in the rights-of-way during the preceding calendar year.

(4) Inspection and audit; verification.

a. Subject to subsection (4)b. below, the City shall have the right to inspect and audit, upon reasonable written notice and no more frequently than every year, at grantee's offices where such records are located, all business records relevant to calculating the license fee in the form and manner as reasonably prescribed by the City to verify compliance with the license fee or other payment requirements of this article.

b. Should grantee's business records be located in another City or state, applicant shall, upon the written request of the City, make such records or information available to the City at a convenient location in the City within a time agreed to by the City and the grantee. The City and grantee shall each pay its own costs and expenses incurred in connection with any such audit, except in the event there is an underpayment of five percent or more of the amount that was due and payable to the City, in which case, in addition to making full payment of the relevant obligation, grantee will promptly pay to the City the actual costs and expenses incurred by the City associated with the audit, including attorneys' fees and the professional services of the auditor to perform the audit; provided, however, grantee's obligations to pay such costs and expenses shall be capped at \$15,000.00 for any one audit. The City may not retain any person or entity to perform the audit whose compensation for performing the audit is dependent in any manner upon the outcome of any such audit, including the audit findings, the recovery of fees, or the recovery of any other payments.

c. Any additional amount due to the City as a result of the audit, including any applicable interest, shall be paid by grantee within 30 days after grantee receives a written notice

MINUTES OF MARCH 2, 2021

from the City accompanied by a copy of the audit report and any other supporting document necessary to determine the alleged amount due is correct.

(5) Final payment. In the event grantee quits its operations or facilities within the City, whether by transfer or otherwise, it shall make a final payment of any amounts owed to the City within 90 calendar days thereof, and shall provide a report for the calendar year through the date of cessation of the operations or facilities, which report shall contain the information and certification required.

(6) Evasion of license fee prohibited. Any transactions which have the effect of circumventing grantee's payment of the license fee, including evasion of payment of the license fee by nonreporting of facilities, or grantee constructed or owned support structures, or by granting title to the facilities or support structures to any entity other than grantee, or any other means which evade the City's collection of license fee revenues, are prohibited. For a violation of this section, the City may, in addition to other remedies it may have under this article or applicable law, require the grantee to remove, at its sole expense and risk, any non-reported facility or support structure and pay a penalty of three times the annual license fee that would be due, without any proration. The removal of the non-reported facility or support structure shall be subject to the removal, repair and restoration requirements contained in this article, including article 3 which is incorporated herein by reference.

(7) Affiliate facilities. Facilities or support structures owned by any affiliate of grantee shall be included in the calculation of the license fee unless a fee is paid to the City by such affiliate for the use contemplated by this article.

(8) No waiver of City rights. No acceptance of any payment by the City shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this article. All amounts paid shall be subject to audit and re-computation by the City in compliance with this article.

(9) Application of interest. In the event any payment is not made on the due date, interest on the amount due shall accrue from such date at the annual rate comparable to the then-current rate used by City for late payment of delinquent taxes.

(10) City office for payment. Unless the City permits electronic payments or provides another payment method, all remittances for the monies due according to the terms of this article are to be made payable to the City and mailed or delivered to the address provided by the City Manager. Such remittances shall clearly identify or reference the applicant and its license.

(11) Removal fee may be applicable. A fee for removal of small cell facilities or grantee's support structure may be applicable and is hereby authorized as necessary unless the removal does not hinder vehicular or pedestrian traffic or an ongoing City project or improvement, and the City incurs no additional cost to ensure safe removal.

(12) Additional cost for make-ready work for attachment. Grantee may be required to bear additional costs for any necessary make-ready work estimate or construction for attachment to City-owned support structures.

(13) Escalation of fees. Notwithstanding anything to the contrary contained in this section, the fees required under subsections (a) and (b) of this section may be adjusted (1) to recover a reasonable approximation of the City's actual and reasonable costs in administering and overseeing the small cell facilities and support structures installed pursuant to this article, or (2) as otherwise permitted, or not prohibited, by applicable laws.

Section 7. Application requirements.

(a) Application requirements. A SCF permit application filed pursuant to this article shall be made by the wireless provider or its duly authorized representative and shall contain the following:

MINUTES OF MARCH 2, 2021

- (1) The applicant's name, address, telephone number, and e-mail address;
 - (2) The names, addresses, telephone numbers, and e-mail addresses of all duly authorized representatives and consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
 - (3) The most adjacent address and geographic coordinates (GPS) accurate to six (6) decimal places of the proposed small cell facility;
 - (4) A technical description of the proposed small cell facility including detailed diagrams with dimensions, volumes, materials, finishing, color, etc. and photo-simulations accurately depicting the antenna facility and associated pole(s), if applicable. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed;
 - (5) Site and elevation plans drawn to scale prepared and stamped by a professional engineer licensed in the State of Alabama identifying the proposed small cell facility, including the number, size, type of the antenna facilities and associated pole(s), conduit, cables, electrical power source, meter and disconnect, proximity to the other small cell facilities in the area, and surface and underground infrastructure existing and proposed;
 - (6) Structural plans and calculations for the pole and associated foundation prepared and stamped by a professional engineer licensed in the State of Alabama meeting all Applicable Codes including specifications on the loading, material strengths, height, depth, diameter, reinforcement;
 - (7) A certification from a licensed engineer that the small cell facility and any support structure will comply with all applicable codes and FCC rules and regulations;
 - (8) Letters of authorization; certification that applicant is a licensed wireless provider under this article authorized to construct, maintain and operate small cell facilities or support structures in the City's rights-of-way.
 - (9) A declaration signed by an authorized representative of the applicant stating that the information in the application is true and accurate and that the small cell facility and (if applicable) associated pole(s) will be built and/or erected in conformance with the specifications set forth in the application;
 - (10) In the case of a new pole, a statement relating to the new pole's ability to collocate additional small cell facilities;
 - (11) In the case of a new pole, documentation demonstrating collocation does not provide a feasible alternative for the provision of wireless services in the area;
 - (12) In the case of a proposed attachment to a City-owned facility or pole in the City rights-of-way, an executed attachment agreement with the City;
 - (13) In the case of a proposed attachment to an Investor owned pole In the City rights-of-way, an executed attachment agreement or proof thereof with the pole owner; and
 - (14) In the case of ground mounted equipment, a concealment element plan.
- (b) Information updates. Any amendment to information contained in a permit application shall be submitted in writing to the City within 10 days after the change necessitating the amendment. Any amendment that materially changes the scope or nature of the application shall restart the timelines set forth in this article.

Section 8. Effect of SCF permit.

MINUTES OF MARCH 2, 2021

(a) Authority granted; no property right or other interest created. A SCF permit from the City authorizes an applicant to undertake only certain activities in accordance with this article. A SCF permit does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

(b) Duration.

(1) For use in general. No SCF permit issued to conduct construction, installation or other activities in the right-of-way shall be valid for a period greater than 180 days.

(2) Limitations on construction. When the SCF permit application is approved to undertake the activities described in this article, every SCF permit issued shall become invalid unless the work on the site authorized by such SCF permit is completed within 180 days after its issuance, or if the work authorized on the site by such SCF permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The City Manager is authorized to grant, in writing, one additional extension of time, for periods that collectively do not exceed more than 180 days, provided that any extension shall be requested in writing with justifiable cause demonstrated, and further provided that:

a. If no request for extension is received, then the SCF permit will become invalid;

b. If construction has not commenced by the 180th day of SCF permit issuance, then the applicant must re-apply and be subject to the same provisions of this article as if the applicant is applying for the first time; and

c. Nothing in this section shall be construed to give an applicant a period for use of the right-of-way greater than 12 months without applying for a new SCF permit.

(c) No warranties. The City makes no warranties or representations regarding the fitness, suitability, or availability of the City's right-of-way or City-owned support structures. A grantee's or applicant's use of the City's right-of-way or City-owned support structures for installation and operation of small cell facilities or for provision of wireless service is at its sole risk.

(d) Revocation of SCF permits. Revocation of SCF permits shall be governed by this article.

Section 9. Action on SCF permit applications subject to this article.

(a) The City Manager shall review an application for a right-of-way permit subject to this article considering its conformity with applicable provision of this article and shall issue a right-of-way permit on nondiscriminatory terms and conditions subject to the following requirements.

(b) The City may deny an application subject to this article if the proposed small cell facility, new pole, modified pole, or replaced pole:

(1) Interferes with the safe operation of traffic control equipment;

(2) Interferes with sight lines or clear zones for transportation, vehicular traffic, or pedestrians;

(3) Interferes with or fails to comply with the Alabama Department Transportation Utility Manual, as it may be applicable and amended;

(4) Fails to comply with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;

(5) Fails to comply with American Association of State Highway Transportation Offices (ASHTO) or other applicable codes; or

MINUTES OF MARCH 2, 2021

(6) Fails to comply with the provisions of this article, including but not limited to the requirements for the grant of a license or franchise or other applicable law.

(7) Is proposed to be located closer than five feet from the street curb or edge of pavement if no curb is present, unless otherwise approved by the City Manager;

(8) in the case of small cell facilities, being placed on any arms or any horizontal structure used to support or mount traffic control signals or other traffic control devices;

(9) In the case of small cell facilities, interfering with electrical lines, cable lines, or their associated equipment, in that small cell facilities must be placed at least ten feet away from energized electrical distribution lines, unless otherwise approved by the electric utility;

(10) In the case of small cell facilities, being hung from energized electrical lines; or

(11) In the case of small cell facilities, being mounted on abandoned poles or poles to be removed in conjunction with the undergrounding of electrical utilities in a particular area.

Section 10. Application review; decisions; timeframes.

(a) Standards for review. Review of applications shall be in light of its conformity with applicable provisions of this article and the licenses issued hereunder, and shall be issued on a nondiscriminatory basis.

(b) Review for completeness; notice of deficiency. In the case of a small cell facility application, the City Manager will, within ten days after receiving the application, determine and notify the applicant by electronic mail to the email address provided in the application whether the application is complete. An application shall not be deemed complete until the applicant has submitted all documents, information, forms and fees specifically enumerated in this article that pertain to the location, construction, or configuration of the small cell facilities or support structures at the requested location(s). If an application is deemed materially incomplete, the City must specifically identify (i) the missing documents or information, and (ii) the specific rule, regulation or code provision creating the underlying obligation to provide same. If the applicant makes a supplemental submission to address or provide the missing information or documents identified by the City within 60 days of the notice sent by the City, the City shall have ten days from receipt of such supplemental submission to verify that the application is complete and, if not, notify the applicant in writing that the supplemental submission was not sufficient to render the application complete and specifically identify the missing documents or information that still need to be submitted pursuant to the City's original notice. The additional documents or information provided in the supplemental submission shall be limited to the deficiencies cited in the original notice from the City and no material changes shall be made to the original application other than those necessary to cure any identified deficiencies. If a supplemental submission includes material changes to the proposed small cell facilities identified in the original application, proposes or requests a small cell facility not identified in the original application, or otherwise includes or makes a material change to the original application other than as necessary to cure the deficiencies identified by the City, such supplemental submission shall be deemed a new application. If an applicant fails to submit sufficient documents or information to render the application complete within 60 days of the notice sent by the City, the original notice sent by the City shall serve as written notice of the denial of the application, and the application shall be deemed denied.

(c) Timeline for action on applications. Unless otherwise agreed to by the applicant and the City Manager, the City Manager will approve or deny an application for a SCF permit within the applicable time period set forth in this subsection, plus any tolling period(s) pursuant to subsection (c)(2) below.

(1) General time period for action on application. Subject to the tolling provisions set forth below, the City, by and through the City Manager, will make its final decision to approve or deny the application(s) within the following time periods, unless the City Manager and the applicant agree to toll the applicable deadline:

MINUTES OF MARCH 2, 2021

- a. For an application(s) to collocate a small cell facility on an existing structure, within 60 days of receipt of such application(s); or
- b. For an application(s) to deploy a small cell facility on a new structure, within 90 days of receipt of such application(s): or
- c. For multiple applications or a single, consolidated application for a small cell facility network project which seeks approval of a mix of collocated small cell facilities and new structures (i.e., one or more of the applications is for a new structure), within 90 days of receipt of such applications.

(2) Tolling period. Unless otherwise agreed to in writing by the applicant and the City, the tolling period for an application, if any, shall be as follows:

a. If within ten days of receipt of an application for a SCF permit to install a small cell facility in the right-of-way, the City Manager notifies the applicant that an application is materially incomplete and specifically identifies (i) the missing documents or information and (ii) the specific rule, regulation or code provision creating the obligation to submit same to the City, the time period for action on an application shall reset and not begin until the applicant submits all of the documents and information identified by the City Manager to render the application complete (i.e., the date the applicant submits all of the documents and information identified by the City in the deficiency notice is day zero).

b. For resubmitted applications (or supplemental submissions) following a notice of deficiency from the City pursuant to subsection (c)(2) of this section, the tolling period shall be the number of days from:

(i) The day after the date the City sends written notice to the applicant that the applicant's supplemental submission is not sufficient to render the application complete and specifically identifies the missing documents or information that need to be submitted based on the City's original notice under subsection (c)(2)a. of this section, until

(ii) The date the applicant submits all the documents and information identified by the City to render the application complete, provided that such notice regarding the insufficiency of the supplemental submission is sent by the City to the applicant within ten days following the City's receipt of the supplemental submission in response to the City's original notice under subsection (c)(2)a. of this section.

(3) Final decision. The City Manager will inform the applicant in writing of his/her final decision and, if such final decision is to deny the application, provide the basis for such denial, including identifying the City Code, rule, regulation, or application form provision, or other applicable law on which the denial was based.

(4) Effect of timelines. The City's failure to issue a final decision within the processing timelines set forth shall not constitute, or be construed to constitute, a grant of an applicant's application(s). Upon expiration of these timelines, applicant may pursue whatever remedies are available to it under applicable law.

(d) Batched applications. Applicants or their agents of record may submit applications for multiple facilities or locations with the following conditions:

(1) No single batched submittal shall contain more than ten (10) applications;

(2) There must be a minimum of ten (10) calendar days between submittals of batched applications by the same applicant;

(3) No more than three (3) batched applications per applicant shall be accepted in any thirty-consecutive-day period.

(4) In the interest of time efficiency, the City reserves the right to negotiate the amount of batched applications that may be submitted by an applicant on large scale installations.

MINUTES OF MARCH 2, 2021

The negotiation shall require the parties, the applicant and the City, to agree in writing to the process, time and the costs that will be required for the Initial review of the project.

(e) Burden of Proof. The burden of proof shall at all times be on the applicant to establish compliance with requirement of applicable law.

(f) Appeal of decision by City Manager. Upon denial of its application by the City Manager, the applicant may, at its option, either seek review in a court of competent jurisdiction or file a written appeal to the City Clerk within 15 days for reconsideration by the City Council and placement on the next regularly scheduled agenda of the City Council. If the applicant appeals to the City Council, it may seek review of an adverse council decision in a court of competent jurisdiction.

Section 11. Small Cell Facilities in the Rights-of-Way; Collocation, Design, Concealment, and Aesthetic Requirements

(a) Collocation requirements. Small cell facilities and any new, modified, or replaced pole for the collocation of small cell facilities in the rights-of-way shall meet the following collocation requirements:

(1) Collocation First. Small cell facilities may be installed on new poles only If the applicant demonstrates that (i) no reasonable collocation' opportunities exist in the area where the small cell facility is proposed to be placed; or (ii) attachment to a new structure will achieve a more visually appealing design, demonstrably, more effective service coverage, or some of the public benefit not achieved by collocation. The applicant must support its claim through written evidence including, but not limited to, affidavits, correspondence, engineering report, or other written information that demonstrates that the applicant has taken all commercially reasonable actions to achieve collocation in the requested location that the applicant has pursued but has received no response or has been denied reasonable access to all potential collocation sites in the subject area (and the reasons any such denial(s)), and otherwise show that the applicant is unable to co-locate on an existing support structure. Only entities granted a certificate of convenience and necessity by the state public service commission pursuant to Code of Ala., § 37-4-28 or licensed by the Federal Communications Commission may erect new poles in the City's right-of-way.

(2) New poles; collocation compatible design. New poles approved for the primary purpose of small cell facilities shall be designed to accommodate the collocation of multiple wireless providers' antennas and related equipment to the maximum extent feasible, but no less than one (1) similarly sized small cell facility.

(3) Secondary use. Where small cell facilities are collocated on existing poles, use of a pole for small cell facilities shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small cell facility becomes unnecessary, obsolete, and/or no longer in use, the pole shall not be retained for the sole purpose of accommodating the small cell facility and the small cell facility, all associated equipment, and the pole shall be removed promptly unless a SCF permit is obtained approving a new pole for the primary purpose of small cell facilities.

(4) Collocation on City street light poles or City traffic signal poles; additional requirements.

a. Small cell facilities are not permitted on traffic signal poles unless the applicant can demonstrate that denial of the SCF permit will effectively prohibit the provision of telecommunications service or personal wireless service in violation of any applicable law.

b. Before collocating on existing street light poles, the applicant must show structural evidence that the current pole and foundation design can meet current AASHTO design standards for wind loads with the addition of the small cell equipment.

c. if poles cannot meet AASHTO requirements for wind loads with the addition of the small cell equipment, the applicant has the option of replacing the current pole with a new pole capable of supporting the existing and proposed additions. Luminaires on new poles must

MINUTES OF MARCH 2, 2021

maintain the same height as that replaced and/or adjacent luminaires and be of the same design as the existing luminaires.

d. The antenna shall be attached to the top of pole only. No mountings are allowed on the luminaire mast arms.

e. Accessory equipment shall not be mounted on the pole. Accessory equipment shall be located either within or as an extension of the pole, within an underground vault, or within an enclosure/cabinet adjacent to the pole camouflaged to appear as a public amenity as shown on the concealment element plan.

f. The pole design must be capable of accommodating a street light arm even if one is not installed initially.

g. The application must provide analysis that the proposed small cell facility will not cause any interference with the City traffic signal systems, emergency signal control devices, other smart City applications, other signal communication components, or any other unforeseen interferences.

h. Small cell facilities shall have their own power supply with disconnect and City workers and contractors shall have the ability to easily shut off radio signals and power while working on City street lights, signal system elements, poles or other facilities, if necessary.

i. Any fiber or power cables supporting the small cell facility shall be labeled and housed in its own conduit(s) separating them from City fiber or power cables.

(b) Pole construction, placement, height, and diameter requirements. Small cell facilities and any new, modified, or replaced pole for the collocation of small cell facilities in the rights-of-way shall meet the following requirements:

(1) Pole spacing. New poles shall be no less than 300 feet from any other pole on the same side of the roadway containing small cell facilities.

(2) New poles. Any new pole shall be a metal pole.

(3) Pole setback. Poles shall be placed as far back from the roadway as technically feasible without any encroachment of the pole and antenna facilities onto private property unless alignment with other street poles, trees, features is more aesthetically desirable as determined by the City.

(4) Pole placement. Any new poles, replacement poles and/or antenna facilities shall be placed where they:

a. Do not obstruct the line of sight for transportation, vehicular, or pedestrian traffic;

b. Do not obstruct the clear zone or have a breakaway design;

c. Comply with the Americans with Disabilities Act (ADA) similar federal or ' state standards, City construction and sidewalk clearance standards and applicable laws, in order to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new pole must: be physically possible, comply with applicable traffic uniform warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public health, safety, or welfare; and

d. Any replacement pole shall be placed as close to the original pole as possible, and no more than five feet from the existing pole location.

(5) Pole heights. The height of poles above the ground including the antennas shall:

a. Be fifty (50) feet or less in non-residentially zoned areas;

b. Be forty (40) feet or less in residentially zoned areas with above ground

MINUTES OF MARCH 2, 2021

power; and

c. Be thirty-five (35) feet or less in residentially zoned areas with underground power.

(6) Metal pole construction requirements.

a. Structural/Foundation Design. The pole and pole foundation shall be designed in accordance with the most current version of American Association of State Highway Transportation Officials (AASHTO) Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals;

b. Material. The pole material shall be aluminum, hot dipped galvanized steel, or other corrosion resistant metal;

c. Diameter. The pole diameter shall be twelve (12) inches maximum at existing grade unless otherwise approved by the City not including the base of the pole; and

d. Pole Coloring. The pole shall be black in color unless another color scheme is determined to be more aesthetically desirable by the City.

(7) Wooden pole construction requirements for collocation:

a. The existing wooden pole diameter shall be sixteen (16) inches maximum at existing grade unless otherwise approved by the City; and

b. The grantee must show structural evidence that the existing wooden pole and foundation design can meet the current wind load requirements based on NESC extreme wind category with the addition of the small cell facilities.

(8) Decorative poles; additional requirements

a. Decorative poles shall be metal poles only;

b. Antennae shall be mounted on top of the pole only;

c. Accessory equipment shall be located either within or as an extension of the pole, within an underground vault, or within an enclosure/cabinet adjacent to the pole camouflaged to appear as a public amenity as shown on the concealment element plan; and

d. Aesthetics. Pole shall match the design of decorative poles in the area.

(c) Antenna and accessory equipment size, location, and dimensional restrictions.-

(1) General. The applicant shall minimize to the extent possible the antenna and accessory equipment space and shall use the smallest amount of enclosure possible to fit the necessary equipment.

(2) Vertical clearance. All antennae and accessory equipment shall be a minimum of ten (10) feet above the existing adjacent grade and shall not be not be installed in such a manner as to obstruct the line of sight or pedestrian paths

(3) Mounting/projection off pole. Unless the applicant can demonstrate that more space is needed to be technically feasible, all antennae and accessory equipment including the enclosure shall be as close to the pole as possible and shall be mounted no greater than four (4) inches off the pole and the furthest point of all antennae and accessory equipment including the enclosure shall not project more than twenty-eight (28) inches from the face of the pole.

(4) Antenna size and dimensional restrictions. Unless the applicant can demonstrate that more space is needed to be technically feasible, the size of each antenna shall:

a. Be no greater than three (3) cubic feet;

MINUTES OF MARCH 2, 2021

b. In the case of top mounted canister antennas, be no greater than six (6) feet in height and share a reasonably similar diameter as the top of the pole not to exceed sixteen (16) inches;

c. in the case of omnidirectional antennas, be no greater than four (4) feet in height; and

d. In the case of microwave dishes, be no greater than two (2) feet in diameter and no more than three (3) microwave dishes per pole.

(5) Accessory equipment size and dimensional restrictions. Unless the applicant can demonstrate that more space is needed to be technically feasible, the size of accessory equipment shall:

a. Be no greater than twenty-eight (28) cubic feet total considering accessory equipment for all small cell facilities attached to the pole collectively not including the electrical equipment;

b. Be designed to be long and narrow along the pole with a reasonably greater vertical dimension than horizontal; and

c. Be no greater than twenty-four (24) inches in width.

(6) . All antenna equipment, excluding the antenna, is to be housed inside the pole, ground vault, an approved ground mounted cabinet, or properly camouflaged.

(7) Antennas, equipment enclosures, and ancillary equipment, conduit and cable shall not dominate the structure or pole upon which they are attached.

(d) Concealment and objective aesthetic requirements. Small cell facilities and any new, modified, or replaced pole for the collocation of small cell facilities in the rights of way shall meet the following concealment and aesthetic requirements:

(1) Collocated replacement poles. Match neighboring pole design. Any pole replaced for the purposes of collocation shall substantially conform to the design of the pole it is replacing or the neighboring pole design standards utilized within the contiguous right-of-way.

(2) Special districts. In Historic Districts, any new or replacement poles shall be metal Poles. If the neighboring poles are decorative poles, then any new or replacement pole shall be decorative poles of matching dimensions and design.

(3) Pole material reservation. The City reserves the right to require or allow certain pole material types.

(4) Concealment within poles. With the exception of wooden poles, all conduit, cables, wires and fiber must be routed within the pole.

(5) Concealment outside of poles. The full concealment of antennae, accessory equipment, and all conduit, cables, wires and fiber is required and shall meet the following requirements:

a. Accessory equipment shall be covered with an enclosure;

b. Canister antennae shall be placed to look as if it is an extension of the pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the pole;

c. Spools and/or coils of excess fiber optic or coaxial cables or any other wires shall not be stored on the pole except completely within the approved enclosures or cabinets; and

MINUTES OF MARCH 2, 2021

d. All cables, wires, and fiber associated with the small cell facility shall be flush-mounted to the support structure where internal installation is not feasible and shall be shrouded or encased in a cover or conduit.

(6) Antenna and accessory equipment coloring. The antenna, accessory equipment, and all visible attachments, equipment, and hardware shall be colored to match the pole unless another color scheme is determined to be more aesthetically desirable by the City.

(7) The preferred location of a small cell facility on a pole is the location with the least visible impact.

(8) Ground-mounted equipment in the rights-of-way is prohibited, unless such facilities are placed underground or the applicant can demonstrate that pole-mounted or undergrounded equipment is technically infeasible. If ground-mounted equipment is necessary, then the applicant shall submit a concealment element plan. Generators located in the rights-of-way are prohibited.

(9) The City may consider the cumulative visual effects of small cell facilities mounted on poles within the rights-of-way when assessing proposed siting locations so as to not adversely affect the visual character of the City. This provision shall not be applied to limit the number of permits issued when no alternative sites are reasonably available nor to impose a technological requirement on the applicant.

(10) These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function of the technology chosen by the applicant, alternative forms of concealment or deployment may be permitted which provide similar or greater protections from negative visual impacts to the streetscape.

(e) Electrical service and equipment requirements:

(1) All electronic service equipment" shall be installed in accordance with the applicable provisions of the National Electrical Safety Code of the National Bureau of Standards and National Electrical Code of the National Board of Fire Underwriters.

(2) An electric meter, if required, will be support structure-mounted where feasible to the extent authorized by the support structure owner and electric utility.

(3) A separate electrical permit is required by the City for the electrical service.

(4) No equipment shall be operated so as to produce noise in violation of the City Code.

(f) Cable strung small cell facilities. Small cell facilities mounted on cables strung between existing utility poles shall conform to the following standards:

(1) Each strand-mounted facility shall not exceed three cubic feet in volume;

(2) Only one strand-mounted facility is permitted between any two existing poles;

(3) The strand-mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than five feet from the pole unless a greater distance is technically necessary or is required by the pole owner for safety clearance;

(4) No strand-mounted device shall be located in or above the portion of the roadway open to vehicular traffic;

(5) Ground-mounted equipment to accommodate a shared mounted facility is not permitted except when placed in preexisting equipment cabinets;

(6) Pole-mounted equipment shall comply with the all other requirements this section;

MINUTES OF MARCH 2, 2021

(7) Such strand-mounted devices must be installed to cause the least visual impact and without excess exterior cabling or wires (other than the original strand); and

(8) Strand-mounted facilities are only permitted on poles that have existing overhead wirelines.

(g) Signage Requirements.

(1) A plate no larger than four inches by six Inches with the location of the pole and the pole owner's name, contact information, and emergency telephone number shall be permanently affixed to the pole or shroud.

(2) No signage, message or identification other than the manufacturer's identification or such other identification required by applicable law is allowed to be displayed on any antenna or equipment enclosure. Any permitted signage shall be located on the equipment enclosures and be of the minimum amount possible to achieve the intended purpose (no larger than four by six Inches); provided, that banners may be permitted as concealment element techniques where appropriate.

Section 12. Removal, relocation, or modification of small cell facility in the rights-of-way.

(a) Notice. Except as provided in paragraph (b), on 90 days prior written notice from the City, the grantee or applicant shall, at Its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small cell facilities within the rights-of-way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for 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.

(b) Emergency removal or relocation of facilities. In the event of an emergency, as the City may determine to be necessary, appropriate or useful in response to any Imminent danger to public health, safety, or property, the City retains the right and privilege, without prior notice, to cut, disconnect, remove, move, or relocate any small cell facility or structure located within the rights-of-way of the City. If circumstances permit, the City shall notify the grantee or applicant and provide the grantee or applicant an opportunity to move Its own facilities prior to cutting or removing a facility and shall notify .the grantee or applicant promptly after cutting or removing a small cell facility.

(c) Abandonment of facilities. A wireless provider is required to notify the City at least 30 days prior to any intentional abandonment of a small cell facility. Absent non-usage arising from lack of commercial power or other circumstances beyond the grantee or applicant's control, a small cell facility shall be deemed abandoned If It remains unused for a period of more than one year. In the event of abandonment, the City may direct the grantee or applicant to remove all or any portion of the small cell facility that the City, or any of Its departments, determines would be in the best Interest of the public health, safety and welfare to remove. If the grantee or applicant fails to remove the abandoned facility within 90 days after such notice, the City may undertake to do so and recover the actual and reasonable expenses of doing so from the grantee or applicant, its successors or assigns.

(d) Damage and repair. The City may require a grantee or applicant to repair all damage to the rights-of-way directly caused by the activities of the grantee or applicant and return the rights-of-way to its functional equivalence before the damage. If the grantee or applicant fails to make the repairs within 120 days after written notice, the City may affect those repairs and charge the applicable party the reasonable, documented cost of such repairs.

Section 13. Insurance and security.

(a) Insurance.

(1) Commercial general liability. A grantee or applicant shall, at its sole expense, maintain, throughout the term of Its license and any extension or renewal thereof, and such other

MINUTES OF MARCH 2, 2021

period of time during which the grantee or applicant operates or is engaged in the removal of its facilities or structures (hereinafter referred to as "coverage period"), commercial general liability insurance using carriers licensed, authorized or permitted to conduct business in the State of Alabama and maintaining a Best rating of not less than "A." Such Insurance shall include coverage for premises and operations, underground, collapse and explosion, and products and completed operations, independent contractors, contractual liability and personal and advertising injury, and shall include as additional Insureds the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, and employees. Such insurance shall be in the amount of \$2,000,000.00 per occurrence for bodily injury (including death) and property damage and \$3,000,000.00 general aggregate. The grantee or applicant shall insure any contractors and subcontractors providing services in connection with its license or permit maintain appropriate levels of Insurance and that the City is included as an additional insured under each policy except workers compensation and employer's liability. Insurance will be written on an occurrence basis.

(2) Commercial automobile liability. A grantee or applicant shall, at its sole expense, maintain during the coverage period commercial automobile liability insurance with a limit of \$2,000,000.00 combined single limit for any one accident or loss for bodily injury, including death, and property damage covering owned, leased, non-owned, and hired automobiles used in conjunction with its operations under its license or permit. Such insurance shall include the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, and employees as additional insureds.

(3) Workers' compensation and employer's liability. A grantee or applicant shall, at its sole expense, maintain, during the coverage period, workers' compensation coverage as prescribed by the laws of the State of Alabama and employer's liability coverage in an amount of \$1,000,000.00 each accident/disease/policy limit.

(4) Umbrella or excess liability. A grantee or applicant shall, at its sole expense, maintain during the coverage period umbrella or excess liability insurance in the amount of \$2,000,000.00. Such insurance shall include the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, and employees as additional insureds.

(5) Evidence of insurance; deductibles; approval; reservation. On grant of a license pursuant to this article and upon each policy renewal thereafter, a grantee or applicant shall, at no cost to the City, furnish to the City certificates of insurance (or proof of self-insurance) evidencing all of the aforementioned types and limits of insurance to be in effect. The City reserves the right to require proof of self-insurance at any time and from time to time, at no cost to the City. A grantee or applicant has the right to maintain reasonable deductibles and the City reserves the right to review and approve such deductibles, which approval shall not be unreasonably withheld or delayed. The policies obtained by applicant and proof thereof, shall be subject to the City's reasonable approval. The City reserves the right to review these Insurance requirements during the coverage period and upon prior written notice to, and review and acceptance by applicant, to adjust insurance coverages and their limits when deemed necessary and prudent by the City Manager, based upon changes in statutory law, court decisions, or the claims history of the industry, or a grantee or applicant.

(6) Maintenance of insurance policies; grantee's coverage primary. The liability insurance policies required under this section, if any, shall be maintained by applicant through the coverage period. Upon receipt of notice from its insurer(s), grantee or applicant shall provide the City with 30 days' prior written notice of cancellation or non-renewal of any required coverage to the City. Grantee or applicant's coverage shall be primary and non-contributory to any other insurance carried by the City, if applicable to a loss, is excess.

(7) No limit of liability. The legal liability of grantee or applicant to the City and any person for any of the matters that are the subject of the insurance policy(ies) required by this

MINUTES OF MARCH 2, 2021

section, shall not be limited by said insurance policy(ies) or by the recovery of any amounts thereunder.

(8) Certificate of insurance. Certificates of insurance, if any, shall include the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions and employees as additional insureds, in the case of commercial general liability, commercial automobile liability, and umbrella or excess liability insurance. Worker's compensation and employer's liability insurance shall waive rights of subrogation in favor of the City. All subsequent notices or certificates shall be delivered to the City Manager and the City Attorney. All deductibles under said policy shall be the sole responsibility of the grantee or applicant.

(9) Self-insurance. Notwithstanding any other provision of this section to the contrary, a grantee or applicant is given the option, at any time throughout the term of its license, to self-insure any or all of the types or limits of insurance coverage described in this section. If a grantee or applicant elects to self-insure, it shall submit to the City with a statement certifying such self-insurance, and a request for the City to approve such self-insurance, together with sufficient information to show that it has sufficient financial resources to self-insure without posing additional risk to the City. Provided that the grantee or applicant provides adequate information concerning its financial resources, the City will not unreasonably withhold, condition, or delay its approval of grantee's or applicant's request to self-insure.

(b) Security.

(1) Subject to the following subsection (2), grantee or applicant shall obtain, maintain, and replenish, at its sole cost and expense, and file with the City Manager, an irrevocable standby letter of credit in favor of the City or surety bond in the amount of \$100,000.00, or in such other amount established by the City Manager, and suitable in form and content, including any amendments thereto, to the City Manager ("letter of credit", "bond", or "security"), both to guarantee the timely completion and faithful performance of all work required in connection with the license including the construction and operation of the facilities and to secure performance of grantee's or applicant's obligations and faithful adherence to all requirements of this article. Throughout the term of its license, and for 120 days thereafter, applicant shall maintain the required letter of credit or bond in the amount specified in accordance with this section. To the extent that the applicant maintains security under any separate franchise or its wireline right-of-way use agreement with the City, such security may, at grantee's or applicant's option, serve to fulfill its obligation under this subsection (b)(1), provided that said security shall refer to and include this article and shall be subject to the terms and conditions applicable to security under this article, including the right to increase the amount of security.

(2) Based on then-current factors, including the construction activity of the grantee or applicant, whether grantee or applicant is engaged in the removal of the facilities, applicant's history of compliance with this article, or such other factors which reasonably necessitate the contemplated action, the City Manager may, in his sole discretion, modify the obligations of the foregoing subsection (1). Such modifications may include: (i) upon the written request of grantee or applicant, a waiver of the requirement to post security, or a whole or partial release of the security posted; provided that at any time and from time to time the City Manager may require the posting of any security so waived or released; and (ii) upon the written notice to grantee or applicant, an increase in the amount of security posted. Grantee or applicant shall post the required security within 30 days or such additional time as the City Manager may allow, without the right of an additional cure period, and the City Manager may delay any construction activity of applicant until the required security is posted.

(3) The letter of credit may be drawn on directly by the City at any time and from time to time for the payment of the following purposes but not before the expiration of any notice or cure provisions to the extent applicable:

MINUTES OF MARCH 2, 2021

a. To secure the faithful performance by grantee or applicant of all terms, conditions, and obligations of this article and any later enacted regulations and ordinances pertaining to the rights-of-way or their use, including the proper installation, maintenance, operation, and removal of the facilities;

b. To compensate the City for any loss or damage to any City-owned pole or structure or other property of the City, during the course of any construction of the facilities by grantee or applicant, its agents, or employees, or any contractors or subcontractors of applicant;

c. To compensate the City for any expenditure, damage, or loss incurred by the City occasioned by grantee's or applicant's non-compliance with the provisions of this article or default under any later enacted regulations and ordinances pertaining to the rights-of-way or their use, or its failure to comply with all rules, regulations, orders, permits, and other directives of the City, issued pursuant to this article or other present or future ordinances adopted by the City;

d. To secure the payments of premiums for the liability insurance required pursuant to this article; or

e. The payment to the City of any amounts for which applicant is liable that are not paid by grantee's or applicant's insurance.

(4) For the City to recover under this subsection (b) for any failure to properly construct or operate the facilities or any alteration, repair, maintenance, or restoration of City structures or property, in connection with such construction or operation, it is not necessary that the City first perform such work.

(5) The rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether provided for in this article or otherwise authorized by law; and no action, proceeding, or exercise of a right with respect to such letter of credit shall affect any other rights the City may have.

(c) Right to require replacement of letter of credit or insurance, if the financial condition of any company issuing a letter of credit pursuant to this section materially and adversely changes, the City may, at any time and from time to time, require that any such letter of credit be replaced with such other insurance policy or letter of credit consistent with the requirements set forth in this section.

(d) Notice.

(1) Each insurance policy shall contain a covenant or endorsement of the insurer to provide 30 days' advance written notice by certified mail of such insurer's intention to cancel, substantially change, or not to renew such policy to both the City Manager, City Attorney, and grantee or applicant; provided, however, in the event said policy fails to so contain such a notice provision to the City Manager and City Attorney, then grantee or applicant shall be responsible for providing notice to the City Manager or City Attorney. Grantee or applicant shall, in the event of any such notice, obtain, pay premiums for, and file with the City Manager and City Attorney written evidence of the issuance of replacement policies prior to the expiration of any such policy.

(2) In no event shall the letter of credit be canceled without 60 days' advance written notice by certified mail to both the City Manager and City Attorney. Grantee or applicant shall, in the event of any such cancellation, obtain and file with the City Manager and City Attorney written evidence of the issuance of a replacement letter of credit that conforms to the requirements of this section prior to the expiration of any such letter of credit.

(3) Failure to carry or keep such insurance and letter of credit in force throughout the period set forth in this section shall constitute a violation of this article. The City, through its City Manager, reserves the right to stop any work related to the facilities until proper evidence of insurance and the letter of credit is furnished.

MINUTES OF MARCH 2, 2021

(e) Commencement of work. Grantee or applicant shall not commence any work in the rights-of-way, including the work of installing any facilities, until the Insurance and letter of credit requirements of this section have been compiled with.

Section 14. Damages and defense.

(a) Hold harmless and indemnification.

(1) Grantee by its acceptance of its license agrees to and does thereby indemnify, defend, and hold the City and the City's present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, and employees whole and harmless from and against all claims, costs, losses, expenses through appeal (including reasonable attorneys' fees; and costs or expenses incidental to the investigation of claims and lawsuits), demands, payments, suits, actions, recoveries, penalties, fines, liabilities, judgments, and damages, of any nature and description, including any suit or claim for personal injury, property damage, defamation, antitrust, errors and omission, theft, fire, royalties, license fees, or infringement of copyright or patent rights, resulting from or arising out of or by reason of: (1) grantee's actions pursuant to its license, and each SCF permit issued thereunder, and the rights awarded thereunder, or the procedures leading thereto, (2) any act or omission of grantee, its agents, employees, representatives, contractors, or sub-contractors, including in the construction, installation or operation of, or the provision of service over, the small cell facilities or support structure in the City, or any portion thereof, (3) any failure by . grantee to comply with any applicable law or the terms and conditions of this article, its license and each SCF permit, (4) grantee's performance under its license and each SCF permit, (5) the use of portions of grantee's small cell facilities or support structures by other persons, including other communications service providers, or (6) the presence of any hazardous substance or environmental hazard brought into the rights-of-way by grantee or by any person acting on its behalf or under the rights granted under its license and SCF permits.

(2) The foregoing obligations of this subsection (a) shall survive the expiration, termination, or revocation of the license.

(b) Notice, in order for the City to assert its rights to be indemnified, defended, or held harmless, the City must notify grantee within a reasonable time of any claim or legal proceeding which gives rise to such right.

(c) Defense. With respect to all grantee's indemnity obligations set forth in this article, grantee shall provide the defense of any claims brought against the City by selecting counsel of grantee's choice to represent the City and defend the claim, subject to the consent of the City, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the City from cooperating with grantee and participating in the defense of any litigation by its own counsel at its own cost and expense. After consultation with the City, grantee shall have the right to defend, settle, or compromise, at its cost and expense, any claim or action arising hereunder, and grantee shall have the authority to decide the appropriateness and the amount of any such settlement, provided, however, that any such settlement shall include, at a minimum, a full and final release of all claims against the City and shall include a provision that the settlement does not constitute an admission of wrongful conduct by the City, in the event that the terms of any such settlement do not include a full and final release of the City, grantee shall not settle the claim or action raised against the City. All of grantee's right to enter a settlement shall entail only payment of monetary amounts by grantee or obligations to be performed fully by grantee, and under no circumstances shall grantee have the power to bind the City to any obligation to pay any monetary amounts, perform any particular action, or refrain from performing any action (although the City may in its discretion independently agree to any such condition).

(d) Indemnification not limited. The indemnification obligations hereunder are not limited in any way by limitation of the amount or type of damages or compensation payable by or for grantee under worker's compensation, disability or other employee benefits acts, or the acceptance of insurance certificates required hereunder, or the terms, applicability, or limitations of any insurance held by grantee.

MINUTES OF MARCH 2, 2021

(e) No waiver of City rights. The City does not and shall not waive any rights against grantee which it may have by reason of grantee's indemnification, or because of the acceptance by the City of grantee's proof of insurance or deposit with the City of any Insurance policies described herein.

Section 15. Limitation of liability; Immunity.

Except to the extent expressly provided for otherwise in this article, the City shall be responsible for its own acts of negligence, or intentional or willful misconduct committed by the City for which the City is legally responsible, subject to defenses, immunities, and limitations of liability provided by applicable law; provided, however, notwithstanding anything to the contrary contained in this article and in no event shall the City, its present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, or employees be liable to grantee, its affiliates, officers, directors, agents, employees, customers, tenants, licensees, contractors, subcontractors, or assigns for any special, indirect, or consequential damages, including any loss, expense, or damage to profits, business, revenue, or income (whether arising out of the damage to or destruction of the small cell facilities or support structures, in whole or in part, transmission interruptions or problems, any Interruption or degradation of service or otherwise), arising in any manner, including the City's negligence, and grantee shall indemnify, defend, and save harmless the City and its present and future officers, elected or appointed officials, council, boards, commissions, agents, representatives, volunteers performing authorized City functions, and employees from and against any and all claims, costs, losses, expenses through appeal (including reasonable attorneys' fees, and costs or expenses incidental to the investigation of claims and lawsuits), demands, payments, suits, actions, recoveries, penalties, fines, liabilities, and judgments, of any nature and description, with respect to such special, indirect, or consequential damages. The foregoing obligations of this section shall survive the expiration, termination or revocation of the license.

Section 16. Applicability.

(a) Amendments. The City may, at any time and from time to time, amend this article, as it shall find necessary in the lawful exercise of its police powers and in the management of the rights-of-way or otherwise in the exercise of its control and authority over the rights-of-way and City property located therein. The provisions hereof shall be applicable to all small cell facilities and support structures placed in the rights-of-way on or after the effective date of the ordinance adopting or amending these provisions, as applicable. Further, to the full extent permitted by applicable law, the provisions hereof shall be applicable to all existing small cell facilities and support structures placed in the rights-of-way prior to the effective date of the ordinance adopting or amending these provisions, as applicable, except that any provision of this article regarding the design, size, composition, or location of small cell facilities shall not apply to any facilities lawfully placed within any right-of-way prior to the effective date of the ordinance from which such provision is derived.

(b) Exemptions and non-applicability. This article regulates the placement of small cell facilities and support structures located or proposed to be located on the rights-of-way. This article does not apply to the placement of such facilities or structures on City-owned property not located within the right-of-way, which placement will be allowed only through a lease or similar agreement with the City. The placement of an antenna, facilities or equipment related to the following types of wireless communication services are exempt from regulation under this article: facilities owned or controlled, or dedicated to primary use by any federal, state or local government or agency to provide safety or emergency services. Further, the provisions in this article are not intended to alter, affect or modify the provisions of existing franchises, licenses, use agreements or ordinances relating to the franchising of cable systems, cable operators, or any landline telecommunications and related facilities, providers or services. No provision in this section or elsewhere in this article is intended to permit, regulate or authorize the placement by grantee or applicant or other wireless provider of fiber optic lines, coaxial cable, switches, pedestals or networking equipment of any type that is used to transport telecommunication signals,

MINUTES OF MARCH 2, 2021

data, messages, or cable services between support structures or between any other points on the right-of-way. In the event any such grantee or applicant or wireless provider desires to place telecommunications or cable system equipment along the right-of-way at points not regulated by this article, it must obtain from the City a separate franchise or similar agreement or authorization that authorizes, governs and applies to such use of other locations on or along the right-of-way.

(c) Existing agreements. If a wireless provider has an existing franchise agreement, lease, right-of-way use agreement or other similar agreement with the City that addresses the placement of small cell facilities or support structures that was in effect prior to the enactment of this article, the existing franchise or agreement shall remain in force for its remaining term (but not for any extension or renewal thereof), and its provisions shall control over any conflicting provisions of this article. Thereafter, the wireless provider's small cell facilities or support structures shall be regulated by this article. Notwithstanding the foregoing, any such wireless provider with an existing franchise or agreement related to small cell facilities may, at its sole option, elect to terminate the franchise or agreement and become immediately subject to this article.

Section 17. Enforcement.

(a) Notice of violation; opportunity to cure.

(1) if the City Manager is of the opinion that a grantee is in violation of a provision of this article, including a license or a SCF permit issued under the authority of this article, he shall provide grantee with a written notice of violation describing the nature of the violation and requirements for correction.

(2) Within ten business days of receiving a notice of apparent violation, grantee shall present facts and arguments in refutation or excuse of the alleged violation, or present a plan for correction of the violation including an estimated schedule for completion of the corrective action. The City Manager shall thereafter determine whether the violation has been refuted or excused, or may approve the corrective plan in whole or part, or require changes thereto. The cure period for any corrective action shall be reasonably established by the City Manager, provided that the period shall not be less than 30 days in the case of any fees or other charges due and not less than 60 days in all other cases, except in the case of an emergency or except as otherwise expressly provided for in this article or the license or a SCF permit.

(3) During the cure period any action to prosecute the violation, including revocation of the license, shall be held in abeyance.

(b) Revocation.

(1) In addition to all other rights or remedies which the City has pursuant to law or equity or under this article or a license or SCF permit issued hereunder, and subject to applicable law, the City may revoke the license and all rights and privileges pertaining thereto including each and every SCF permit issued thereunder, or to revoke one or more SCF permits, in the event that:

a. Grantee is in violation of any material provision of this article, its license, or a SCF permit, and the violation is not capable of being cured or grantee has not, to the City's satisfaction, refuted or excused the failure to comply or has not complied with the cure provisions set forth hereinabove in subsection (a).

b. Grantee has engaged in an evasion or attempt to evade any material provision of this article, its license, or a SCF permit, and fails or refuses to cure it.

c. Grantee has perpetrated or attempted to perpetrate any fraud or deceit upon the City.

d. There is any material misrepresentation of fact by grantee in any permit application or report filed pursuant to this article.

MINUTES OF MARCH 2, 2021

(2) The City Manager shall have the authority to revoke a SCF license, subject to the right of appeal to the City Council provided that the grantee files a written notice of appeal with the City Manager within 30 days of the revocation. The City Council shall have the authority to revoke a license, which includes all SCF permits issued thereunder. Prior to revoking the license, the City Council shall schedule a hearing on the matter and grantee shall be given at least 30 days' advance notice of the date and time for the hearing and the grounds for revocation of the license. At such hearing, grantee shall have the right to be heard on the matter and may present evidence on its behalf, including proof refuting or excusing the violation.

(3) Within 30 days of the conclusion of the hearing, the City Council may adopt a resolution revoking the license or upholding the revocation of a license, where it finds that there is a basis to do so and grantee shall, thereafter, be notified in writing of the council's decision.

(c) stop work order.

(1) The City Manager may, at any time and from time to time, issue a stop work order for construction of all or any portion of the facilities or a support structure when the City Manager determines,' in his/her sole discretion: (1) that, subject to the cure provisions in subsection (a) of this section, the activity is being performed contrary to the provisions of the SCF permit issued for the site; or (2) that the activity has caused, or is likely to cause, a situation to exist that poses or would pose a clear and immediate danger: (i) to life or health, (ii) of a significant loss of property or services, or (iii) of significant damage to or destruction of the rights-of-way (there is no opportunity to cure in this instance). The order may be issued, at the City Manager's option, on site or to the provider's technical contact person. The City Manager will lift any such stop work order as soon as possible after he/she determines that the situation giving rise thereto no longer exists.

(2) It shall be a violation of this article for a provider, or those persons working on its behalf, to disobey a stop work order. Each day that the violation continues constitutes a separate offense, and is subject to the fines in Section 1-31, and 1-32, Schedule of Fines.

(d) Violation by wireless provider. Subject to the cure provisions set forth in subsection (a) of this section, it shall be a violation of this article for a wireless provider to fail to comply with this article and any terms or conditions of its license or a SCF permit. The penalty provisions of section 1-31 and 1-32 of this Code apply. Each day that the violation continues, after the applicable cure period, if any, constitutes a separate offense.

(e) Unauthorized facilities or support structure.

(1) It shall be a violation of this article for any person, its contractor, servant, agent, or employee, to construct, operate, or maintain, a small cell facility or support structure in the rights-of-way without having obtained a license from the City and a SCF permit for the particular location from the City Manager. The penalty provisions of section 1-31 and 1-32 of this Code apply. Each day a violation continues is a separate offense.

(2) In addition to prosecution of the violation in accordance with subsection (1) above, a wireless provider who has failed to obtain a SCF permit for a particular location shall pay an additional administrative fee of \$500.00 per month for each such location that does not have a SCF permit.

(f) The remedies and penalties set forth herein are nonexclusive and the exercise of one or more of such remedies or penalties shall not preclude the exercise of another.

(g) In addition to the other remedies previously set forth herein, the City may take all necessary civil action to enforce the provisions hereof and may seek appropriate legal or equitable remedies or relief, including injunctive relief. The remedies set forth in this section are in addition to and cumulative of all other remedies provided by law.

ARTICLE 3:

MINUTES OF MARCH 2, 2021

No other portion of the Mobile City Code, Chapter 57. Streets and Sidewalks, Article VIII, Right-of-Way Construction and Administration, nor any other portion of said Chapter 57, shall be affected by this amendment.

ARTICLE 4:

Repealer. All laws and all parts of laws in conflict with these provisions are hereby repealed.

ARTICLE 5:

Severability. If any section, sentence, paragraph, clause, phrase or word of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holding of invalidity shall not affect the remaining portions of this ordinance, and It shall be construed to have been the intent of the City Council of Mobile to pass this ordinance without such unconstitutional, Invalid, or inoperative part therein, and the remainder of this ordinance shall be deemed and held to be valid as if such parts had not been included therein.

ARTICLE 6:

Effect of Ordinance. This ordinance shall be effective following its adoption and publication as required by law. This Ordinance shall be in full force and effect within the City of Mobile and its police jurisdiction following said date.

The move was seconded by Councilmember Gregory. Following comments by Councilmembers Gregory, Rich, Williams, Daves and Richardson and Chris Arledge, Council Attorney, the vote was as follows:

Ayes: Richardson, Small, Williams, Daves and Gregory
Nays: Rich

The vote was then announced by the city Clerk, whereupon the Presiding Officer declared the ordinance adopted as amended.

Richardson moved to adopt the administrative changes, which move was seconded by Councilmember Daves and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves and Gregory
Nays: Rich

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the administrative changes adopted.

The Presiding Officer then called for the vote on the original motion as amended and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves and Gregory
Nays: Rich

The vote was then announced by the city Clerk, whereupon the Presiding Officer declared the ordinance adopted as amended.

ORDINANCE TO AMEND CHAPTER 64 OF THE CITY CODE TO DELETE SECTION 64.4.H, TREE PROTECTION REQUIREMENTS. The following ordinance, which was introduced and read at the regular meeting of February 23, 2021 and held over until the meeting of March 2, 2021, was called up by the Presiding Officer.

ORDINANCE: 64-012-2021

Sponsored by: Councilmember Gregory

MINUTES OF MARCH 2, 2021

AN ORDINANCE TO AMEND CHAPTER 64 OF THE MOBILE CITY CODE, COMMONLY KNOWN AS THE ZONING ORDINANCE

WHEREAS, the Planning Commission held a Public Hearing on January 7, 2021, to consider recommending that the Zoning Ordinance be amended by deleting therefrom section 64-4.H, Tree Protection Requirements; and,

WHEREAS, following the Public Hearing the Planning Commission recommended that section 64-4.H, Tree Protection Requirements, be deleted from the Zoning Ordinance and that the City Council create a new City Code Chapter for Tree Protection and Management; and,

WHEREAS, the Council has adopted an Ordinance that creates Chapter 65 of the Mobile City Code, entitled Tree Protection and Management; and,

WHEREAS, the newly created Chapter 65 contains the provisions and tree protection requirements that are currently in section 64-4.H of the Zoning Ordinance; and,

WHEREAS, the newly created Chapter 65 establishes an Urban Forestry Department, defines clearer roles and responsibilities of the Urban Forester, increases tree protection requirements to meet nationally recognized ANSI standards, expands the list of Heritage Trees requiring permits for removal, simplifies City regulations making tree protection easier to understand and administer, aligns Tree Protection and Tree Maintenance requirements with the proposed Unified Development Code, and makes the City Council the first step for appeals of decisions by both the Urban Forester and the Tree Commission to reflect recent changes in State law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBILE, as follows:

Section One. That Chapter 64 of the Mobile City Code, commonly known as the Zoning Ordinance, be, and the same hereby is, amended by deleting therefrom the entirety of section 64-4.H, Tree Protection Requirements.

Section Two. This Ordinance shall be in full force and effect from and after its adoption and publication as required by law.

The ordinance was read by the City Clerk; whereupon Councilmember Daves moved that the ordinance be adopted, which was seconded by Councilmember Gregory.

Councilmember Williams moved to amend the ordinance as follows:

“As written today with no additions other than a change in the appeal process which would bring it to the City Council as opposed to an unlawful direction of the planning commission.”

The move was seconded by Councilmember Daves. Following comments by Councilmembers Rich, Williams, Gregory, Daves and Ricardo Woods, City Attorney and Chris Arledge, Council Attorney, the vote was as follows:

Ayes: Richardson, Small, Williams, Daves and Gregory
Nays: Rich

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the amendment adopted.

Councilmember Williams moved to reconsider the amendment, which was seconded by Councilmember Daves and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves and Gregory
Nays: Rich

MINUTES OF MARCH 2, 2021

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the amendment reconsidered.

The Presiding Officer then called for the vote on the original motion and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves and Gregory

Nays: Rich

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the ordinance adopted.

ORDINANCE TO REZONE PROPERTY LOCATED AT 704 LAKESIDE DRIVE WEST (WEST SIDE OF LAKESIDE DRIVE WEST, 150' SOUTH OF COTTAGE HILL ROAD) FROM B-1 AND B-2 TO B-3 (DISTRICT 4). The following ordinance, which was introduced and read at the regular meeting of February 23, 2021 and held over until the meeting of March 2, 2021, was called up by the Presiding Officer.

ORDINANCE: 64-013-2021

Sponsored by: Councilmember Williams

AN ORDINANCE AMENDING THE ORDINANCE ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MOBILE ON THE 16TH DAY OF MAY, 1967, SAID ORDINANCE BEING COMMONLY KNOWN AS THE ZONING ORDINANCE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBILE AS FOLLOWS:

Section One: That the Ordinance commonly known as the Zoning Ordinance and adopted on May 16, 1967, together with the Zoning Map of the City of Mobile, 1967, be, and the same hereby is changed and altered in respect to that certain property In the City of Mobile, State of Alabama, described as follows to-wit:

PARCEL A:

Lot 4, Lakeside Commercial Park Twelfth Addition as recorded In Map Book 37, Page 122, Probate Court Records, Mobile County, Alabama.

TOGETHER WITH:

PARCEL B:

Beginning at the westernmost corner of Lot 4 Lakeside Commercial Park Twelfth Addition as recorded in Map Book 37, Page 122, Probate Court Records, Mobile County, Alabama, run thence south 37 degrees 40 minutes 25 seconds east, along the western line of said Lot 4, a distance of 43.07 feet; thence south 50 degrees 59 minutes 54 seconds west, 17.06 feet; thence north 37 degrees 28 minutes 20 seconds west, 43.45 feet to a north line of Lot 5, said Lakeside Commercial Park Twelfth Addition; thence north 52 degrees 16 minutes 30 seconds east, along said north line, a distance of 16.90 feet to the Point of Beginning.

The classification of said property is hereby changed from B-1, Buffer Business District, and B-2, Neighborhood Business District, to B-3, Community Business District, and it shall hereafter be lawful to construct on such property any structures permitted by the Ordinance of May 16, 1967, commonly known as the Zoning Ordinance and to use said premises for any use permitted by the terms of said Ordinance in B-3, Community Business District, provided, however, that the plans for any structure or building sought to be erected on said property shall be in compliance with the building laws of the City of Mobile, and that any structure shall be approved by the Building Inspector of the City of Mobile, and that any such structure be erected only in compliance with such laws, including the requirements of said Zoning Ordinance of May 16, 1967, and further provided, however, that no lot or parcel of land herein above described shall be used for any use

MINUTES OF MARCH 2, 2021

allowed in an B-3, Community Business District until all of the conditions set forth below have been complied with: (1) Compliance with the Engineering Comments: 1. Any work performed in the existing ROW (right-of-way) such as driveways, sidewalks, utility connections, grading, drainage, irrigation, or landscaping will require a ROW permit from the City of Mobile Engineering Permitting Department (208-6070) and must comply with the City of Mobile Right-of-Way Construction and Administration Ordinance (Mobile City Code, Chapter 57, Article VIII). 2. A Land Disturbance Permit application shall be submitted for any proposed land disturbing activity with the property. A complete set of construction plans including, but not limited to, drainage, utilities, grading, storm water detention systems and paving will need to be Included with the Land Disturbance permit. This Permit must be submitted, approved, and issued prior to beginning any of the construction work. 3. Any and all proposed land disturbing activity within the property will need to be submitted for review and be in conformance with Mobile City Code, Chapter 17, Storm Water Management and Flood Control); the City of Mobile. Alabama Flood Plain Management Plan (1984); and, the Rules For Erosion and Sedimentation Control and Storm Water Runoff Control. 4. Any existing or proposed detention facility shall be maintained as it was constructed and approved. The Land Disturbance Permit application for any proposed construction includes a requirement of a Maintenance and Inspection Plan (signed and notarized by the Owner) for the detention facility. This Plan shall run with the land and be recorded in the County Probate Office prior to the Engineering Department issuing their approval for a Final Certificate of Occupancy. 5. The approval of all applicable federal, state, and local agencies (including all storm water runoff, wetland and floodplain requirements) will be required prior to the issuance of a Land Disturbance permit. The Owner/Developer is responsible for acquiring all of the necessary permits and approvals. 6. The proposed development must comply with all Engineering Department design requirements and Policy Letters.; (2) Full compliance with all municipal codes and ordinances.

Section Two; This Ordinance shall be in force and effect from and after its adoption and publication.

The ordinance was read by the City Clerk; whereupon Councilmember Daves moved that the ordinance be adopted, which was seconded by Councilmember Gregory and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory
Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the ordinance adopted.

ORDINANCE TO AUTHORIZE THE SALE OF 2662 FILLINGIM STREET TO DORIS BETTIS. The following ordinance, which was introduced and read at the regular meeting of February 23, 2021 and held over until the meeting of March 2, 2021, was called up by the Presiding Officer.

ORDINANCE: 88-014-2021

Sponsored by: Mayor Stimpson

AN ORDINANCE DEEMING CERTAIN PROPERTY NOT NOW NEEDED FOR PUBLIC OR MUNICIPAL PURPOSES AND AUTHORIZING THE SALE THEREOF

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA as follows:

SECTION ONE: It is hereby found and determined by the City Council of the City of Mobile, Alabama, that the property at 2662 Fillingim Street hereinafter described is not now needed for public or municipal purposes and that it is in the best interest of the City of Mobile and in the public interest that said property be sold to DORIS BETTIS:

MINUTES OF MARCH 2, 2021

Lot 6, Block 16, Mechem and Gass' 2nd Addition to West Mobile, according to plat thereof recorded in Deed Book 142, Page 233 of the records in the Office of the Judge of Probate Court of Mobile County, Alabama. (Key 764060, Parcel R022907230001021)

SECTION TWO: The Mayor and the City Clerk are hereby authorized and directed to execute and attest, respectively, for and in the name, and on behalf of the City of Mobile, the Purchase Agreement when prepared for the property shown above.

SECTION THREE: The Mayor and the City Clerk are also hereby authorized and directed to execute and attest, respectively, for and in the name, and on behalf of the City of Mobile, the Warranty Deed when prepared for the property shown above.

SECTION FOUR: Said Purchase Agreement and Warranty Deed are by reference made a part of this ordinance as fully as if set forth herein, and a copy of such will be on file in the office of the City Clerk and in the office of the Real Estate Officer of the City of Mobile, 4th Floor, Government Plaza, 205 Government Street, Mobile, Alabama.

SECTION FIVE: This Ordinance shall be in full force and effect from and after its adoption and publication as required by law.

The ordinance was read by the City Clerk; whereupon Councilmember Daves moved that the ordinance be adopted, which was seconded by Councilmember Gregory and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory
Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the ordinance adopted.

APPROVE PURCHASE ORDER TO SUNSOUTH, LLC, FOR TWO SKID STEER LOADERS, \$70,954.00. The following resolution, which was introduced and read at the regular meeting of February 23, 2021 and held over until the meeting of March 2, 2021, was called up by the Presiding Officer.

RESOLUTION: 08-126-2021

Sponsored by: Mayor Stimpson

MINUTES OF MARCH 2, 2021

BE IT RESOLVED BY THE CITY COUNCIL OF MOBILE, ALABAMA, that the Purchasing Agent is authorized to execute, for and on behalf of the City of Mobile, a purchase order to the indicated vendor in the approximate amount stated, and to approve the supporting bid award if required, for the following requisition as indicated below and attached herein:

Requisition	Fiscal Year	Department	Description	Amount	Vendor
<u>115</u>	2021	(F7000) MOTOR POOL	2 JOHN DEERE 318G SKID STEER LOADERS (SOURCEWELL COOPERATIVE PURCHASING AGREEMENT- NOT ON STATE CONTRACT)	\$70,954.00	<u>(291912) SUNSOUTH LLC</u>

BE IT FURTHER RESOLVED THAT the City Council of the City of Mobile, Alabama, finds that this resolution is either necessary to respond to COVID-19 or necessary to perform essential minimum functions of the Council.

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Gregory and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory
Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the resolution adopted.

AUTHORIZE CONTRACT WITH LAINE FEDERAL SOLUTIONS, INC., FOR YES INTERN STAFFING SERVICES, \$175,000.00. The following resolution, which was introduced and read at the regular meeting of February 23, 2021 and held over until the meeting of March 2, 2021, was called up by the Presiding Officer.

RESOLUTION: 21-127-2021

Sponsored by: Mayor Stimpson

BE IT RESOLVED BY THE CITY COUNCIL OF MOBILE, ALABAMA, that the Mayor and City Clerk be, and they hereby are, authorized to execute and attest, respectively, for and on behalf of the City of Mobile, a contract, by and between the City of Mobile and Laine Federal Solutions Incorporated in an amount not to exceed \$175,000 per year, for a one year period, and renewable without further Council approval for two additional years, for personnel staffing services for the Youth Empowered for Success intern program, attached hereto and made a part hereof as though set forth in full, and to approve the supporting bid award. A copy of said contract is on file in the Office of the City Clerk.

BE IT FURTHER RESOLVED THAT the City Council of the City of Mobile, Alabama, finds that this resolution is either necessary to respond to COVID-19 or necessary to perform essential minimum functions of the Council.

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Gregory and the vote was as follows:

MINUTES OF MARCH 2, 2021

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory
Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the resolution adopted.

AUTHORIZE CONTACT WITH ZEKE-TRICE, LLC, D/B/A ROWE ENGINEERING & SURVEYING, FOR SURVEY OF PROPERTY SOUTH OF MAGNOLIA GOLF COURSE.

The following resolution, which was introduced and read at the regular meeting of February 23, 2021 and held over until the meeting of March 2, 2021, was called up by the Presiding Officer.

RESOLUTION: 21-128-2021

Sponsored by: Councilmember Gregory and Mayor Stimpson

BE IT RESOLVED BY THE CITY COUNCIL OF MOBILE, ALABAMA, that the Mayor and the City Clerk be, and they hereby are, authorized and directed to execute and attest, respectively, for and on behalf of the City of Mobile, a Contract, by and between the City of Mobile, and the company listed below, for work as outlined in the contract attached hereto and made a part hereof as though set forth in full. A copy of said contract will be on file in the office of the City Clerk.

Name of Company: ZEKE-TRICE, LLC d/b/a Rowe Engineering & Surveying

Project Name: ALTA/NSPS LAND TITLE SURVEY OF PROPERTY
SOUTH OF MAGNOLIA GROVE GOLF COURSE,
KEY NOS: 476853, 477521, 476791, 476782, AND 474515

Amount: \$17,450.00

BE IT FURTHER RESOLVED that the City Council of the City of Mobile, Alabama, finds that this Resolution is either necessary to respond to COVID-19 or necessary to perform essential minimum functions of the Council.

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Gregory and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory
Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the resolution adopted.

AUTHORIZE THE FY20 STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE (SAFER) GRANT, \$5,183,996.70 (NO MATCH). The following resolution, which was introduced and read at the regular meeting of February 23, 2021 and held over until the meeting of March 2, 2021, was called up by the Presiding Officer.

RESOLUTION: 31-129-2021

Sponsored by: Mayor Stimpson

WHEREAS, the City Council of the City of Mobile, Alabama, finds that the subject of this Resolution is either necessary to respond to COVID 19, or necessary to perform essential minimum functions of the Council, the Mayor is authorized to apply, accept and receive from the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), a Notice of Award for grant assistance in the approximate amount of \$5,183,996.70 for the FY 2020 Staffing for Adequate Fire and Emergency Response (SAFER) Grant Program.

MINUTES OF MARCH 2, 2021

BE IT FURTHER RESOLVED that the Mayor or his designee be authorized to accept said grant if offered and to sign any agreements or other documents in connection with the grant application and to provide any information required by the U.S. Department of Homeland Security/Federal Emergency Management Agency. Any agreements for grant assistance, together with the exhibits, shall be filed with the City Clerk after award and execution.

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Gregory and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the resolution adopted.

ADOPT THE CDBG, HOME AND ESG 2021-22 ACTION PLAN. The following resolution, which was introduced and read at the regular meeting of February 23, 2021 and held over until the meeting of March 2, 2021, was called up by the Presiding Officer.

RESOLUTION: 31-130-2021

Sponsored by: Councilmember Richardson and Mayor Stimpson

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, that the Action Plan for 2021 is hereby adopted. Said Plan shall direct resources to develop a viable urban community by providing decent affordable housing and a suitable living environment along with expanding economic opportunities for low and moderate-income persons. Said Action Plan is the third installment within the City's overall five-year "2018-2022 Consolidated Housing and Community Development Plan," and establishes projects for the next Program Year from May 1, 2021 through April 30, 2022, to be funded with assistance from the following three programs which are funded by the U.S. Department of Housing and Urban Development (HUD): Community Development Block Grants (CDBG), HOME Investment Partnership Grants (HOME), and Emergency Solutions Grants (ESG). The City followed its HUD and City Council approved Citizen Participation Plan throughout the process.

BE IT FURTHER RESOLVED that the Mayor, or his designee, is directed and authorized to act on behalf of the City of Mobile in the filing of this plan with HUD, and that this authorization extends to the execution of all required certifications and to all other actions required to obtain referenced Federal funds. The Mayor, or his designee, is further authorized to execute Subrecipient Agreements, Conditional Commitment Letters, Developer Agreements, Administrative Agreements, Loan Agreements, and associated security documents on behalf of the City in accordance with the funding recommendations attached herein as Exhibit 1.

A copy of this Plan shall remain on file in the office of the City Clerk.

EXHIBIT 1



**2021 Program Year
Action Plan**

PY 2021-2022 ACTION PLAN
PROJECTS AND COMMUNITY PARTNERS

Community Development Block Grant (CDBG)

City of Mobile Programs	HUD Category	
Administration (City of Mobile)	Administration	550,000
Section 108 Payment	Loan Repayment	220,000
Housing Rehabilitation	Decent Housing	650,000
Volunteer Paint Program	Decent Housing	85,000
Hurricane Fortified Roofing Program	Decent Housing	50,000
Float Loan Program	Various Eligibilities	1,000,000
Residential Rehabilitation Loans	Decent Housing	200,000
Microenterprise Loan Program	Economic Opportunity	86,186
Sidewalks and Infrastructure	Suitable Living Environment	60,000
Blight Removal	Decent Housing	450,000
SUBTOTAL - CITY OF MOBILE PROGRAMS		3,351,186

Community Development Block Grant (CDBG)

Public Services	HUD Category	
100 Black Men	Public Services	10,000
Legal Services of Alabama-Will Program	Public Services	50,000
Boys and Girls Clubs of South Alabama	Public Services	25,000
Mobile Area Interfaith Conference	Public Services	30,000
Ozanam Charitable Pharmacy	Public Services	32,950
United Methodist Inner City Mission	Public Services	30,000
Legacy, Inc.	Public Services	10,000
Dumas Wesley Community Center	Public Services	14,000
Legal Services of Alabama-Land Loss Prevention	Public Services	40,000
Dearborn YMCA	Public Services	10,000
VIA Volunteer Guardian Program	Public Services	10,000
VIA Senior Services	Public Services	10,000
Mobile Housing Board Job Certification Program	Public Services	47,050
Intern Program in Coordination with Nonprofits	Public Services	20,000
SUBTOTAL - PUBLIC SERVICES		339,000

TOTAL ANTICIPATED CDBG FUNDING \$ 3,690,186

Emergency Solutions Grant (ESG)

MINUTES OF MARCH 2, 2021

HUD Category		
Administration (City of Mobile)	Administration	14,484
Dumas Wesley Community Center	Rapid Rehousing	40,000
McKemie Place	Emergency Shelter	25,000
Family Promise	Emergency Shelter	30,000
Penelope House Family Violence Center	Emergency Shelter	40,000
Salvation Army	Emergency Shelter	20,500
Legal Services of Alabama	Homeless Prevention	23,138

TOTAL ANTICIPATED ESG FUNDING \$ 193,122

HOME Investment Partnership Program (HOME)

City of Mobile and Developers

HUD Category

Administration (City of Mobile)	Administration	99,350
Homebuyer Activities--(TBD)	Decent Housing	200,000
Affordable Housing--Homebuyer/Rental Activities (TBD)	Decent Housing	694,157

TOTAL ANTICIPATED HOME FUNDING \$ 993,507

SUMMARY: 2020-2021 ANTICIPATED HUD FUNDING

Community Development Block Grant (CDBG)	\$ 3,690,186
Emergency Solutions Grant (ESG)	\$193,122
HOME Investment Partnership Program (HOME)	\$993,507
GRAND TOTAL	\$ 4,876,815

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Gregory and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory
Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the resolution adopted.

SUSPENSION OF RULES FOR IMMEDIATE CONSIDERATION OF ESSENTIAL/COVID-19 ITEMS BEING INTRODUCED FOR THE FIRST TIME.

Councilmember Daves moved for the suspension of the rules to consider Essential/Covid-19 items 65-017, 27-149 – 40-154, 58-156 and 60-158 – 60-160 being introduced for the first time. The motion was seconded by Councilmember Williams and the vote was as follows:

Ayes: Richardson, Manzie, Small, Williams, Daves, Rich and Gregory
Nays: None

The Presiding Officer declared unanimous consent granted for the items.

ESSENTIAL/COVID19 ITEMS BEING INTRODUCED:

ORDINANCE TO AMEND SECTION 38-24 OF THE CITY OCDE TO PERMIT THE TRANSFER OF UNCLAIMED PROPERTY HELD BY MUNICIPAL COURT TO THE

MINUTES OF MARCH 2, 2021

GENERAL FUND. The following ordinance was held over until the regular meeting of March 9, 2021.

ORDINANCE: 38-015-2021

Sponsored by: Mayor Stimpson

AN ORDINANCE TO AMEND CHAPTER 38, ARTICLE I, SECTION 38-24 OF THE MOBILE CITY CODE, 1991, PERMITTING THE TRANSFER OF UNCLAIMED PROPERTY HELD BY THE MOBILE MUNICIPAL COURT TO THE CITY OF MOBILE'S GENERAL FUND

WHEREAS, the Municipal Court of the City of Mobile ("Court") collects restitution ordered by the Court for payment to victim of crimes, receives and holds cash bond payments as well as bond forfeitures, and occasionally receives overpayments for the payments of fines and costs of court; and,

WHEREAS, parties to whom restitution, bond monies, or overpayment refunds are owed sometimes fail to claim what is owed them, even after reasonable attempts by the Court at notification; and,

WHEREAS, the City of Mobile ("City"), being a municipality, is exempt from the Uniform Disposition of Unclaimed Property Act of 2004 pursuant to Ala. Code §35-12-73(2); and,

WHEREAS, the Attorney General of the State of Alabama issued an opinion on November 27, 1984, which allows municipalities to create an ordinance enacting a similar method as the one established in Ala. Code §19-3-87 for the transfer of unclaimed municipal court funds to the general fund of the municipality; and,

WHEREAS, the City Council has heretofore adopted Ordinance 38-018-2009 AN ORDINANCE TO AMEND CHAPTER 38 OF THE MOBILE MUNICIPAL CODE TO ADD A NEW SECTION TO PERMIT TRANSFER OF UNCLAIMED PROPERTY HELD BY THE MOBILE MUNICIPAL COURT TO THE MOBILE GENERAL FUND adopted April 14, 2009; and,

WHEREAS, the City Council finds that amending Section 38-24, of the Mobile City Code, 1991, to establish a procedure for the transfer of unclaimed monies held by the Municipal Court to the City's general fund in a manner similar to the one established in Ala. Code §19-3-87 serves a legitimate public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA as follows:

ARTICLE ONE:

Chapter 38, Article I, Section 38-24 of the Mobile City Code, 1991, is hereby amended and restated to read as follows:

Sec. 38-24. – Unclaimed property held by municipal court.

(a) The clerk of the municipal court shall prepare a written report showing the amount of all funds whatsoever that are in the possession of the municipal court and remained unclaimed. Said funds shall include, but are not limited to, restitution payments, bond monies, fine overpayments, or costs of court overpayments. Said report shall list the name of the owner, the applicable case number(s), the amount of monies the court has received, and the date said monies became distributable.

(b) At the first session of court after January 1st of each year, the clerk shall file said report with the presiding judge.

MINUTES OF MARCH 2, 2021

(c) The presiding judge shall carefully examine said report and order the same recorded by the clerk of the court in a well-bound book, kept for that purpose, and a physical copy of said book shall be available for inspection by the public.

(d) The municipal court may distribute funds held by the court, without interest, to an eligible person.

(e) Any funds held by the municipal court are presumed abandoned ten (10) years after the funds become distributable, and after said time, the presiding judge may order any abandoned monies held by the municipal court to be deposited into the City's general fund.

ARTICLE TWO:

No other portion of Chapter 38, Article I of the Mobile City Code, 1991, nor any other portion of said Chapter 38, shall be affected by this amendment.

ARTICLE THREE:

Repealer. The City hereby repeals Ordinance 38-018-2009 adopted April 14, 2009 and all laws, and all parts of laws, in conflict with these provisions are hereby repealed.

ARTICLE FOUR:

Publication. A copy of this Ordinance shall be published pursuant and according to law, after its adoption.

ARTICLE FIVE:

Severability. The provisions of this Ordinance are severable. If any part of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, that declaration shall not affect the part or parts that remain.

ARTICLE SIX:

Effective Date. This Ordinance shall be in full force and effect from and after its adoption and publication as required by law.

ORDINANCE TO REZONE PROPERTY LOCATED AT 5001 & 5009 COTTAGE HILL ROAD (SOUTHWEST CORNER OF COTTAGE HILL ROAD AND NORTH DEMETROPOLIS ROAD) FROM R-1 AND B-2 TO B-2. The following ordinance was held over until the regular meeting of March 9, 2021.

ORDINANCE: 64-016-2021

Sponsored by: Councilmember Rich

AN ORDINANCE AMENDING THE ORDINANCE ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MOBILE ON THE 16TH DAY OF MAY, 1967, SAID ORDINANCE BEING COMMONLY KNOWN AS THE ZONING ORDINANCE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBILE AS FOLLOWS:

Section One: That the Ordinance commonly known as the Zoning Ordinance and adopted on May 16, 1967, together with the Zoning Map of the City-of Mobile, 1967, be, and the same hereby is changed and altered in respect to that certain property in the City of Mobile, State of Alabama, described as follows to-wit:

COMMENCE AT THE FORMER INTERSECTION OF THE SOUTH MARGIN OF COTTAGE HILL ROAD AND THE WEST MARGIN OF NORTH DEMETROPOLIS ROAD, SAID POINT MARKED BY A CONCRETE MONUMENT; THENCE SOUTH ALONG SAID WEST MARGIN 01°17'12" WEST A DISTANCE OF 35.59 FEET TO THE POINT OF BEGINNING, SAID POINT MARKED BY A CAPPED IRON ROD; THENCE CONTINUE

MINUTES OF MARCH 2, 2021

ALONG SAID SOUTH MARGIN SOUTH 01°17'12" WEST A DISTANCE OF 154.34 FEET, THENCE DEPARTING SAID SOUTH MARGIN, NORTH 88°45'48" WEST A DISTANCE OF 140.18 FEET TO A POINT MARKED BY A CRIMPED TOP PIPE; THENCE SOUTH 04°52'02" EAST A DISTANCE OF 52.79 FEET TO A POINT MARKED BY A CRIMPED TOP PIPE, THENCE SOUTH 70°58'53" WEST A DISTANCE OF 89.92 FEET TO A POINT MARKED BY A CRIMPED TOP PIPE; THENCE NORTH 07°56'18" WEST A DISTANCE OF 189.63 FEET TO A POINT ON SAID SOUTH MARGIN, SAID POINT MARKED BY CAPPED IRON ROD (REBAR); THENCE ALONG SAID SOUTH MARGIN, NORTH 72°14'14" EAST A DISTANCE OF 99.84 FEET TO A POINT MARKED BY A CAPPED IRON ROD (REBAR); THENCE CONTINUING ALONG SAID SOUTH MARGIN, NORTH 72°14'14" EAST A DISTANCE OF 128.77 FEET TO THE POINT OF CURVATURE OF A 25.00' RADIUS CURVE TO THE RIGHT, SAID POINT MARKED BY A CAPPED IRON ROD (REBAR); THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 47.58 FEET (CHORD BEARS SOUTH 53°14'17" EAST, 40.72'); CONTAINING 41520 SQUARE FEET (0.95 ACRES), MORE OR LESS.

The classification of said property is hereby changed from R-1, Single-Family Residential District, and B-2, Neighborhood Business District, to B-2, Neighborhood Business District, and it shall hereafter be lawful to construct on such property any structures permitted by the Ordinance of May 16, 1967, commonly known as the Zoning Ordinance and to use said premises for any use permitted by the terms of said Ordinance in B-2, Neighborhood Business District, provided, however, that the plans for any structure or building sought to be erected on said property shall be in compliance with the building laws of the City of Mobile, and that any structure shall be approved by the Building Inspector of the City of Mobile, and that any such structure be erected only in compliance with such laws, including the requirements of said Zoning Ordinance of May 16, 1967, and further provided, however, that no lot or parcel of land herein above described shall be used for any use allowed in an B-2, Neighborhood Business District until all of the conditions set forth below have been complied with: (1) Correction of the legal description to be the current legal description and not that of the proposed Subdivision after recording; (2) Completion of the Subdivision process; and (3) Full compliance with all municipal codes and ordinances.

Section Two: This Ordinance shall be in force and effect from and after its adoption and publication.

ORDINANCE TO CREATE CHAPTER 65 OF THE CITY CODE RELATING TO TREE PROTECTION AND THE MOBILE TREE COMMISSION. The following ordinance was introduced by Councilmember Daves.

ORDINANCE: 65-017-2021

Sponsored by: Mayor Stimpson

AN ORDINANCE TO CREATE CHAPTER 65 OF THE MOBILE CITY CODE RELATING TO TREE PROTECTION AND THE MOBILE TREE COMMISSION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBILE, as follows:

SECTION ONE. That Chapter 65 to the Mobile City Code, to be entitled Tree Protection and Management, is hereby created and adopted so that it reads in its entirety as follows:

CHAPTER 65 - Tree Protection and Management

Article 1. Definitions.

For the purpose of this chapter certain words and phrases used herein are defined as follows:

The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.

MINUTES OF MARCH 2, 2021

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

The word "shall" is mandatory; the word "may" is permissive.

The words "used or occupied" include the words "intended, designed, or arranged to be used or occupied."

Diameter at breast height (DBH): The measurement of the width of the trunk of the tree at four and one-half (4 1/2) feet above the existing grade. For multi-trunk trees the DBH shall be the sum of the diameter of the trunks.

Heritage live oak tree: A live oak tree which is at least twenty-four (24) inches DBH.

Heritage tree: Any of the following list of trees which are at least twelve (12) inches DBH: oak (excluding water oak and scrub oak), hickory, sycamore, yellow poplar, sweet gum, magnolia, cypress, and new trees required by this chapter.

Historic district: A geographic area designated by the city council as a historic district, including all historic districts existing as of the date of this ordinance and future districts designated by the Mobile City Council.

Mobile Tree Act: The common name of the local law enacted by the Alabama State Legislature (Act No. 929, Acts of Alabama, 1961 Regular Session, as amended, 1981, 2015) for the purpose of protecting the trees on both public and private property within the incorporated areas of the city, codified at Ala. Code (1975) Title 11 Chapter 72.

Mobile Tree Commission: Hereafter call the "commission," (the Mobile Tree Commission) is the agency designated by the Alabama State Legislature to enforce the Mobile Tree Act.

Overstory: The top portion or canopy of trees above a cluster of smaller trees.

Public tree: A tree located on any property owned by the City of Mobile, Alabama.

Tree: Any self-supporting, woody plant of a species suitable for growing in the proposed environment as well as the City of Mobile.

Understory: The trees which grow beneath the overstory to include dogwood, crepe myrtles, Bradford pears, red buds and others approved by the urban forester.

Urban forester: The City employee specially trained in forestry, arboiculture and urbiculture, or his/her duly authorized designee.

Article 2. General Purposes and Application.

1. Purpose.

- a. To promote environmental and ecological awareness;
- b. To improve the city's image and aesthetic charm and beauty;
- c. To protect property values from the adverse aesthetic and ecological effects of imprudent tree removal;
- d. To promote ground and surface water stabilization and decrease the adverse impact of the water table fluctuations caused by imprudent removal;
- e. To protect against greater noise pollution which is increased by the imprudent removal of buffer trees;
- f. To protect existing vegetation from greater wind velocities resulting from the imprudent removal of buffer trees;

MINUTES OF MARCH 2, 2021

g. To promote air quality which is significantly affected by the natural clearing of the atmosphere by the trees through particulate matter interception and the release of oxygen into the atmosphere as a byproduct of photosynthesis;

h. To stabilize the urban wildlife habitat and ecosystem balance;

i. To provide for the public health, safety and welfare;

j. To support the provisions of the Mobile Tree Act (Ala. Code (1975) Title 11, Chapter 72.)

k. To provide uniform standards in the removal and replacement of trees on public and private property within the corporate limits of the City of Mobile, with the exception of the rights-of-way of public streets and areas designated as rights-of-way on approved subdivision plats in accordance with both municipal and state laws which are governed by the Mobile Tree Act and the Mobile Tree Commission;

l. To educate the public in the economic, aesthetic and historic benefits of preserving trees, including conserving energy, reducing soil erosion, and protecting trees and the ecosystem of the City of Mobile, Alabama;

m. To preserve the economic base attracted to the City of Mobile by such factors.

2. Application of chapter. The requirements of this chapter shall apply to all land, other than the public rights-of-way, and areas designated as rights-of-way, located within the corporate limits of the City of Mobile, except R-1 and R-2 lots with an existing habitable structure, which are not located in an historic district subject to the rules and regulations of either the architectural review board and/or the Old Dauphin Way review board. However, R-1 and R-2 lots which are under the purview of the rules and regulations of either the architectural review board and/or the Old Dauphin Way review board are subject to the requirements of this chapter.

3. Mobile Tree Commission.

a. The Mobile Tree Commission shall act in an advisory, research and consultation capacity to the City of Mobile and the general public, in coordination with the City's urban forester.

b. Nothing in this section shall be construed to limit the Mobile Tree Commission's regulatory authority pursuant to the Mobile Tree Act of 1961, (Ala. Code (1975) Title 11, Chapter 72) with regard to monitoring trees in public rights-of-way.

c. Further, the Mobile tree commission shall take active steps to:

(1) Conduct regular meetings in a public place in a manner conducive to public comment and participation;

(2) Educate the public as to provisions of this chapter and the State Tree Act, as well as the economic, aesthetic and historic benefits of trees to the city and its citizens, both on publicly and privately owned property protected by this section;

(3) Promote the planting and replacement of trees in the city;

(4) Promote the health, care, watering, fertilization and other desirable measures which promote the maintenance and growth of existing trees in street rights-of-way and public parks in the city;

(5) Protect trees located in the city's street rights-of-way and public parks from damage, removal, lack of sustenance or any other act or condition which might threaten the health and growth of such trees; and

MINUTES OF MARCH 2, 2021

d. On the 1st day of March in each year, the Mobile Tree Commission shall make a written report to the mayor, the city council and the planning commission which report shall state:

(1) The number of heritage trees and heritage live oak trees preserved during the previous twelve (12) months;

(2) The number of public trees and new heritage trees planted during the previous twelve (12) months;

(3) Other pertinent information.

4. Permit. Any person wishing to remove or relocate a heritage live oak tree shall under the provisions of this section make written application with the urban forester inspection services, which application shall include a landscape plan. Upon paying an administrative application fee of thirty dollars (\$30.00) to cover the costs of researching and processing the application, the application and plan shall be stamped with the date and time and forwarded to the City's urban forester for review and approval. All proceeds from the said processing fee shall be earmarked for the use of the City's urban forester for the administration of this subsection.

a. Time of permit. Any and all permits issued by the City as per the requirements of this subsection shall be declared null and void if commencement of work so permitted is not started within a reasonable time, not to exceed six (6) months. But in no case will the permit be valid, for more than twelve (12) months. Permits not used within this period will become null and void and future work will require a new application.

b. Permit procedure. An application may be field checked prior to issuance of a permit, but in no event more than ten (10) working days after the date of receipt of the application. Failure to deny the application, as provided herein, within this ten-day period shall result in the automatic issuance of the permit as requested in the application. The urban forester may request a recommendation concerning the application from any or all appropriate City departments, and/or the tree commission.

c. Pre-application inspection service. In connection with applications involving extremely large tracts of property, the urban forester may arrange and coordinate a pre-application inspection of the site involved.

d. Issuance and denial of permit. Upon receiving the field inspection report and any requested recommendations concerning the application, the urban forester shall issue a permit for the removal or relocation of trees if one (1) or more of the criteria in subparagraph (e) is met.

e. Criteria for issuance of tree removal permit.

(1) The tree is located in an area where a structure or improvement will be placed according to an approved plan.

(2) In addition to criteria #1 above, as to R-1 and R-2 properties only, the tree is located where a swimming pool or detached carport or garage will be located.

(3) The tree is diseased, injured, in danger of falling too close to existing or proposed structures, interferes with existing utility service, creates unsafe vision clearance or conflicts with other ordinances or regulations.

(4) The tree is, or will be after construction, in violation of federal, state, or local laws or regulations, or cause the construction to violate federal, state, or local laws or regulations including, but not limited to, laws and regulations pertaining to government programs for financing the construction.

f. Basis for denial of permit. The urban forester, upon a determination that an application for tree removal does not meet the criteria of subparagraph (e) above, may, within his

MINUTES OF MARCH 2, 2021

discretion, deny the same and shall notify the applicant of the reason(s) for said denial within five (5) working days of his decision.

g. Historic areas. All other provisions of this subsection notwithstanding, no heritage tree can be removed, nor can land be cleared or grubbed, in any historic district, area, or property within the jurisdiction of the architectural review board and/or the Old Dauphin Way review board, except under a permit issued by the urban forester after application as provided above, which shall be granted only upon a showing that the said heritage tree is:

(1) Diseased or injured, in danger of falling too close to existing or proposed structures, interferes with existing utility service, creates unsafe vision clearance or conflicts with other federal, state or local laws and regulations;

(2) Certified by the architectural review board or the Old Dauphin Way review board to be removed for the purpose of renovating an historic structure or enhancement of the aesthetic quality of the property; or

(3) The owner of the property on which the heritage tree is located has demonstrated by clear and convincing evidence that the owner will suffer extreme and extraordinary hardship unless the permit is granted.

In all cases where removal is permitted, the said tree shall be relocated if deemed feasible by the urban forester and the cost does not exceed five hundred dollars (\$500.00). Otherwise the said tree shall be replaced on a two (2) for one (1) basis, with replacement heritage trees. For trees located in areas covered by this subsection the definition of a heritage tree shall be amended to reduce the size to eight (8) inches DBH.

5. Tree protection during construction. It shall be unlawful for any person in the construction of any structures or other improvements to place solvents, material, construction machinery, or temporary soil deposits within ten (10) feet of any protected tree trunk having a twenty-four-inch or greater DBH above grade. Before development, land clearing, filling or any land alteration, a permit will be required; the developer shall be required to erect suitable protective barriers, and this protection, where required, shall remain until permanent barriers have been erected. Also, during construction, no attachments or wires shall be attached to any of said trees so protected.

Except for sidewalks, driveways, and streets, no person shall pave with concrete, asphalt or other impervious material within eight (8) inches per one (1) inch of DBH of any remaining heritage tree or heritage live oak tree, not to exceed five (5) feet. The urban forester shall have the discretion to waive this requirement.

6. Emergencies. In case of emergencies, such as hurricane, windstorm, flood, freeze, or other disasters, the requirements of these regulations may be waived by the urban forester, upon a finding that such waiver is necessary so that public or private work to restore order in the city will not be impeded.

7. Exemptions. The provisions of this article shall not apply to any land recognized by the city upon which bona fide agricultural uses or commercial nursery or tree farm are being conducted, which land exceeds ten (10) acres, as hereinafter defined:

a. Bona fide agriculture: A land used to derive income from growing plants or trees on land, including but not limited to, land used principally for timber production, and not including land used principally for another use and incidentally for growing trees or plants for income.

b. Commercial nursery or tree farm: A licensed plant or tree nursery or farm in relation to those trees planted and growing on the premises of the licensee, which are planted and growing for sale or intended sale to the general public in the ordinary course of said licensee's business.

This exception shall not be interpreted to include timber harvesting incidental to imminent development of the land.

MINUTES OF MARCH 2, 2021

8. Removal of public trees.

a. No trees shall be removed from public rights-of-way except as provided by the Mobile Tree Act of 1961, as amended, in accordance with the rules and regulations of the Mobile tree commission.

b. No public tree located in any City property shall be removed without first filing a notice of intent with the tree commission at least two (2) weeks prior to obtaining a resolution of authority from the city council, said resolution and notice of intent requirements shall be in lieu of obtaining a permit from the urban forester. The foregoing provision shall not apply to public trees whose removal is authorized by the urban forester.

9. Tree removal companies; construction companies. All provisions of this chapter shall apply to any person removing trees on behalf of any other person, including all tree removal construction companies or persons in the business of removing trees or constructing. It shall be unlawful for any person or company to remove or cause to be removed any tree, or undertake any work for which a permit is required pursuant to this ordinance, unless a valid permit therefor is in effect and is displayed in accordance with the provisions of subsection 10 herein. If any such work or removal is performed without the permit being displayed as required in subsection 10 herein, such removal or work shall constitute a violation of this ordinance and shall subject the person or company violating this ordinance to all penalties provided for herein.

10. Display of permit; inspection. The applicant shall prominently display on the site the permit issued. Such permit shall be displayed continuously while trees are being removed or replaced or work is being done as authorized on the permit, and for ten (10) days thereafter. As a condition for the issuance of the permit, the applicant shall agree in writing to entry onto his premises by representatives of the City and all law enforcement officers to inspect the permit at any time, and such entry shall be lawful. Failure to allow such entry shall be unlawful, shall constitute a violation of this ordinance and shall constitute failure to display the permit as required under this chapter.

11. Arborists' license and bond. It shall be unlawful for any person, individual, corporation, institution, or agent of such, to engage principally in the business or occupation of pruning, fertilizing, or removing trees within the corporation limits of the City of Mobile, without first applying for and procuring the appropriate business license from the City. Plus, all local arborists must abide by all relevant state laws.

a. City employees and public service workers who perform arboricultural duties within the street right-of-way and public parks of the city in protection of the public health, safety and welfare shall not be required to apply for a City business license. However, should such arboricultural work be subcontracted, the City department(s) and/or public service organization(s) which subcontract the work shall be responsible for insuring that their contractors are properly licensed arborists.

b. Where federal, state, and local laws require the certification of any person, individual, corporation, institution, or agent of such, to utilize the services of workers certified to practice arboriculture, said certification shall apply, in addition to having a business license from the City.

c. Before any permit is issued to a subcontractor for work within the street right-of-way and public parks of the city, the applicant shall file with the executive director of public works evidence of possession of a performance bond, either in the minimum amount of ten thousand dollars (\$10,000.00) or the minimum amount specified by the City for the type of development activity being performed, whichever amount is the greater of the two. All other insurance coverage, such as bodily injury, damages and related coverages, shall comply with the requirements mandated by the City's legal department. The developer or primary contractor can agree by notarized letter to be the responsible party for damages of subcontractor.

MINUTES OF MARCH 2, 2021

12. Removal, abuse or mutilation of heritage trees. No person shall damage, cut, carve, transplant, mutilate, abuse or remove any public tree, heritage tree, or heritage live oak tree; attach any rope, wire, nails, advertising posters, or other contrivance to any public tree, heritage tree, or heritage live oak tree; allow any gaseous liquid, or solid substance which is harmful to such trees to come in contact with any such tree, including roots damaged during curb cuts, sidewalk and driveway installation and repair.

a. Utility line clearing in conformance with International Society of Arboriculture, National Arborist Association Standards and the National Electrical Safety Code clearances does not constitute tree abuse.

b. No curb cuts which involve public trees, heritage trees, or heritage live oak trees shall be allowed without prior coordination with the urban forester.

c. No action in removing trees due to lightning, hurricanes, or other natural disasters shall be considered tree abuse.

d. The removal of trees for which permits have been issued shall not be prohibited by this subsection.

Notwithstanding the foregoing, heritage trees may be removed pursuant to a properly filed and approved landscape plan.

13. Enforcement of ordinance. The urban forester, in coordination with the parks department, traffic engineering department, inspection services department, engineering department and any other affected City department, shall perform, or cause to be performed, the following duties and/or activities:

a. Direct the enforcement of this chapter plus coordinate and educate the various departments of the city and the general public which are affected by the provisions of this section H;

b. Develop and maintain a tree inventory for the purpose of creating a master data bank of all trees within the City's street rights-of-way and public properties;

c. Develop and maintain a tree disease and injury list for the purpose of establishing the most common problems which afflict trees in Mobile's urban environment;

d. To develop and maintain a tree plan for the purpose of establishing design standards for trees and other landscaping materials planted within the public rights-of-way.

14. Interference with the urban forester. No person shall hinder, prevent, delay, or interfere with the urban forester, the tree commission or any other duly authorized individual, while engaged in carrying out the execution or enforcement of this ordinance; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the municipality.

15. Tree trails.

a. Tree trails. The following city streets are of significant historic and aesthetic value because of the trees adjoining the land, and hereby are declared tree trails of the city: Government Street, Dauphin Street, Michigan Avenue, Park Avenue, Houston Street, Old Shell Road, Springhill Avenue, and the Avenue of Oaks. Other streets, such as those in historic districts, may be designated tree trails by the planning commission upon recommendation by the urban forester, the tree commission, or the public in the future.

b. All tree trails of the city shall be clearly marked with municipal signs.

c. On all designated tree trails within the city, utility companies shall work closely with both the urban forester and the tree commission prior to performing any projects which would affect the trees along these designated streets.

MINUTES OF MARCH 2, 2021

d. In no event shall any utility company be authorized to cut or prune more than thirty (30) percent of the existing tree overstory of any tree along these designated streets.

e. All oversized vehicles, specifically those vehicles in excess of thirteen (13) feet, six (6) inches in height and ten (10) feet in width, and any vehicle hauling or pulling an oversized load in excess of the dimensions of an oversized vehicle are prohibited from traversing tree trails, without first obtaining a written permit therefor from the urban forester.

16. Tree planting and preservation trust fund. The tree commission shall establish a trust fund, known as the tree planting and preservation trust fund, for the purpose of replenishing the urban forest. Endowments for said fund shall be received from private contributions for said purpose. The tree commission, using nationally accepted accounting methods, shall deliver an annual report to the city council regarding the status of the tree planting and preservation trust fund.

17. Appeal of grant or denial of permit. Appeals of either a grant or denial of permits pursuant to this chapter shall be to the city council and may be taken by the applicant, by any officer, department or board of the city affected by any decision, or by any person aggrieved by the decision by filing a written notice of appeal with the Urban Forester and the City Clerk within fifteen (15) days from the date of the decision. The notice of appeal shall specify the particular grounds upon which the appeal is taken. Upon receipt of the notice of appeal, the Urban Forester shall transmit to the City Clerk all of the original documents and materials, or true copies thereof, constituting the record upon which the order or decision appealed is based. Any person aggrieved by the decision of the City Council may appeal the decision in accordance with State code.

18. Civil penalty. Notwithstanding any other provision of the zoning ordinance, any person, firm, or corporation violating or failing to comply with the stipulations of this chapter, pursuant to the provisions of this ordinance, shall be subject to a civil fine, to be assessed by the City's environmental judge, not to exceed five hundred dollars (\$500.00) per violation. In lieu of the foregoing, the environmental judge may require mitigation actions or the payment of the cost of the damage caused to the tree. The proceeds of all fines and damages shall be earmarked for the use of the urban forester in his official duties. Each violation of this chapter, including each unpermitted removal or mutilation of a heritage tree, public tree, or heritage live oak tree, is a separate and distinct civil offense.

19. Civil appeals. Appeals of municipal court judgments issued pursuant to violations of this chapter shall be to the Circuit Court of Mobile County, as mandated by state law.

SECTION TWO: The provisions of this Ordinance are supplemental and shall not be construed to repeal any other ordinance or law except to the extent of any conflict, in which case the provisions of this Ordinance shall prevail.

SECTION THREE: The provisions of this Ordinance are severable. If any part of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, that declaration shall not affect the part or parts that remain.

SECTION FOUR: This Ordinance shall be in full force and effect from and after its adoption and publication as required by law.

The ordinance was read by the City Clerk; whereupon Councilmember Daves moved that the ordinance be adopted, which was seconded by Councilmember Gregory. Following comments by Councilmembers Rich, Gregory, Daves and Richardson the vote was as follows:

Ayes: Richardson, Small, Williams, Daves and Gregory

Nays: Rich

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the ordinance adopted.

MINUTES OF MARCH 2, 2021

AUTHORIZE AGREEMENT WITH ALABAMA PIPE & SUPPLY COMPANY, INC., FOR THE EPA GULF OF MEXICO TRASH FREE WATERS GRANT PROJECT, \$75,600.00. The following resolution was held over until the regular meeting of March 9, 2021.

RESOLUTION: 01-136-2021

Sponsored by: Mayor Stimpson

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, that the Mayor and the City Clerk be, and they hereby are, authorized and directed to execute and attest, respectively, for and on behalf of the City of Mobile, an Agreement with Alabama Pipe & Supply Company, Inc., in the amount of \$75,600.00 for the EPA Gulf of Mexico Trash Free Waters Grant project, as outlined in the agreement attached hereto and made a part hereof as though set forth in full. A copy of said agreement is on file in the office of the City Clerk.

BE IT FURTHER RESOLVED that the City Council finds that this resolution is necessary to perform essential minimum functions of the Council.

CONCUR IN THE RE-APPOINTMENT OF LARRY JACKSON TO THE ALTAPOINTE HEALTH BOARD OF DIRECTORS. The following resolution was held over until the regular meeting of March 9, 2021.

RESOLUTION: 03-137-2021

Sponsored by: City Council

BE IT RESOLVED BY THE CITY COUNCIL OF MOBILE, ALABAMA, that the City Council concurs in the re-appointment of Larry Jackson to the AltaPointe Health Board of Directors, effective April 1, 2021, for a term ending April 1, 2027.

BE IT FURTHER RESOLVED that the City Council finds that this resolution is necessary to perform essential minimum functions of the Council.

APPOINT HONORABLE FREDDIE STOKES TO THE POSITION OF ADJUNCT JUDGE OF MOBILE MUNICIPAL COURT. The following resolution was held over until the regular meeting of March 9, 2021.

RESOLUTION: 03-138-2021

Sponsored by: Mayor Stimpson

BE, IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF MOBILE, hereby appoints the Honorable Freddie Stokes to the position of Adjunct Judge of the Mobile Municipal Court, effective immediately.

APPROVE PURCHASE ORDER TO DONOHOO CHEVROLET LLC FOR THREE 2021 CHEVROLET TAHOE POLICE SUVS, \$107,835.78. The following resolution was held over until the regular meeting of March 9, 2021.

RESOLUTION: 08-139-2021

Sponsored by: Mayor Stimpson

MINUTES OF MARCH 2, 2021

BE IT RESOLVED BY THE CITY COUNCIL OF MOBILE, ALABAMA, that the Purchasing Agent is authorized to execute, for and on behalf of the City of Mobile, a purchase order to the indicated vendor in the approximate amount stated, and to approve the supporting bid award if required, for the following requisition as indicated below and attached herein:

Requisition	Fiscal Year	Department	Description	Amount	Vendor
<u>6266</u>	2021	(F7000) MOTOR POOL	3 2021 CHEVROLET TAHOE POLICE PACKAGE SUVS (AL STATE CONTRACT)	\$107,835.78	<u>(293039) DONOHOO CHEVROLET LLC</u>

BE IT FURTHER RESOLVED THAT the City Council of the City of Mobile, Alabama, finds that this resolution is either necessary to respond to COVID-19 or necessary to perform essential minimum functions of the Council.

APPROVE PURCHASE ORDER TO DENNIS ALUMINUM PRODUCTS FOR 50 DECORATIVE SIGN POSTS, \$21,860.00. The following resolution was held over until the regular meeting of March 9, 2021.

RESOLUTION: 08-140-2021

Sponsored by: Mayor Stimpson

BE IT RESOLVED BY THE CITY COUNCIL OF MOBILE, ALABAMA, that the Purchasing Agent is authorized to execute, for and on behalf of the City of Mobile, a purchase order to the indicated vendor in the approximate amount stated, and to approve the supporting bid award if required, for the following requisition as indicated below and attached herein:

Requisition	Fiscal Year	Department	Description	Amount	Vendor
<u>4098</u>	2021	(2060) TRAFFIC ENGINEERING	50 3IN X 12FT DECORATIVE ALUMINUM SIGN POSTS, 20 24IN EXTENSION POSTS (SEALED BID 5510)	\$21,860.00	<u>(44605) DENNIS ALUMINUM PRODUCTS</u>

BE IT FURTHER RESOLVED THAT the City Council of the City of Mobile, Alabama, finds that this resolution is either necessary to respond to COVID-19 or necessary to perform essential minimum functions of the Council.

AUTHORIZE A PERFORMANCE CONTRACT WITH GCB ENTERTAINMENT, INC. FOR THE GULF COAST CHALLENGE, \$200,000.00. The following resolution was held over until the regular meeting of March 9, 2021.

RESOLUTION: 21-141-2021

MINUTES OF MARCH 2, 2021

Sponsored by: Mayor Stimpson

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, that the Mayor and the City Clerk be, and they hereby are, authorized and directed to execute and attest, respectively, for and on behalf of the City of Mobile, a performance contract, by and between the City of Mobile and GCB Entertainment, Inc. A copy of said contract is on file in the office of the City Clerk.

BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, that the sum of \$200,000.00 be allocated to Capital Project #P0063 Contributions-Gulf Coast Challenge in the Convention Center Fund (6080) for the GCB Entertainment, Inc., performance contract.

AUTHORIZE CONTRACT WITH WRICO SIGNS, INC. FOR TRINITY GARDENS PARK – DOTCH COMMUNITY CENTER – MARQUEE SIGN REPLACEMENT, \$73,200.00 (2020 CIP ID#2026 D1). The following resolution was held over until the regular meeting of March 9, 2021.

RESOLUTION: 21-142-2021

Sponsored by: Councilmember Richardson and Mayor Stimpson

BE IT RESOLVED BY THE CITY COUNCIL OF MOBILE, ALABAMA, that the Mayor and the City Clerk be, and they hereby are, authorized and directed to execute and attest, respectively, for and on behalf of the City of Mobile, a Contract, that is necessary to perform essential minimum function of the Council, by and between the City of Mobile, and the company listed below, for work as outlined in the contract attached hereto and made a part hereof as though set forth in full. A copy of said contract is on file in the office of the City Clerk.

Name of Company: Wrico Signs, Inc.

Project Name: Trinity Gardens Park – Dotch Community Center –
Marquee Sign Replacement

Project Number: PR-054-20

Amount: \$73,200.00 (2020 CIP ID#2026 D1)

AUTHORIZE CONTRACT WITH BAGBY & RUSSELL ELECTRIC CO INC FOR AN ACCESS CONTROL SYSTEM UPGRRADE AT THE MOBILE ALABAMA CRUISE TERMINAL CBP OFFICES; \$15,880.00. The following resolution was held over until the regular meeting of March 9, 2021.

RESOLUTION: 21-143-2021

Sponsored by: Councilmember Manzie and Mayor Stimpson

BE IT RESOLVED BY THE CITY COUNCIL OF MOBILE, ALABAMA, that the Mayor and the City Clerk be, and they hereby are, authorized and directed to execute and attest, respectively, for and on behalf of the City of Mobile, a Contract, by and between the City of Mobile, and the company listed below, for work as outlined in the contract attached hereto and made a part hereof as though set forth in full. A copy of said contract is on file in the office of the City Clerk.

Name of Company: BAGBY & RUSSELL ELECTRIC COMPANY, INC.

Project Name: MOBILE ALABAMA CRUISE TERMINAL CBP OFFICES –
ACCESS CONTROL SYSTEM UPGRADE

Project Number: SR-017-21

MINUTES OF MARCH 2, 2021

Amount: \$15,880.00

AUTHORIZE CONTRACT WITH JOHNSON CONTROLS INC., FOR AN IONIZATION TUBE REPLACEMENT AT GULFQUEST MARITIME MUSEUM, \$44,927.00. The following resolution was held over until the regular meeting of March 9, 2021.

RESOLUTION: 21-144-2021

Sponsored by: Councilmember Manzie and Mayor Stimpson

BE IT RESOLVED BY THE CITY COUNCIL OF MOBILE, ALABAMA, that the Mayor and the City Clerk be, and they hereby are, authorized and directed to execute and attest, respectively, for and on behalf of the City of Mobile, a Contract, by and between the City of Mobile, and the company listed below, for work as outlined in the contract attached hereto and made a part hereof as though set forth in full. A copy of said contract is on file in the office of the City Clerk.

Name of Company: JOHNSON CONTROLS, INC.

Project Name: GULFQUEST MARITIME MUSEUM –
IONIZATION TUBE REPLACEMENT

Project Number: FM-118-21

Amount: \$44,927.00

AUTHORIZE CONTRACT WITH OZARK STRIPING COMPANY, INC., FOR APPLICATION OF THERMOPLASTIC STRIPING, MARKING AND LEGENDS ON VARIOUS CITY ROADWAYS, \$1,048,847.50. The following resolution was held over until the regular meeting of March 9, 2021.

RESOLUTION: 21-145-2021

Sponsored by: City Council

WHEREAS, the City Council of the City of Mobile, Alabama, finds that the subject this resolution is either necessary to respond to COVID 19, or necessary to perform essential minimum functions of the Council.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, that the Mayor and the City Clerk be, and they hereby are, authorized and directed to execute and attest, respectively, for and on behalf of the City of Mobile, a contract, by and between the City of Mobile, and the company listed below; for the construction of roadway striping throughout the City, as outlined in the contract attached hereto and made a part hereof as though set forth in full. A copy of said contract is on file in the office of the City Clerk.

Name of Company: Ozark Striping Company, Inc.

Project Name: Application of Thermoplastics Striping, Marking and
Legends on Various City of Mobile Roadways

Capital Project No.: RWS19

Amount: \$1,048,847.50

AUTHORIZE CONTRACT WITH HARRIS CONTRACTING SERVICES, INC., FOR SPANISH PLAZA – LIGHTING UPGRADES, \$370,444.00. The following resolution was held over until the regular meeting of March 9, 2021.

RESOLUTION: 21-146-2021

Sponsored by: Councilmember Manzie and Mayor Stimpson

MINUTES OF MARCH 2, 2021

BE IT RESOLVED BY THE CITY COUNCIL OF MOBILE, ALABAMA, that the Mayor and the City Clerk be, and they hereby are, authorized and directed to execute and attest, respectively, for and on behalf of the City of Mobile, a Contract, that is necessary to perform essential minimum functions of the Council, by and between the City of Mobile, and the company listed below, for work as outlined in the contract attached hereto and made a part hereof as though set forth in full. A copy of said contract is on file in the office of the City Clerk.

Name of Company: Harris Contracting Services, Inc.
Project Name: Spanish Plaza – Lighting Upgrades
Project Number: PR-063-20
Amount: \$370,444.00

AUTHORIZE CONTRACT AMENDMENT WITH BARTER & ASSOCIATES, INC., FOR LADD STADIUM STRUCTURAL REPAIRS – PHASE 2; PR-011-20, \$7,500.00. The following resolution was held over until the regular meeting of March 9, 2021.

RESOLUTION: 21-147-2021

Sponsored by: Councilmember Manzie and Mayor Stimpson

BE IT RESOLVED BY THE CITY COUNCIL OF MOBILE, ALABAMA, that the execute and attest, respectively, for and on behalf of the City of Mobile, a Contract, that is necessary to perform essential minimum functions of the Council, by and between the City of Mobile, and the company listed below, for work as outlined in the contract attached hereto and made a part hereof as though set forth in full. Whereby, the sum of \$7,500.00 will be added to the original contract amount of \$60,000.00. A copy of said contract is on file in the office of the City Clerk.

Name of Company: Barter & Associates, Inc.
Project Name: Ladd Stadium Structural Repairs – Phase 2
Project Number: PR-011-20
Amount: \$7,500.00

AUTHORIZE A 2021 ARTS, CULTURE & COMMUNITY ASSETS GRANT APPLICATION TO THE DANIEL FOUNDATION OF ALABAMA FOR MECHANICAL UPGRADES TO THE SAENGER THEATRE, \$2,000,000 (NO MATCH). The following resolution was held over until the regular meeting of March 9, 2021.

RESOLUTION: 31-148-2021

Sponsored by: Mayor Stimpson

WHEREAS, the City Council of the City of Mobile, Alabama, finds that the subject of this Resolution is either necessary to respond to COVID 19, or necessary to perform essential minimum functions of the Council, the Mayor is authorized to apply, accept, and receive from The Daniel Foundation of Alabama, grant assistance in the amount of \$2,000,000.00 from the 2021 Arts, Culture, & Community Assets Grant, supporting the Mobile Saenger Theatre – Mechanical Upgrades.

BE IT FURTHER RESOLVED that the Mayor or his designee be authorized to accept said foundation grant if offered and to sign any agreements or other documents in connection with the grant application and to provide any information required by The Daniel Foundation of Alabama. Any agreements for grant assistance, together with the exhibits, shall be filed with the City Clerk after award and execution.

MINUTES OF MARCH 2, 2021

APPROVE THE USE OF ELECTRONIC VOTE COUNTING SYSTEM FOR 2021 MUNICIPAL ELECTION. The resolution was introduced by Councilmember Daves.

RESOLUTION: 27-149-2021

Sponsored by: Mayor Stimpson

WHEREAS, Chapter 7 of Title 17 of the Code of Alabama (1975), and the regulations adopted pursuant thereto by the Alabama Electronic Voting Committee, provide for the use of Electronic Vote Counting Systems; and

WHEREAS, Section 17-7-21 of the Code of Alabama (1975) provides that a municipality may, in its discretion, by adoption of an appropriate resolution, authorize, adopt, and direct the use of electronic vote counting systems for use in all elections held in such municipality;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Mobile, Alabama, that for all elections held subsequent to the passage of this resolution, the use of ES&S Model DS 200, ES&S Express Vote and ES&S DS 850 (absentee ballot counter), a system which complies with Section 17-7-21 of the Code of Alabama and any regulations adopted pursuant thereto, is hereby authorized for the reporting, counting, and tabulating of any and all election results.

BE IT FURTHER RESOLVED, that the City Clerk of the City of Mobile is hereby directed to file a copy of this resolution with the Secretary of State as provided in Section 17-7-21 of the Code of Alabama (1975).

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Richardson and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the resolution adopted.

FIX THE COSTS FOR THE DEMOLITION OF THE STRUCTURE AT 2056 GENERALGORGAS DRIVE NORTH, \$3,850.00. The following resolution was introduced by Councilmember Daves.

RESOLUTION: 40-150-2021

Sponsored by: Councilmember Richardson

WHEREAS, notice has been duly given pursuant to Ordinance No. 11-085, adopted November 26, 2002, affording to all persons an opportunity to be heard concerning the demolition of the structure at 2056 General Gorgas Drive North and the City Council of the City of Mobile having held such public hearing in connection therewith;

WHEREAS, an itemized report in writing has been made to the City Council of the City of Mobile showing the costs involved in the demolition of the structure 2056 General Gorgas Drive North to be \$3,850.00 and the City Council, having received the report and heard all objections which have been raised by any of the interested parties liable to be assessed for the cost of the work, finds and determines that such costs are reasonable and in all respects should be confirmed;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, as follows:

MINUTES OF MARCH 2, 2021

Section 1. The amount of \$3,850.00 shall constitute a special assessment against the property at 2056 General Gorgas Drive North and being that property more particularly described as follows:

LOT 15 GENERAL GORGAS PLACE MBK 4/663 #SEC 42 T4S RIW #MP29 07 42 0 001

Parcel No.: 29 07 42 0 001 198

Owner: SMITH WILLIE
2062 ESLAVA LANE
MOBILE, AL 36605

and the assessment hereby made and confirmed shall constitute a lien on and against said parcel of land for the amount of the assessment so made, and the report made to this body of the costs for the demolition of the structure upon said property is hereby in all respects confirmed.

Section 2. It is directed that a certified copy of this resolution shall be filed in the Office of the Judge of Probate of Mobile County, Alabama.

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Richardson and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory
Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the resolution adopted.

FIX COSTS FOR THE DEMOLITION OF THE STRUCTURE AT 374 DUNBAR STREET, \$3,850.00. The following resolution was introduced by Councilmember Daves.

RESOLUTION: 40-151-2021

Sponsored by: Councilmember Manzie

WHEREAS, notice has been duly given pursuant to Ordinance No. 11-085, adopted November 26, 2002, affording to all persons an opportunity to be heard concerning the demolition of the structure at 374 Dunbar Street and the City Council of the City of Mobile having held such public hearing in connection therewith;

WHEREAS, an itemized report in writing has been made to the City Council of the City of Mobile showing the costs involved in the demolition of the structure 374 Dunbar Street to be \$3,850.00 and the City Council, having received the report and heard all objections which have been raised by any of the interested parties liable to be assessed for the cost of the work, finds and determines that such costs are reasonable and in all respects should be confirmed;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, as follows:

Section 1. The amount of \$3,850.00 shall constitute a special assessment against the property at 374 Dunbar Street and being that property more particularly described as follows:

LOT 22 BLK 1 CARVER COURT MBK 4 P 239 #SEC 25 T4S R1W #MP29 07 25 0 003

Parcel No.: 29 07 25 0 003 154

Owner: MOORE LESLIE & FLORA MAE % TRACEY MOORE
5712 DEERWOOD DR N

MINUTES OF MARCH 2, 2021

MOBILE, AL 36618

and the assessment hereby made and confirmed shall constitute a lien on and against said parcel of land for the amount of the assessment so made, and the report made to this body of the costs for the demolition of the structure upon said property is hereby in all respects confirmed.

Section 2. It is directed that a certified copy of this resolution shall be filed in the Office of the Judge of Probate of Mobile County, Alabama.

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Richardson and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the resolution adopted.

FIX COSTS FOR THE DEMOLITION OF THE STRUCTURE AT 1220 DR. MARTIN LUTHER KING, JR. AVENUE, \$5,980.00. The following resolution introduced by Councilmember Daves.

RESOLUTION: 40-152-2021

Sponsored by: Councilmember Manzie

WHEREAS, notice has been duly given pursuant to Ordinance No. 11-085, adopted November 26, 2002, affording to all persons an opportunity to be heard concerning the demolition of the structure at 1220 Dr. Martin Luther King, Jr. Avenue and the City Council of the City of Mobile having held such public hearing in connection therewith;

WHEREAS, an itemized report in writing has been made to the City Council of the City of Mobile showing the costs involved in the demolition of the structure 1220 Dr. Martin Luther King, Jr. Avenue to be \$5,980.00 and the City Council, having received the report and heard all objections which have been raised by any of the interested parties liable to be assessed for the cost of the work, finds and determines that such costs are reasonable and in all respects should be confirmed;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, as follows:

Section 1. The amount of \$3,850.00 shall constitute a special assessment against the property at 1220 Dr. Martin Luther King, Jr. Avenue and being that property more particularly described as follows:

LOT 22 BLK 1 CARVER COURT MBK 4 P 239 #SEC 25 T4S R1W #MP29 07 25 0 003

Parcel No.: 29 07 25 0 003 154

Owner: MOORE LESLIE & FLORA MAE % TRACEY MOORE
5712 DEERWOOD DR N
MOBILE, AL 36618

and the assessment hereby made and confirmed shall constitute a lien on and against said parcel of land for the amount of the assessment so made, and the report made to this body of the costs for the demolition of the structure upon said property is hereby in all respects confirmed.

Section 2. It is directed that a certified copy of this resolution shall be filed in the Office of the Judge of Probate of Mobile County, Alabama.

MINUTES OF MARCH 2, 2021

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Richardson and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory
Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the resolution adopted.

FIX THE COSTS FOR THE DEMOLITION OF THE STRUCTURE AT 613 BELSAW AVENUE, \$2,200.00. The following resolution was introduced by Councilmember Daves.

RESOLUTION: 40-153-2021

Sponsored by: Councilmember Manzie

WHEREAS, notice has been duly given pursuant to Ordinance No. 11-085, adopted November 26, 2002, affording to all persons an opportunity to be heard concerning the demolition of the structure at 613 Belsaw Avenue and the City Council of the City of Mobile having held such public hearing in connection therewith;

WHEREAS, an itemized report in writing has been made to the City Council of the City of Mobile showing the costs involved in the demolition of the structure 613 Belsaw Avenue to be \$2,200.00 and the City Council, having received the report and heard all objections which have been raised by any of the interested parties liable to be assessed for the cost of the work, finds and determines that such costs are reasonable and in all respects should be confirmed;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, as follows:

Section 1. The amount of \$2,200.00 shall constitute a special assessment against the property at 613 Belsaw Avenue and being that property more particularly described as follows:

LOTS 13 & 14 BLK 2 DIXIE PARK MBK 3 P 273 #SEC 25 T4S RIW #MP29 07 25 0 002

Parcel No.: 29 07 25 0 002 018

Owner: JOHNSON BARBARA ANN & KELVIN
TYRON JOHNSON
2946 WINDCHASE BLVD
HOUSTON, TX 77082

and the assessment hereby made and confirmed shall constitute a lien on and against said parcel of land for the amount of the assessment so made, and the report made to this body of the costs for the demolition of the structure upon said property is hereby in all respects confirmed.

Section 2. It is directed that a certified copy of this resolution shall be filed in the Office of the Judge of Probate of Mobile County, Alabama.

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Richardson and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory
Nays: None

MINUTES OF MARCH 2, 2021

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the resolution adopted.

FIX THE COSTS FOR THE DEMOLITION OF THE STRUCTURE AT 800 HOLCOMBE AVENUE, \$4,183.00. The following resolution was introduced by Councilmember Daves.

RESOLUTION: 40-154-2021

Sponsored by: Councilmember Daves

WHEREAS, notice has been duly given pursuant to Ordinance No. 11-085, adopted November 26, 2002, affording to all persons an opportunity to be heard concerning the demolition of the structure at 800 Holcombe Avenue and the City Council of the City of Mobile having held such public hearing in connection therewith;

WHEREAS, an itemized report in writing has been made to the City Council of the City of Mobile showing the costs involved in the demolition of the structure 800 Holcombe Avenue to be \$4,183.00 and the City Council, having received the report and heard all objections which have been raised by any of the interested parties liable to be assessed for the cost of the work, finds and determines that such costs are reasonable and in all respects should be confirmed;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, as follows:

Section 1. The amount of \$4,183.00 shall constitute a special assessment against the property at 800 Holcombe Avenue and being that property more particularly described as follows:

BEG AT NW COR OF LOT 18 BLK 34 BON AIR ESTATES DBK 156 PG 374-377, TH RUN E 150 FT, TH S 65 FT, TH SWLY 18 FT(S), TH NWLY 162.07 FT, TH NELY 18.85 FT TO ROB

Parcel No.: 29 09 29 4 001078

Owner: STATE OF ALABAMA
MONTGOMERY, AL 36130

and the assessment hereby made and confirmed shall constitute a lien on and against said parcel of land for the amount of the assessment so made, and the report made to this body of the costs for the demolition of the structure upon said property is hereby in all respects confirmed.

Section 2. It is directed that a certified copy of this resolution shall be filed in the Office of the Judge of Probate of Mobile County, Alabama.

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Richardson and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the resolution adopted.

AUTHORIZE CONTRACT WITH JASON EVERSULL, LLC, FOR MEDICAL DIRECTOR SERVICES FOR MOBILE FIRE RESCUE DEPARTMENT, \$150,000 (3 YEARS). The following resolution was held over until the regular meeting of March 9, 2021.

RESOLUTION: 21-155-2021

MINUTES OF MARCH 2, 2021

Sponsored by: Mayor Stimpson

BE IT RESOLVED BY THE CITY COUNCIL OF MOBILE, ALABAMA, that the Mayor and City Clerk be, and they hereby are, authorized to execute and attest, respectively, for and on behalf of the City of Mobile, a contract, by and between the City of Mobile and Jason Eversull, LLC, for three years, for Medical Director services for the Mobile Fire Rescue Department, in an amount not to exceed \$150,000, attached hereto and made a part hereof as though set forth in full. A copy of said contract is on file in the Office of the City Clerk.

BE IT FURTHER RESOLVED THAT the City Council of the City of Mobile, Alabama, finds that this resolution is either necessary to respond to COVID-19 or necessary to perform essential minimum functions of the Council.

AUTHORIZE REMOVAL OF WEEDS, GROUP #1610. The following resolution was introduced by Councilmember Daves.

RESOLUTION: 58-156-2021

A RESOLUTION DETERMINING WHAT OBJECTIONS SHALL BE ALLOWED AND WHAT OBJECTIONS SHALL BE OVERRULED TO THE REMOVAL OF NOXIOUS OR DANGEROUS WEEDS ON OR IN FRONT OF CERTAIN PARCELS OF LAND.

WHEREAS, notice has been duly given and posted at least five days prior to the date of this resolution in the manner provided by law offering full opportunity to all interested parties to object to the removal of noxious or dangerous weeds on the hereinafter described parcels of land, and the City Council of Mobile having held such public hearing in connection with the notices given and no objections having been filed or made by any of the interested parties; and

WHEREAS, Parcels Nos. 1 through 20 described in the resolution adopted on the 26th of January, 2021, have not been cleared of noxious and dangerous weeds and continue to be public nuisances.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MOBILE, as follows:

SECTION 1. It is hereby ascertained and determined that the dangerous and noxious weeds growing on the hereinafter described parcels of real property are public nuisances, and it is hereby ordered and directed that the employees of the City of Mobile assigned to that work promptly remove the weeds on such parcels of property:

PARCELS OR PIECES OF PROPERTY ON WHICH NOXIOUS OR DANGEROUS WEEDS ARE TO BE REMOVED:

Parcels of real property located in the City of Mobile and more particularly described as Parcels Nos. 1 through , as described in the resolution adopted on the 26th day of January, 2021, and entitled: "A RESOLUTION DECLARING WEEDS GROWING UPON THE STREETS OR SIDEWALKS AND UPON PRIVATE PROPERTY WITHIN THE CORPORATE LIMITS OF THE CITY OF MOBILE TO BE NOXIOUS OR DANGEROUS AND TO BE PUBLIC NUISANCES AND PROVIDING FOR THE ABATEMENT OF SUCH NUISANCES."

(Lot Cleaning Liens, Group No. 1610, on file in the office of the City Clerk).

SECTION 2. The employees of the City of Mobile assigned to the work required by this resolution are hereby expressly authorized to enter upon such described pieces of property for the purpose of removing the weeds authorized by this resolution to be removed. The owner of any of the above described pieces of property shall have the right to remove the weeds ordered by this resolution to be removed from this property provided such removal is done prior to the arrival of the employees of the City of Mobile against his property by reason of any action taken hereunder. An accurate account of the costs with respect to each piece of property shall be kept by the employees of the City of Mobile

MINUTES OF MARCH 2, 2021

covering the costs of removing such weeds in front of or in front of or on each separate lot or parcel of land where the work is done by the City of Mobile or its employees, and promptly thereafter an itemized report in writing shall be made to the City Council showing such costs with respect to each separate lot or parcel of land but before the report is submitted to the City Council a copy of the itemized costs with respect to each such lot or parcel of land shall be posted for at least three days prior to such report on the door of the Council Chamber at the City Hall of Mobile, Alabama, together with a notice of the time when the report will be submitted to the City Council for confirmation.

BE IT FURTHER RESOLVED that the City Council of the City of Mobile, Alabama, finds that this resolution is either necessary to respond to COVID-19 or necessary to perform essential minimum functions of the Council.

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Williams.

Councilmember Richardson made the motion to amend the resolution to exclude the property at 1358 Martin Luther King Jr. Drive, which was seconded by Councilmember Daves and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

The Presiding Officer then called for the vote on the original motion as amended and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the resolution adopted.

APPROVE SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (OLISA GAMBLE, NOEL PARROTT, SHAUNTASIA BRACY AND MICHAEL & ROBIN FREEMAN). The following resolution was held over until the regular meeting of March 9, 2021.

RESOLUTION: 60-157-2021

Sponsored by: Mayor Stimpson

BE IT RESOLVED by the City Council of the City of Mobile, that the City Attorney and the City Council Attorney, or their respective designees, be, and they hereby are, authorized and directed to execute for and on behalf of the City of Mobile and the City Council of the City of Mobile, Alabama, the settlement agreement and release of claims to settle the following claims:

1. The claim for personal injury of Olisa Gamble suffered on September 24, 2019, when her vehicle, being driven by Noel Parrott, and the vehicle owned by the City collided into one another on Dauphin Island Parkway near Ellen Drive and Old Military Road, as outlined in the Settlement Agreement and Release of Claims. A copy of said settlement agreement is on file in the Office of the City Clerk.

2. The claim for personal injury of Noel Parrott suffered on September 24, 2019, when Olisa Gamble's vehicle, being driven by Parrott and the vehicle owned by the City collided into one another on Dauphin Island Parkway near Ellen Drive and Old Military Road, as outlined in the Settlement Agreement and Release of Claims. A copy of said settlement agreement is on file in the Office of the City Clerk.

3. The claim for personal injury of Shauntasia Bracy suffered on August 18, 2019, as outlined in the Settlement Agreement and Release of Claims arising out of that certain civil action styled as "Benjamin Bracy; Shauntasia Bracy v. City of Mobile, et al, Mobile County

MINUTES OF MARCH 2, 2021

Circuit Court Case No. 02-CV-2019-902478.00. A copy of said settlement agreement is on file in the office of the city clerk.

4. The revised claim for damage suffered on October 28, 2020, when a large oak tree on City right of way fell over onto the property of Michael and Robin Freeman, damaging their home, as outlined in the Settlement Agreement and Release of Claims. A copy of said settlement agreement is on file in the Office of the City Clerk.

APPROVE AWARD OF SPECIAL BONUS TO THE OFFICER OF THE MONTH AS PART OF THE MAYOR'S INCENTIVE PROGRAM, WILFREDO FERNANDEZ, \$500.00. The following resolution was introduced by Councilmember Daves.

RESOLUTION: 60-158-2021

Sponsored by: Mayor Stimpson

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, that the Mayor, upon nomination by City supervisors, recommends to the City Council that it authorize awards, pursuant to Section 71-40-22 Code of Alabama 1975, of 5500 to the following employee:

January 2021- Wilfredo Fernandez

This employee is to be commended for his exemplary work performance or innovations that significantly reduce costs or results in an outstanding improvement in service to the public.

Be it further resolved that the City Council finds this resolution is either necessary to respond to COVID-19 functions of the Council.

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Richardson and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the resolution adopted.

DETERMINE AN APPROPRIATION TO JOHN L. LEFLORE HIGH SCHOOL SERVES A PUBLIC PURPOSE AND APPROVE PAYMENT, \$2,000.00. The following resolution was introduced by Councilmember Daves.

RESOLUTION: 60-159-2021

Sponsored by: Councilmember Richardson

WHEREAS, Councilmember Richardson wishes to appropriate \$2,000.00 to John L. LeFlore High School, from his discretionary funds; and

WHEREAS, John L. LeFlore High School, is public school in Mobile, Alabama, which the Council may support pursuant to Code of Alabama § 16-13-36; and

WHEREAS, the Attorney General of the State of Alabama has opined that the granting of public funds is proper if the City Council determines that the same serves a public purpose; and

WHEREAS, the Mobile City Council determines that this appropriation to John L. Leflore High School will be used to purchase uniforms and equipment for their baseball program, which will serve a public purpose benefitting the City of Mobile and its citizens.

MINUTES OF MARCH 2, 2021

NOW, THEREFORE, BE IT RESOLVED that the Mobile City Council hereby finds and determines that an appropriation of \$2,000.00 to John L. LeFlore High School for the purposes described hereinabove serves a public purpose and the Council further approves and directs the payment of same, and further authorizes execution of a standard form City of Mobile council discretionary fund performance contract with said entity, group or individual for the amount set forth herein.

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Richardson and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the resolution adopted.

DETERMINE AN APPROPRIATION TO THE VILLAGE OF SPRING HILL, INC., SERVES A PUBLIC PURPOSE AND APPROVE PAYMENT, \$8,500.00. The following resolution was introduced by Councilmember Daves.

RESOLUTION: 60-160-2021

Sponsored by: Councilmember Daves

WHEREAS, Councilmember Daves wishes to appropriate \$8,500.00 to The Village of Spring Hill, Inc., from his discretionary funds; and

WHEREAS, The Village of Spring Hill, Inc., is an Alabama non-profit corporation which provides a service to the community; and

WHEREAS, the Attorney General of the State of Alabama has opined that the granting of public funds to private groups or corporations is proper if the City Council determines that the same serves a public purpose; and

WHEREAS, the Mobile City Council determines that this appropriation to The Village of Spring Hill, Inc., will be used to help with the maintenance of the landscaped median along Dauphin St., the grassy area along Vickers Lane & S. McGregor Avenue and yearly maintenance for The Village of Spring Hill trees on the City's right of way which will serve a public purpose benefitting the City of Mobile and its citizens.

NOW, THEREFORE, BE IT RESOLVED that the Mobile City Council hereby finds and determines that an appropriation of \$8,500.00 to The Village of Spring Hill, Inc., for the purposes described hereinabove serves a public purpose and the Council further approves and directs the payment of same, and further authorizes execution of a standard form City of Mobile council discretionary fund performance contract with said entity, group or individual for the amount set forth herein.

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Richardson and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the resolution adopted.

ESTABLISH THE COMPENSATION OF ADJUNCT AND ACTING MUNICIPAL COURT JUDGES. The following resolution was held over until the regular meeting of March 9, 2021.

MINUTES OF MARCH 2, 2021

RESOLUTION: 60-161-2021

Sponsored by: Mayor Stimpson

RESOLUTION ESTABLISHING THE COMPENSATION OF ADJUNCT AND ACTING MUNICIPAL COURT JUDGES

FINDINGS.

1. The Mobile City Council previously amended and restated Chapter 38, Article II of the Mobile City Code to allow for the appointment of adjunct judges.
2. Code of Alabama §12-14-34 and Mobile City Code §38-48 provide for the appointment of acting judges.
3. The City Council deems it necessary and proper to establish compensation for such adjunct judges and acting judges.

Now, therefore, BE IT RESOLVED by the City Council of the City of Mobile, Alabama, as follows:

1. Compensation - Adjunct Judges and Acting Judges Any adjunct judge appointed pursuant to §38-41(c) of the Mobile City Code or any acting judge appointed pursuant to §38-48 of the Mobile City Code shall be compensated at the rate of four hundred dollars (\$400) for each docket held by such judge.
2. Benefits. Adjunct judges and acting judges shall not be eligible for benefits afforded to full and part-time judges.
3. Effective Date. This resolution shall be effective upon its adoption and publication pursuant to applicable law.

CALL FOR PUBLIC HEARINGS

CALL FOR PUBLIC HEARING TO REZONE PROPERTY LOCATED AT THE EAST TERMINUS OF BLUE RIDGE BOULEVARD, EXTENDING TO THE WEST TERMINUS OF OLD DOBBIN DRIVE NORTH, THE WEST TERMINUS OF HARNESS WAY, THE NORTH TERMINUS OF CREEKLINE DRIVE AND THE NORTH TERMINUS OF VALLEYDALE DRIVE FROM R-1, R-2 AND B-1 TO R-1. The following resolution was introduced by Councilmember Rich.

RESOLUTION: 41-162-2021

RESOLUTION DIRECTING THE CITY CLERK TO SCHEDULE A PUBLIC HEARING ON THE PROPOSED REZONING OF PROPERTY LOCATED AT THE EAST TERMINUS OF BLUE RIDGE BOULEVARD, EXTENDING TO THE WEST TERMINUS OF OLD DOBBIN DRIVE NORTH, THE WEST TERMINUS OF HARNESS WAY, THE NORTH TERMINUS OF CREEKLINE DRIVE AND THE NORTH TERMINUS OF VALLEYDALE DRIVE

WHEREAS, the City of Mobile Planning Commission has recommended approving an application to rezone property located at the east terminus of Blue Ridge Boulevard, extending to the west terminus of Old Dobbin Drive North, the west terminus of Harness Way, the north terminus of Creekline Drive and the north terminus of Valleydale Drive from R-1, Single Family Residential District, R-2, Two Family Residential District and B-1, Buffer Business District, to R-1, Single Family Residential District.

1. As required by section 64-9(B)(6) of the Mobile City Code, 1991, the Commission has furnished to Council a copy of its report, recommendation and supporting documents.
2. The Council has considered the information provided and finds it necessary and desirable to schedule the rezoning for a public hearing.

MINUTES OF MARCH 2, 2021

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mobile, Alabama as follows;

1. That the date and time set for the public hearing shall be March 30, 2021, at 10:30 a.m. in the Auditorium of Government Plaza, 205 Government Street, Mobile, Alabama; provided, however, that if the Mobile City Council is still meeting remotely at that time as authorized by the March 18, 2020, Proclamation of the Governor of Alabama, the public hearing will be held on said date at said time via Zoom video conference and participants will be invited to participate directly in the Zoom meeting remotely or via a video and audio station set up outside the Council Chambers at 205 Government St., Mobile, Alabama.

2. That the City Clerk shall publish in full the proposed ordinance for one insertion and an additional insertion of a synopsis of the proposed ordinance one week after the first insertion in a newspaper of general circulation published within the municipality as required by Ala. Code §11-52-77.

3. That at the hearing, all persons who desire shall have an opportunity to be heard in opposition to or in favor of such ordinance.

4. That after the close of the public hearing, the Council may approve the proposed ordinance with or without conditions; deny the proposed ordinance; consider zoning classifications other than those sought by the applicant; and take any other action allowed by law.

5. BE IT FURTHER RESOLVED that the City Council of the City of Mobile, Alabama, finds that this resolution is either necessary to respond to COVID-19 or necessary to perform essential minimum functions of the Council.

Councilmember Rich then moved to call for the public hearing, which move was seconded by Councilmember Daves and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

The vote was then announced whereupon the Presiding Officer set the date for the public hearing as March 30, 2021.

ANNOUNCEMENTS:

Councilmember Richardson announced that Barretts Lane is on the list to be resurfaced in the near future.

Councilmember Richardson stated that the Toulminville Warren Street Methodist Church submitted a request with the Mobile County Health Department and USA Health for a Covid-19 vaccine clinic.

Councilmember Rich noted that the Planning Commission met regarding the new Unified Development Code and will meet again on March 8th.

Councilmember Rich thanked the Mayor and his staff for their efforts to make vaccinations available for vulnerable citizens who are unable to come to other sites.

Councilmember Gregory provided updates for street projects in District 7.

Councilmember Gregory stated that the Administrative Committee meeting is scheduled for March 9, 2021, at 1:00 p.m. The topic of discussion will be Ordinance 64-012.

Councilmember Small thanked the Administration and USA Health for working to get Mobilians vaccinated.

Councilmember Small mentioned he had the opportunity to walk with senior citizens at Trimmier Park last week.

MINUTES OF MARCH 2, 2021

Councilmember Small stated that Revitalize DIP will host a community clean-up on March 27, 2021, 9:00 until noon.

Councilmember Small announced that the Parks and Recreation Department will host an Easter Egg Hunt, March 27, 2021, from 10:00 a.m. - 1:00 p.m., at the Duval Street Park.

Councilmember Daves moved to adjourn the meeting, which move was seconded by Councilmember Rich and the vote was as follows:

Ayes: Richardson, Small, Williams, Daves, Rich and Gregory

Nays: None

The vote was then announced by the City Clerk, whereupon the Presiding Officer declared the regular meeting adjourned at approximately 12:30 p.m.

Adopted:

COUNCIL VICE PRESIDENT

CITY CLERK