

MUNICIPAL BUILDING, MOBILE, ALABAMA, FEBRUARY 23, 2021

The Council of the City of Mobile, Alabama met remotely via virtual meeting on Tuesday, February 23, 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, FEBRUARY 23, 2021

The City Council of the City of Mobile, Alabama met remotely via virtual meeting on Tuesday, February 23, 2021, at 10:30 a.m., in regular meeting.

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

Rev. Vincent Robinson, Right Way Christian Center Church, offered the invocation.

The Presiding Officer led the Pledge of Allegiance.

Councilmembers Manzie, Rich and Richardson asked for a moment of silence in memoriam of Charles Hope, lives lost to the Coronavirus, Cornice Fairley and Annie Lois Nero-Thompson.

Present on Roll Call:

Chairman: Manzie
Councilmembers: Richardson, Small, Williams, Daves, Rich and Gregory
Absent: None

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 17, 2021, were approved as submitted.

COMMUNICATIONS FROM THE MAYOR:

Jim Barber, Acting Chief of Staff, gave the following announcements on behalf of Mayor Stimpson.

- The Mayor attended the ground breaking ceremony for the Africatown Heritage House.

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- The City and USA Health hosted a drive-thru vaccination event at Yorktown Missionary Baptist Church.
- Mayor Stimpson presented “Exceptional Citizenship” Awards to Mobilians who have been instrumental in responding to the COVID-19 pandemic.
- Mr. Barber expressed the Mayor’s support of Resolution 31-130.

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 Small and the vote was as follows:

Ayes: Richardson, Manzie, 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 Emily Naron, Ultimate Audio Fabrication, 3404 Moffett Road, Suite 1, for a waiver of the Noise Ordinance on the first Friday of every month in 2021 from 6:00-9:00 p.m. (District 1).

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

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

Nays: None

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

PUBLIC HEARINGS

PUBLIC HEARING TO CONSIDER AN ORDINANCE TO AMEND CHAPTER 64 OF THE CITY CODE TO DELETE SECTION 64.4.H, TREE PROTECTION REQUIREMENTS.

The Presiding Officer announced that today was the day for the public hearing to consider an ordinance to amend Chapter 64 of the City Code to delete section 64.4.H, tree protection requirements 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 ordinance authorizing the proper action would be introduced at a later date.

PUBLIC HEARING 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 Presiding Officer announced that today was the day for the public hearing to rezone property located at 704 Lakeside Drive West (west side of Lakeside Drive West, 150’ south of Cottage Hill Road) and asked if there was anyone present to speak for or against this matter.

Ed Majure, 708 Lakeside Drive West, spoke in support of Ordinance 64-013.

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

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PRESENTATIONS OF PETITIONS AND OTHER COMMUNICATIONS TO THE COUNCIL:

AGENDA ITEMS:

None

NON-AGENDA ITEMS:

None

ESSENTIAL/COVID-19 ITEMS HELD OVER:

ORDINANCE TO AMEND CHAPTER 64 OF THE CITY CODE AND TO CREATE CHAPTER 65 RELATING TO URBAN FORESTRY, THE MOBILE TREE COMMISSION AND TREE PROTECTION AND MANAGEMENT. The following ordinance, which was introduced and read at the regular meeting of February 2, 2021 and held over until the meetings of February 9 and 23, 2021, was called up by the Presiding Officer.

ORDINANCE: 65-006-2021

Sponsored by: Mayor Stimpson

AN ORDINANCE TO AMEND CHAPTER 64 OF THE MOBILE CITY CODE AND TO CREATE CHAPTER 65 OF THE MOBILE CITY CODE RELATING TO URBAN FORESTRY, THE MOBILE TREE COMMISSION, AND TREE PROTECTION AND MANAGEMENT

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

SECTION ONE. That Section 64-4.H., Tree Protection Requirements, is hereby deleted from the Zoning Ordinance, Chapter 64 of the Mobile City Code.

SECTION TWO. 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 I. General Purposes and Application.

1. Purposes. This Chapter is intended:

- 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, pruning, or lack of maintenance;
- d. To promote water quality and ground and surface water stabilization and decrease the adverse impact of water table fluctuations caused by imprudent tree removal;
- e. To protect against greater noise and light pollution which is increased by the imprudent removal of buffer trees;
- f. To protect structures and existing vegetation from greater wind velocities resulting from the imprudent removal of buffer trees;
- 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;

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- h. To stabilize the urban wildlife habitat and ecosystem balance;
- i. To provide for the public health, safety and welfare through a systematic process used to identify, analyze, and evaluate the likelihood of tree failure and associated consequences, and the application of policies, procedures, and practices to identify, evaluate, mitigate, monitor, and communicate tree risk;
- j. To support the provisions of the Mobile Tree Act
- 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 in accordance with both municipal and state laws;
- 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;
- m. To preserve the economic base attracted to the City of Mobile by such factors.

2. Application. The requirements of this Chapter shall apply to all land located within the corporate limits of the City of Mobile, except single-family and two-family lots with an existing habitable structure, which are not located in an Historic District subject to the rules and regulations of the Architectural Review Board. Single-family and two-family lots which are located within a locally designated Historic District are subject to the requirements of this Chapter.

Article II. Definitions.

1. As used in this Chapter, the following words and terms shall have the following meanings:

American National Standards Institute (ANSI): A private non-profit organization that oversees the development of voluntary consensus standards by accredited representatives of government agencies, industry, and other stakeholders.

ANSI A300: The industry-developed, national consensus standards of practice for tree care in the United States.

Arborist: A person trained in the proper care and maintenance of trees who has passed an independent exam administered by the International Society of Arboriculture, and maintains the credential through continuing education.

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.

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.

Critical Root Zone (CRZ): The area of soil around a tree where the minimum amount of roots considered critical to the structural stability or health of the tree are located. Per ANSI A300 (Part 5), these roots are located within 6 to 18 times the trunk diameter (DBH) depending on species tolerance to root loss, tree age and health.

Diameter at Breast Height (DBH): The measurement of the width of the trunk of the tree at four and one-half (4½) feet above the existing grade. For multi-trunk trees the DBH shall be the sum of the diameter of the trunks.

Drip Line: The circumference of the tree's natural, unaltered canopy extended vertically to the ground.

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Grubbing: The effective removal of understory vegetation such as, but not limited to, palmetto from the site. As herein defined, no tree greater than three (3) inches DBH will be removed.

Heritage Tree, existing: Any of the following list of trees which is at least 24 inches DBH: bald cypress (*Taxodium distichum*); hickory (*Carya* spp.); longleaf pine (*Pinus palustris*); Magnolia (*Magnolia* spp.); Oak (*Quercus* spp.), excluding water oak (*Quercus nigra*); river birch (*Betula nigra*); sweet gum (*Liquidambar styraciflua*); sycamore (*Platanus occidentalis*); and yellow poplar (*Liriodendron tulipifera*). In Historic Districts, Heritage Trees include the species previously noted, but have a minimum size of at least eight (8) inches DBH.

Heritage Tree, credit or compliance: any tree planted or claimed for credit for compliance with the UDC or tree planting and landscaping requirements of the City.

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.

Land Clearing: Those operations where trees and vegetation are removed and which occur previous to the construction of building; e.g., road right-of-way excavation or paving, lake and drainage system excavation, utility excavation, grubbing, and any other necessary clearing operations.

Landscape Material: Living plant material which shall include, but not be limited to, trees, shrubs, flowers, vines, lawn grass and other ground cover; natural features and areas; and nonliving durable material commonly used in landscaping which shall include, but not be limited to, rocks, pebbles, sand, mulch, wood chips, exterior lighting fixtures, planters, fountains, reflecting pools, works of art, walkways, fences, walls, benches and other types of appropriate outdoor furniture. Nonliving landscape material shall not include artificial or synthetic material in the form of trees, flowers, shrubs, vines, or ground cover.

Landscape Plan: a drawing representing existing and proposed tree and landscape elements for a site, and drawn to either a standard architectural or engineering scale.

Landscaped Area: An area which shall consist of landscape material, as defined, such that the use of living landscape material predominates over the use of nonliving landscape material.

Mobile Tree Act: The common name of the local law enacted by the Alabama State Legislature (Act 929 of the 1961 Regular Session of the Alabama Legislature (Acts 1961, p. 1487), as amended) for the purpose of protecting the trees on both public and private property within the City.

Mobile Tree Commission: The entity (hereafter referred to as the "Commission") created by the Alabama State Legislature and specifically charged with the responsibility and duty of fostering the planting, growth and protection of trees on private property and publicly owned areas in accordance with the provisions of the Mobile Tree Act.

Overstory Tree: A tree whose mature canopy height is at least 35-feet.

Protective Barrier: A physical structure limiting access to a protected area, composed of wood or other suitable materials which assures compliance with the intent of this article. Variations of these methods may be permitted by the urban forester upon written request if they satisfy the intent of this ordinance.

Public Tree: A tree located on any property owned by the City of Mobile, Alabama.

Selective Root Pruning: A process consisting of soil excavation using supersonic air tools, pressurized water, or hand tools, followed by cutting individual roots conducted under the

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supervision of an ISA certified arborist as set forth in ANSI A300 (part 8) Best Management Practices.

Streetscape: The appearance or view of the street including trees, lighting fixtures, and street furnishings such as benches and trash receptacles.

Tree: Any self-supporting, woody plant of a species suitable for growing in the proposed environment as well as the City of Mobile.

Understory Tree: A tree whose mature canopy height is between 15 and 35 feet.

Urban Forester: The City employee specially trained in forestry or arboriculture tasked with the management of naturally occurring and planted trees and associated plants within the corporate limits of the City of Mobile who has passed an independent exam administered by the International Society of Arboriculture, and maintains the credential through continuing education, or his/her duly authorized designee.

Article III. Urban Forestry.

1. Establishment. This Ordinance establishes an Urban Forestry Department charged with The responsibility of planning for and maintaining trees within the public rights-of-way and public parks. The Department shall be staffed with one full time Urban Forester, one or more full time arborists, and associated tree crew(s).

2. Urban Forester. The Urban Forester shall perform a variety of professional administrative duties involved in the study, planning, development, coordination and implementation of systems, programs, procedures, and practices in support of the City's urban forestry program. The Forester is responsible for managing the urban forest and the urban forest programs. Work involves instructing staff in the planting, cultivating, and maintenance of a variety of trees and other plant materials throughout the City, providing for an overall tree maintenance and replacement plan for trees in the rights-of-way, protection of public trees, and providing staff support to the Mobile Tree Commission. The Urban Forester, in coordination with any other involved City department(s), shall perform, or cause to be performed, the following duties and/or activities:

- a. Direct the enforcement of this Chapter;
- b. Coordinate and educate the various departments of the City and the general public which are affected by the provisions of this Chapter;
- c. Develop and maintain a tree inventory for the purpose of creating a master data bank of all trees within the City's public rights-of-way and public properties;
- d. 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; and,
- e. 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.

3. Arborist. The Arborist job duties shall involve tree care operations such as planting, trimming, insect and disease control, and removal of tree limbs and debris giving careful consideration to all surroundings before, during, and after tree care activities. Work involves the execution of specific rules, regulations, or procedures.

Article IV. Mobile Tree Commission.

1. Establishment. The Mobile Tree Commission is established under the authority of the Mobile Tree Act and is charged with exercising the duties specifically provided in the Act.

2. Duties. The Mobile Tree Commission is specifically charged with the responsibility and duty of fostering the planting, growth, and protection of trees on private property and publicly owned areas within the City of Mobile and shall take active steps to:

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- a. Educate the public as to the economic, aesthetic, health, storm protection, and historic benefits of trees to the City and its citizens, both on publicly and privately owned property;
- b. Promote the planting and replacement of trees in the city, with the particular objective of establishing and protecting avenues of live oak trees and other trees deemed suitable by the Commission;
- c. Promote the care, feeding, fertilization and other measures desirable for the health and growth of existing trees in street rights-of-way;
- d. Protect trees located in street rights-of-way from damage, removal, lack of sustenance, or any other act or condition which might threaten the health and growth of such trees.

3. Membership.

- a. The Commission shall consist of the same number of members as the number of members of the City Council. The City Council shall make the appointments to the Commission.
- b. The members of the Commission shall serve at the pleasure of the City Council.
- c. Persons appointed to serve on the Commission shall serve until a successor takes office.
- d. Any vacancies on the Commission shall be filled by appointment made by the City Council.
- e. Members shall serve without salary or remuneration.
- f. The Commission shall annually elect from among its members a Chair, a Vice-Chair, a Secretary, and a Treasurer.
- g. The Commission shall hold regular meetings at least once each month and specially as it deems necessary in a public place open to the public in a manner conducive to public comment and participation.
- h. The Commission shall cooperate with and coordinate its activities with the Urban Forestry Department, the Public Works Department, the Parks and Recreation Department, and other City departments. All departments of the City shall cooperate with the Commission in the exercise and discharge of the Commission's duties.
- i. The Commission is authorized to accept contributions and to expend the same for the purposes of carrying out its duties and obligations imposed by the Mobile Tree Act. All contributions and funds received by the Commission shall be held in a Trust Fund known as the Tree Planting and Preservation Trust Fund. The Commission, using nationally accepted accounting methods, shall deliver an annual report to the City Council regarding the status of the Trust Fund.
- j. The Commission shall adopt By-Laws and Regulations for carrying out its duties and obligations imposed by the Mobile Tree Act, and in accordance with its By-Laws:
 - i. May provide printed forms to be used as shall be necessary to govern its proceedings and to effectuate the provisions of the Mobile Tree Act;
 - ii. May cause studies to be made as it deems necessary;
 - iii. May perform its functions directly through its own agents or employees, or may contract with others for specific or general services to carry out its purposes; and,
 - iv. Shall keep a record of its proceedings and a register of all applications made to it and its action thereon, all of which shall be public records.

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k. Any decision of the Commission, or any decision of any officer or agent of the Commission to whom its duties are delegated, may be appealed to the City Council by any person aggrieved by the decision by filing a written notice of appeal with the Commission 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 Commission 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.

l. On or before the 1st day of March in each year, the Commission shall make a written report to the Mayor, the City Council, and the Planning Commission which report shall state:

i. The number of heritage trees and heritage live oak trees preserved during the previous twelve (12) months;

ii. The number of public trees and new heritage trees planted during the previous twelve (12) months;

iii. The contributions accepted by the Commission during the previous twelve (12) months and all expenditures of the Commission during that same time period; and

iv. Other pertinent information.

Article V. Tree Trails.

1. Designation. 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:

a. Government Street

b. Dauphin Street

c. Michigan Avenue

d. Park Avenue

e. Houston Street

f. Old Shell Road

g. Springhill Avenue

h. The Avenue of Oaks

i. Dauphin Island Parkway, south of Interstate 10.

2. Designation of New Tree Trails. Other streets, such as those in Historic Districts, may be designated as Tree Trails by the City Council upon recommendation of the Commission, the Urban Forester, or the public.

3. Tree Trails shall be clearly marked with municipal signs.

4. On all designated Tree Trails, utility companies shall work closely with both the Urban Forester and the Commission prior to performing any projects which would affect the trees along these designated streets.

5. 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

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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.

Article VI. Tree Trimming or Tree Removal from Private Property.

1. Permit. Any person wishing to trim, remove or relocate a Heritage Tree shall be required to obtain a Tree Permit from the Urban Forester.

a. Tree removal applications for a site not zoned R-1, Single-Family Residential, or R-2, Two-Family Residential, require a landscape plan identifying trees to be removed.

i. Pre-application inspection. In connection with applications involving extremely large tracts of property, the Urban Forester may arrange and coordinate a preapplication inspection of the site involved.

b. Tree trimming applications do not require a landscape plan unless otherwise deemed required by the Urban Forester.

c. Fees. Upon paying an administrative application fee of seventy-five dollars (\$75) per tree with a maximum charge of \$225 for one and two-family sites and \$675 for all other sites, 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 Article.

d. Permit procedure. An application will be field checked prior to the issuance of a Tree Permit. The Urban Forester may request a recommendation concerning the application from any or all appropriate city departments, and/or the Tree Commission.

e. Criteria for issuance of Tree Permit. Upon receiving the field inspection report and any requested recommendations concerning the application, the Urban Forester shall issue a Tree Permit for the trimming, removal or relocation of trees if one (1) or more of the following criteria is met:

i. The tree is located in an area where a structure or improvement will be placed according to an approved plan;

ii. For one and two-family properties only, the tree is located where a swimming pool or detached carport or garage will be located;

iii. The tree is deemed a moderate to high level risk per ANSI A300 (Part 9) Tree Risk Assessment; or,

iv. 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 for issuance, shall deny the application and will notify the applicant of the reason(s) therefore.

g. Time of permit. Tree Permits issued pursuant to the requirements of this Article shall be valid for a period of six (6) months. The Urban Forester may extend the permit for no more than an additional six (6) months, but in no case will a permit be valid for more than twelve (12) months.

h. Historic Districts. In Historic Districts, Heritage Trees have a minimum size of at least eight (8) inches DBH.

i. No Heritage Tree can be removed, nor can land be cleared or grubbed, in any local Historic District except under a permit issued by the Urban Forester after application as

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provided above, which shall be granted only upon a showing that the said Heritage Tree is:

1. The tree is deemed a moderate to high level risk per ANSI A300 (Part 9) Tree Risk Assessment;

2. Certified by the Architectural 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 way of an ISA certified arborist evaluation, clear and convincing evidence, meeting the standards set forth in ANSI A300 (Part 9) standards, that the owner will suffer extreme and extraordinary hardship unless the permit is granted.

ii. In all cases where removal is permitted, the said tree shall be relocated if deemed feasible by the Urban Forester and the cost of relocation does not exceed five hundred dollars (\$500.00). Otherwise said tree shall be replaced in coordination with and approval by the Urban Forester.

2. Appeal of grant or denial of permit. Appeals of either a grant or denial of a permit by the Urban Forester 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.

Article VII. Trimming or Removal of Public Trees.

1. No tree shall be removed from any public right-of-way except as provided by the Mobile Tree Act, in accordance with the rules and regulations of the Mobile Tree Commission.

2. No Public Tree located on any City property other than a public right-of-way 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.

Article VIII. Tree Protection

1. Tree protection during construction.

a. It shall be unlawful for any person in the construction of any structure or other improvement to conduct non-selective root pruning within the Critical Root Zone (CRZ) as described in ANSI A300 (Part 5) of any tree retained on a land development or improvement, and selective root pruning shall be conducted under the supervision of an ISA certified arborist as described in ANSI A300 (part 8) Best Management Practices.

b. It shall be unlawful for any person in the construction of any structure or other improvement to place solvents, material, construction machinery, or temporary soil deposits within the Critical Root Zone (CRZ) as described in ANSI A300 (Part 5) of any tree retained on a land development or improvement.

c. 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.

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d. 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, not to exceed five (5) feet. The Urban Forester shall have the discretion to waive this requirement.

2. 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.

3. Exemptions. The provisions of this Article shall not apply to any land recognized by the City upon which Bona Fide Agriculture or a Commercial Nursery or Tree Farm are being conducted, which land exceeds ten (10) acres. This exception shall not be interpreted to include timber harvesting incidental to imminent development of the land.

Article IX. Tree Trimming/Removal Companies.

1. Applicability. All provisions of this Chapter shall apply to any person removing trees on behalf of any other person, including tree removal companies, construction companies, or persons in the business of removing or trimming trees.

2. Display of permit; inspection.

a. The applicant shall prominently display on the site the permit issued.

b. Such permit shall be displayed continuously while trees are being trimmed, removed, or replaced, or work is being done as authorized on the permit, and for ten (10) days thereafter.

c. It shall be unlawful for any person or company to trim, remove, or cause to be trimmed or removed, any tree, or undertake any work for which a permit is required pursuant to this Chapter, unless a valid permit therefor is in effect and is displayed in accordance with the provisions of this Article.

d. If any such work or removal is performed without the permit being displayed as required in this Article, such removal or work shall constitute a violation of this Chapter and shall subject the person or company violating this Chapter to all penalties provided for herein.

e. 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 at any time the permit and all work being done pursuant to the permit, and such entry shall be lawful. Failure to allow such entry shall be unlawful, shall constitute a violation of this Chapter and shall constitute failure to display the permit as required under this Chapter.

3. 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 trimming, pruning, fertilizing, or removing trees within the corporate limits of the City of Mobile, without first applying for and procuring the appropriate business license from the City. All arborists must abide by all relevant State laws and requirements.

4. Trimming or removal of trees in public rights-of-way or City parks.

a. Trimming or removal of trees in public rights of way or city parks by private companies, corporations or individuals must be done under the supervision of a properly certified, licensed and bonded arborist. Trimming or pruning shall comply with ANSI A300 standards.

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.

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c. Before any permit is issued for work within the public right-of-way, public parks or other City properties, the applicant shall:

i. Provide a performance bond to the Urban Forester, either in the amount of ten thousand dollars (\$10,000.00), or in the minimum amount specified by the City for the type of development activity being performed, whichever amount is the greater of the two:

ii. Furnish the City with a Certificate of Insurance evidencing that the applicant has insurance coverages acceptable to the City with a company licensed and qualified to do business in the State of Alabama, including comprehensive general liability, bodily injury protection, indemnity, completed operations, personal injury protection, and worker compensation, in compliance with requirements mandated by the City's Legal Department. All policies of insurance must have Additional Insured provisions and be endorsed to provide coverage to the City and its officers and employees as additional insureds, and the Certificate of Insurance shall evidence that the City and its officers and employees are additional insureds under all policies. The Certificate of Insurance shall further provide that the City must receive sixty (60) days written notice of cancellation, non-renewal, or change in the insurance coverage before the effective date of any such cancellation, non-renewal, or change in the insurance coverage. Any cancellations or lapses of such insurance shall be deemed a material breach of contract.

iii. Agree in a writing acceptable to the City Legal Department to indemnify and hold the City, its officers and employees, whole and harmless from and against all costs, liabilities, and claims for damages of any kind (including judgments, interest, attorney's fees, and costs of investigation and defense) arising out of the performance of any work under the permit or within the public right-of-way, public parks or other City properties.

iv. Provision of proper certification that an ISA (International Society of Arboriculture) certified arborist will be responsible for the work.

Article X. Tree Abuse.

1. Removal, abuse or mutilation of Public Trees or Heritage Trees. No person shall:

a. Damage, cut, carve, transplant, mutilate, abuse, or remove any Public Tree or Heritage Tree;

b. Attach any rope, wire, nails, advertising posters, or other contrivance to any Public Tree or Heritage Tree;

c. Allow any gaseous liquid or solid substance which is harmful to such trees to come in contact with any such tree;

d. Damage roots within the critical root zone (CRZ) through non-selective root pruning as opposed to selective root pruning as described in ANSI A300 (part 8) Best Management Practices, including roots damaged during curb cuts, sidewalk and driveway installation and repair.

2. 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.

3. No action in removing or trimming trees due to lightning, hurricanes, or other natural disasters shall be considered tree abuse.

4. The removal of trees for which permits have been issued shall not be prohibited by this Article.

5. No curb cuts which involve Public Trees or Heritage Trees shall be allowed without prior coordination with the Urban Forester.

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6. Notwithstanding the foregoing, Heritage Trees may be removed pursuant to a properly filed and approved landscape plan.

Article XI. Enforcement.

1. 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 Chapter; 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.

2. Punishment. Any person found guilty of violating any of the provisions of this Chapter shall be punished as prescribed in Chapter 1, Article II, Division 2, Mobile City Code, with a fine not to exceed five hundred dollars (\$500) per violation, plus court costs, or by community service for a period not exceeding six (6) months, or by both fine and imprisonment and/or community service at the discretion of the judge.

SECTION THREE. 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 FOUR. 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 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 tabled, which was seconded by Councilmember Richardson and the vote was as follows:

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

Nays: None

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

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 and 23, 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,

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,

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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:

- (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;

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- (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 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

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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.

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

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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 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,

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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, 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

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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:

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

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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*.

(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

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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 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.

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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:

(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.

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(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 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

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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:

(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;

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(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.

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.

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(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

(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;

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(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:

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

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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;

(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.

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(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.

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.

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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

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.

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(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 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 antennas shall:

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

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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;

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

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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;

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(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.*

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(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.

(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.

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(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 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:

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- 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.

(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 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 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).

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.

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(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 THREE:

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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 Richardson moved that the ordinance be held over until the regular meeting of March 2, 2021, which was seconded by Councilmember Small and the vote was as follows:

Ayes: Richardson, Manzie, 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 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 (DISTRICT 6). The following ordinance, which was introduced and read at the regular meeting of October 13, 2020, and held over until the regular meetings of October 20, 2020, January 19, 2021, February 2 & 17, 2021, was called up by the Presiding Officer.

ORDINANCE: 64-036-2020

Sponsored by: Councilmember Rich

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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:

COMMENCING AT A POINT ON THE EAST LINE OF THE NORTHEAST QUARTERS OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 5 SOUTH RANGE 2 WEST, MOBILE COUNTY, ALABAMA WHERE IT IS INTERSECTED BY THE SOUTH RIGHT OF WAY LINE OF A 40 FOOT SERVICE ROAD SOUTH OF AND PARALLEL WITH COTTAGE HILL ROAD, SAID POINT BEING THE NORTHEAST CORNER OF ASHVILLE, UNIT ONE, ACCORDING TO PLAT RECORDED IN MAP BOOK 66 PAGE 111 OF THE PROBATE COURT RECORDS OF MOBILE COUNTY, ALABAMA, RUN SOUTH 00 DEGREES 09 MINUTES 20 SECONDS WEST ALONG THE EASTERN BOUNDARY OF ASHVILLE, UNIT ONE 280.70 FEET TO A POINT; THENCE CONTINUING ALONG SAID EASTERN BOUNDARY OF ASHVILLE, UNIT ONE RUN NORTH 89 DEGREES 18 MINUTES 55 SECONDS EAST 221.41 FEET TO A POINT; THENCE CONTINUING ALONG SAID EASTERN BOUNDARY RUN SOUTH 68 DEGREES 34 MINUTES 44 SECONDS EAST 130.86 FEET TO THE NORTHWEST CORNER OF CARRIAGE HILLS, UNIT TWO, ACCORDING TO THE PLAT RECORDED IN MAP BOOK 24, PAGE 92 OF THE AFOREMENTIONED PROBATE COURT RECORDS OF MOBILE COUNTY, ALABAMA, SAID POINT BEING THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED; THENCE ALONG THE WESTERN BOUNDARY OF SAID CARRIAGE HILLS, UNIT TWO, RUN AS FOLLOWS: SOUTH 16 DEGREES 14 MINUTES 47 SECONDS WEST 111.93 FEET, SOUTH 22 DEGREES 30 MINUTES 13 SECONDS EAST 170.00 FEET, SOUTH 04 DEGREES 24 MINUTES 43 SECONDS EAST 109.05 FEET, SOUTH 17 DEGREES 08 MINUTES 07 SECONDS WEST 70.0 FEET, SOUTH 00 DEGREES 08 MINUTES 07 SECONDS WEST 665.10 FEET TO THE NORTHWEST CORNER OF CARRIAGE HILLS, UNIT FOUR, ACCORDING TO PLAT RECORDED IN MAP BOOK 26 PAGE 31 OF THE AFOREMENTIONED PROBATE COURT RECORDS OF MOBILE COUNTY, ALABAMA; THENCE ALONG THE WESTERN BOUNDARY OF SAID CARRIAGE HILLS UNIT FOUR, RUN AS FOLLOWS: SOUTH 42 DEGREES 38 MINUTES 07 SECONDS WEST 158.00 FEET SOUTH 19 DEGREES 08 MINUTES 51 SECONDS WEST 32.09 FEET, SOUTH 11 DEGREES 06 MINUTES 39 SECONDS EAST 170.00 FEET, SOUTH 00 DEGREES 36 MINUTES 39 SECONDS EAST 250.0 FEET, SOUTH 21 DEGREES 36 MINUTES 39 SECONDS EAST 260 FEET, NORTH 69 DEGREES 08 MINUTES 38 SECONDS EAST 71.40 FEET, SOUTH 08 DEGREES 15 MINUTES 32 SECONDS WEST 225.00 FEET, SOUTH 04 DEGREES 45 MINUTES 32 SECONDS WEST 205.00 FEET TO THE SOUTHWEST CORNER OF SAID CARRIAGE HILLS, UNIT FOUR; THENCE ALONG THE SOUTHERN BOUNDARY OF SAID CARRIAGE HILLS, UNIT FOUR, RUN SOUTH 71 DEGREES 14 MINUTES 28 SECONDS EAST 170.00 FEET TO THE NORTHWEST CORNER OF CARRIAGE HILLS, UNIT FIVE ACCORDING TO PLAT RECORDED IN MAP BOOK 26 PAGE 51 OF THE AFOREMENTIONED PROBATE COURT RECORDS OF MOBILE COUNTY, ALABAMA; THENCE ALONG THE WESTERN BOUNDARY OF SAID CARRIAGE HILLS, UNIT FIVE, RUN SOUTH 39 DEGREES 05 MINUTES 43 SECONDS EAST 44.49 FEET TO THE NORTHWEST CORNER OF CARRIAGE HILLS, UNIT SIX ACCORDING TO PLAT RECORDED IN MAP BOOK 26 PAGE 109 OF THE AFOREMENTIONED PROBATE COURT RECORDS OF MOBILE COUNTY, ALABAMA; THENCE ALONG THE WESTERN BOUNDARY OF SAID CARRIAGE HILLS, UNIT SIX, RUN AS FOLLOWS: SOUTH 35 DEGREES 47 MINUTES 57 SECONDS WEST 344.67 FEET, SOUTH 82 DEGREES 11 MINUTES 57 SECONDS WEST 84.95 FEET, SOUTH 00 DEGREES 12 MINUTES 03 SECONDS EAST 750.00 FEET, SOUTH 13 DEGREES 00 MINUTE 57 SECONDS WEST 215.05 FEET TO THE

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NORTHEAST CORNER OF CHELSEA, UNIT TWO, ACCORDING TO PLAT RECORDED IN MAP BOOK 58 PAGE 121 OF THE AFOREMENTIONED PROBATE COURT RECORDS OF MOBILE COUNTY, ALABAMA; THENCE ALONG THE NORTHERN BOUNDARY OF SAID CHELSEA, UNIT TWO RUN AS FOLLOWS: NORTH 67 DEGREES 58 MINUTES 45 SECONDS WEST 23.28 FEET, SOUTH 73 DEGREES 23 MINUTE 36 SECONDS WEST 37.80 FEET, SOUTH 88 DEGREES 01 MINUTES 28 SECONDS WEST 100.40 FEET, NORTH 78 DEGREES 17 MINUTES 13 SECONDS WEST 38.00 FEET, SOUTH 73 DEGREES 35 MINUTES 25 SECONDS WEST 45.53 FEET, SOUTH 83 DEGREES 56 MINUTES 56 SECONDS WEST 82.26 FEET, SOUTH 80 DEGREES 05 MINUTES 10 SECONDS WEST 84.51 FEET, SOUTH 77 DEGREES 36 MINUTES 42 SECONDS WEST 96.74 FEET, SOUTH 69 DEGREES 00 MINUTES 48 SECONDS WEST 145.45 FEET, NORTH 66 DEGREES 00 MINUTES 52 SECONDS WEST 87.50 FEET, NORTH 70 DEGREES 01 MINUTES 43 SECONDS WEST 28.57 FEET, SOUTH 80 DEGREES 43 MINUTES 13 SECONDS WEST 55.18 FEET, SOUTH 44 DEGREES 07 MINUTES 19 SECONDS WEST 42.54 FEET, SOUTH 70 DEGREES 36 MINUTES 08 SECONDS WEST 149.28 FEET, SOUTH 44 DEGREES 56 MINUTES 38 SECONDS WEST 250 FEET, MORE OR LESS TO THE CENTER OF MILKHOUSE CREEK THENCE ALONG THE MEANDERING OF SAID CENTER OF MILKHOUSE CREEK RUN NORTHWARDLY 1350 FEET MORE OR LESS TO THE SOUTHEAST CORNER OF SHADOW CREEK, ACCORDING TO PLAT RECORDED IN MAP BOOK 84 PAGE 40 OF THE AFOREMENTIONED PROBATE COURT RECORDS OF MOBILE COUNTY, ALABAMA; THENCE ALONG THE EASTERN BOUNDARY OF SAID SHADOW CREEK, SAID EASTERN BOUNDARY BEING THE CENTER OF MILKHOUSE CREEK RUN NORTHWARDLY 200 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SHADOW CREEK, SAID CORNER BEING THE SOUTHEAST CORNER OF CHARLESTON OAKS, UNIT FOUR, ACCORDING TO THE PLAT RECORDED IN MAP BOOK 52 PAGE 77 OF THE AFOREMENTIONED PROBATE COURT RECORDS OF MOBILE COUNTY, ALABAMA; THENCE ALONG THE EASTERN BOUNDARY OF SAID CHARLESTON OAKS, UNIT FOUR SAID EASTERN BOUNDARY BEING THE CENTER OF MILKHOUSE CREEK RUN NORTHWARDLY 620 FEET, MORE OR LESS TO THE NORTHEAST CORNER OF SAID CHARLESTON OAKS, UNIT FOUR, SAID POINT BEING THE SOUTHEAST CORNER OF CHARLESTON OAKS, UNIT FIVE ACCORDING TO PLAT RECORDED IN MAP BOOD 53 PAGE 31 OF THE AFOREMENTIONED PROBATE COURT RECORDS OF MOBILE COUNTY, ALABAMA; THENCE ALONG THE EASTERN BOUNDARY OF CHARLESTON OAKS, UNIT FIVE, SAID EASTERN BOUNDARY BEING THE CENTER OF MILKHOUSE CREEK, RUN NORTHWARDLY 1670 FEET MORE OR LESS, TO THE NORTHEAST CORNER OF SAID CHARLESTON OAKS, UNIT FIVE, SAID POINT BEING ON THE NORTH LINE THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 5 TOWNSHIP 5 SOUTH RANGE 2 WEST; THENCE ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5 TOWNSHIP 5 SOUTH RANGE 2 WEST, RUN SOUTH 89 DEGREES 50 MINUTES 05 SECONDS EAST 843.76 FEET MORE OR LESS TO A POINT ON THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, TOWNSHIP 5 SOUTH, RANGE 2 WEST; THENCE ALONG THE EAST LINE RUN NORTH 00 DEGREES 09 MINUTES 20 SECONDS WEST 25.00 FEET TO A POINT; THENCE RUN NORTH 89 DEGREES 50 MINUTES 05 SECONDS WEST 451 FEET, MORE OR LESS TO THE CENTER OF MILKHOUSE CREEK; THENCE ALONG SAID CENTER OF MILKHOUSE CREEK RUN NORTHWARDLY 344 FEET, MORE OR LESS TO A POINT THAT WOULD BE A WESTWARD EXTENSION OF THE SOUTHERN BOUNDARY OF THE AFOREMENTIONED ASHVILLE, UNIT ONE; THENCE ALONG SAID EXTENSION AND ALONG SAID SOUTHERN BOUNDARY OF ASHVILLE, UNIT ONE, RUN NORTH 76 DEGREES 18 MINUTES 45 SECONDS EAST 404 FEET MORE OR LESS TO A POINT; THENCE CONTINUING ALONG SAID SOUTHERN BOUNDARY OF ASHVILLE, UNIT ONE RUN NORTH 85 DEGREES 48 MINUTES 45 SECONDS EAST 238.07 FEET TO A POINT; THENCE ALONG THE SOUTHEASTERN BOUNDARY OF ASHVILLE, UNIT ONE, RUN AS FOLLOWS: NORTH 38 DEGREES 35 MINUTES 05 SECONDS EAST 150.00 FEET, NORTH 34 DEGREES 37 MINUTES 21 SECONDS EAST 50.12 FEET, NORTH 43 DEGREES 05 MINUTES 05 SECONDS EAST 165.00 FEET, NORTH 51 DEGREES 09 MINUTES 25 SECONDS EAST 170.38 FEET TO THE POINT OF BEGINNING.

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PARCEL B:

COMMENCE AT THE SOUTHWEST CORNER OF SECTION 8, TOWNSHIP 5, RANGE 2 WEST, ST. STEPHENS MERIDIAN AND RUN SOUTH 89 DEGREES 33 MINUTES 29 SECONDS EAST, FOR A DISTANCE OF 1330.59 FEET FOR A POINT OF BEGINNING; THENCE RUN NORTH 00 DEGREES 12 MINUTES 50 SECONDS WEST, 3050.01 FEET; THENCE RUN NORTHEASTWARDLY 380 FEET, MORE OR LESS, THENCE RUN NORTHWARDLY 830 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF UNO SUBDIVISION, PHASE ONE AS SHOWN BY MAP OR PLAT THEREOF RECORDED IN MAP BOOK 121, PAGE 22; THENCE RUN SOUTH 88 DEGREES 02 MINUTES 54 SECONDS WEST, 63.01 FEET; THENCE RUN NORTH 00 DEGREES 12 MINUTES 28 SECONDS EAST, 276.71 FEET; THENCE RUN SOUTH 88 DEGREES 47 MINUTES 57 SECONDS EAST, ALONG THE SOUTH MARGIN OF SHADOW CREEK SUBDIVISION, AS SHOWN ON MAP OR PLAT THEREOF RECORDED IN MAP BOOK 84, PAGE 40, FOR A DISTANCE OF 615 FEET, MORE OR LESS TO A POINT IN THE CENTER OF MILKHOUSE CREEK; THENCE RUN SOUTHWARDLY ALONG THE CENTERLINE OF THE MEANDERINGS OF MILKHOUSE CREEK A DISTANCE OF 1350 MORE OR LESS, TO A POINT ON THE NORTH BOUNDARY OF CHELSEA SUBDIVISION, UNIT TWO AS SHOWN BY MAP OR PLAT THEREOF RECORDED AT MAP BOOK 58, PAGE 121, THENCE RUN SOUTH 44 DEGREES 56 MINUTES 38 SECONDS WEST, A DISTANCE OF 42 FEET, MORE OR LESS, THENCE RUN SOUTH 17 DEGREES 28 MINUTES 54 SECONDS EAST, ALONG THE WEST LINE OF SAID CHELSEA SUBDIVISION, UNIT TWO AND ALSO CHELSEA SUBDIVISION, UNIT ONE, AS SHOWN BY MAP OR PLAT THEREOF RECORDED AT MAP BOOK 39, PAGE 82, FOR A DISTANCE OF 890.57 FEET, THENCE RUN SOUTH 14 DEGREES 34 MINUTES 24 SECONDS EAST, A DISTANCE OF 169.91 FEET; THENCE RUN SOUTH 04 DEGREES 54 MINUTES 01 SECONDS WEST A DISTANCE OF 430.02 FEET, THENCE RUN SOUTH 16 DEGREES 37 MINUTES 54 SECONDS EAST, A DISTANCE OF 659.14 FEET; THENCE RUN SOUTH 25 DEGREES 35 MINUTES 52 SECONDS EAST, A DISTANCE OF 405.03 FEET; THENCE RUN SOUTH 39 DEGREES 35 MINUTES 49 SECONDS EAST, A DISTANCE OF 200.01 FEET; THENCE RUN SOUTH 00 DEGREES 35 MINUTES 58 SECONDS EAST, A DISTANCE OF 360.02 FEET; THENCE RUN SOUTH 20 DEGREES 42 MINUTES 15 SECONDS EAST, A DISTANCE OF 278.19 FEET; THENCE RUN SOUTH 56 DEGREES 34 MINUTES 43 SECONDS, A DISTANCE OF 412.01 FEET, THENCE RUN NORTH 89 DEGREES 33 MINUTES 29 SECONDS, A DISTANCE OF 1673.23 FEET TO THE POINT OF BEGINNING.

The classification of said property is hereby changed 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, 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 an R-1, Single-Family Residential 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 R-1, Single-Family Residential District, until all of the conditions set forth below have been complied with: 1) 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 Rich moved that the ordinance be adopted, which was seconded by Councilmember Small.

Councilmember Rich made the motion to amend the ordinance and to hold it over until the regular meeting of March 30, 2021 as follows:

I would like to offer an amendment at this time:

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I would like to add a condition that vehicular access to Old Dobbins Drive North, Harness Way and Creekline Drive at the boundaries Carriage Hills and Autumn Ridge be denied. And to hold this ordinance over until such time that the revised ordinance can be published and a public hearing on the revised hearing on the revised version be held.

The reason for this:

Unit three (3) opens up to Valley Dale Drive. We are not asking for that to be restricted at all because it would be land locked. There are three (3) units, two (2) are connected. Units one and two would connect at Blue Ridge Boulevard which is actually conduit for the Ashville Subdivision. Keeping that within that corridor and denying the access to Carriage Hills Subdivision would be very wise because of known traffic issues. There was a traffic study done and this Council was kind enough to hold that up for a new study; however, a new study was not warranted according to the developer and our City Traffic Engineer. I do feel it was a flawed study. Based on the dates the study was done, the schools had been closed via a State Order. The University of South Alabama had closed as well so a lot of vehicular traffic was not counted. I believe it was a two or three days study that they counted at the major intersections on Cottage Hill Road and Hillcrest Road for any car impact or vehicular impact.

The residents met with the representative from this development and it has never been the zoning. It's welcomed to have a new subdivision in the area. As a matter of fact, it is a down zoning. The residents were concerned about the vehicular traffic it would create. A traffic study was promised at that meeting in June. I understand the frustration that the developer has on this timeline. Unfortunately, we thought within the 90 days, initially when this was heard, that there would be an end to the pandemic, such is not the case. However, the idea that traffic will be a problem has never gone away, it has been consistent and known to all parties involved. The Cottage Hill Road area across from Blue Ridge Boulevard is very undeveloped at this time, but all those properties fronting Cottage Hill Road have the great potential to go to commercialization. This will also add to vehicular traffic trying to reach those businesses and stores that will eventually be developed there. It is a huge issue on residential streets and is often a negative that will devalue and make it less family friendly to live. So, I appreciate your support of these conditions and a re-hearing for all interested parties to again look at these conditions that you will hopefully place today on behalf of the residents and the stability for the neighborhoods that already exist.

I would ask that the hearing be on March 30, 2021.

The motions were seconded by Councilmember Williams and the vote was as follows:

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

Nays: None

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

ORDINANCE TO REZONE PROPERTY LOCATED AT 107 AND 111 NORTH LAFAYETTE STREET AND 106 PROVIDENCE STREET (NORTH SIDE OF OLD SHELL ROAD, EXTENDING TO THE EAST SIDE OF PROVIDENCE STREET AND THE WEST SIDE OF NORTH LAFAYETTE STREET) FROM B-1 AND R-1 TO R-1 (DISTRICT 2).

The following ordinance, which was introduced and read at the regular meeting of February 17, 2020, and held over until the regular meeting of February 23, 2021, was called up by the Presiding Officer.

ORDINANCE: 64-011-2021

Sponsored by: Councilmember Manzie

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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:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 4, MCGILL-TOOLEN HIGH SCHOOL SUBDIVISION AS RECORDED IN MAP BOOK 83 PAGE 114, PROBATE COURT RECORDS, MOBILE COUNTY, ALABAMA, THENCE NORTH 03°-04'-17" EAST ALONG THE EAST LINE OF PROVIDENCE STREET 400.86 FEET TO THE NORTHWEST CORNER OF SAID LOT 4; THENCE NORTH 87°-00'-11" WEST 5.44 FEET TO THE SOUTHWEST CORNER OF LOT 23, PROVIDENCE PLACE AS RECORDED IN DEED BOOK 118 PAGE 471 OF THE AFORESAID RECORDS; THENCE NORTH 03°-11'-09" EAST ALONG THE EAST LINE OF PROVIDENCE STREET 50.06 FEET TO THE NORTHWEST CORNER OF SAID LOT 23; THENCE SOUTH 87°-00'-11" EAST 118.75 FEET TO THE NORTHEAST CORNER OF 23; THENCE SOUTH 03°-16'-38" WEST 50.06 FEET; THENCE SOUTH 02°-14'-25" WEST 55.40 FEET; THENCE SOUTH 87°-19'-43" EAST 225.48 FEET TO A POINT ON THE WEST LINE OF LAFAYETTE STREET; THENCE SOUTH 04°-53'-39" WEST ALONG SAID WEST LINE 46.14 FEET TO THE NORTHEAST CORNER OF LOT 4, MCGILL-TOOLEN HIGH SCHOOL SUBDIVISION; THENCE SOUTH 04°-53'-56" WEST 300.34 FEET; THENCE NORTH 87°-04'-57" WEST 328.46 FEET TO THE POINT OF BEGINNING WHICH INCLUDES LOT 23, PROVIDENCE PLACE AS RECORDED IN DEED BOOK 118 PAGE 471 AND LOT 4, MCGILL-TOOLEN HIGH SCHOOL SUBDIVISION AS RECORDED IN MAP BOOK 83 PAGE 114, PROBATE COURT RECORDS, MOBILE COUNTY, ALABAMA.

The classification of said property is hereby changed from B-1, Buffer Business District, and R-1, Single-Family Residential District, to R-1, Single-Family Residential 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 R-1, Single-Family Residential 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 R-1, Single-Family Residential District until all of the conditions set forth below have been complied with: (1) Provision of a residential buffer, in compliance with Section 64-4.D.1. of the Zoning Ordinance, where the site abuts residential properties. (2) Completion of the Rezoning process prior to signing the Final Plat for the Subdivision; 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.

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, Manzie, 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.

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DECLARE THE STRUCTURE AT 2766 LECREN STREET A PUBLIC NUISANCE AND ORDER IT DEMOLISHED. The following resolution, which was introduced and read at the regular meeting of January 26, 2021, and held over until the regular meeting of February 23, 2021, was called up by the Presiding Officer.

RESOLUTION: 40-053-2021

Sponsored by: Councilmember Richardson

WHEREAS, under the provisions of Chapter 52, Article II of the Mobile City Code, "Abatement of Unsafe Buildings and Structural Nuisances," adopted December 5, 2017, the accessory structure at 2766 LECREN STREET has been found by the Code Official of the City of Mobile to be dangerous and unsafe to the extent that it is a public nuisance;

WHEREAS, the Code Official has identified the following factors, in accordance with Section 4, Subsection 5 of Article II of Chapter 52, in support of the determination that the structure is dangerous and unsafe to the extent that it is a public nuisance: Nuisance Abatement Inspection Checklist/Exhibit A – No. 4, 6, 7, 8, 12, 14 and 15; and

WHEREAS, the Mobile City Council has held a public hearing to determine whether said structure constitutes a public nuisance;

NOW, THEREFORE, BASED UPON THE EVIDENCE PRESENTED, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOBILE that the structure at 2766 LECREN STREET as:

LOT 7 SHRINER & MCKEON SUB DBK 99 P 353 #SEC 18 T4S R1W #MP29 08 18 4 002

Parcel Number: 29 08 18 4 002 094

Last Assessed to: STATE OF ALABAMA C/O RHODEN HARDY & ANNIE B

is found and determined by the Mobile City Council to be dangerous and unsafe to the extent that it is a public nuisance and a blighted property, and it is hereby ordered that said structure be demolished in accordance with the terms of said Chapter 52, Article II of the Mobile City Code, "Abatement of Unsafe Buildings and Structural Nuisances."

BE IT FURTHER RESOLVED the City Clerk of the City shall mail a certified copy of this resolution by registered or certified mail to the interested persons listed above, and a certified copy of this resolution shall be published in the manner and as prescribed for the publication of municipal ordinances, and a certified copy of this resolution shall also 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 Small and the vote was as follows:

Ayes: Richardson, Manzie, 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 PURCHASE ORDER TO BAGBY & RUSSELL COMPANY, INC. FOR PARTS & INSTALLATION FOR STREET LIGHTS IN BATTERY HEIGHTS, \$151,172.50. The following resolution, which was introduced and read at the regular meeting of February 17, 2020, and held over until the regular meeting of February 23, 2021, was called up by the Presiding Officer.

RESOLUTION: 08-113-2021

Sponsored by: Councilmember Manzie and Mayor Stimpson

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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>1668</u>	2021	(2060) TRAFFIC ENGINEERING	PARTS AND INSTALLATION FOR 17 STREET LIGHTS IN BATTERY HEIGHTS (MOBILE COUNTY BID 133-20)	\$151,172.50	<u>(020320) BAGBY & RUSSELL ELECTRIC CO INC</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 Small. Following comments by Councilmember Manzie the vote was as follows:

Ayes: Richardson, Manzie, 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 PURCHASE ORDER TO DEERE & COMPANY FOR SEVEN (7) ZERO TURN MOWERS, \$131,075.28. The following resolution, which was introduced and read at the regular meeting of February 17, 2020, and held over until the regular meeting of February 23, 2021, was called up by the Presiding Officer.

RESOLUTION: 08-114-2021
Sponsored by: Mayor Stimpson

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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>2024 & 2025</u>	2021	(F7000) MOTOR POOL	7 2021 JOHN DEERE Z950R 72IN ZERO TURN MOWERS (4 DIESEL, 3 GAS) (SOURCEWELL COOPERATIVE PURCHASING AGREEMENT, NOT ON STATE CONTRACT)	\$131,075.28	<u>(295477) DEERE & COMPANY</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 Small the vote was as follows:

Ayes: Richardson, Manzie, 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 REALLOCATION OF FUNDS FROM OPERATING BUDGET TO CAPITAL BUDGET FOR SECURITY UPGRADES AT MULTIPLE PUBLIC WORKS FACILITIES.
The following resolution, which was introduced and read at the regular meeting of February 17, 2020, and held over until the regular meeting of February 23, 2021, was called up by the Presiding Officer.

RESOLUTION: 09-116-2021

Sponsored by: Mayor Stimpson

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, that the sum of \$50,000.00 be reallocated from Public Services Maintenance Hauling in the General Fund (10042086.42060) to Capital Project #C0462 Public Works Security Improvements in the Capital Improvement Fund (2000).

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

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

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

AUTHORIZE CONTRACT WITH SOUTHERN EARTH SCIENCES, INC. (GEOTECH ENGINEERING SERVICES) FOR TEXAS STREET REHABILITATION FROM ANN STREET TO BROAD STREET & ANN STREET REHABILITATION FROM TENNESSEE STREET DITCH TO VIRGINIA STREET, COM PROJECT NO. 2021-3005-04 (D 2 & 3); \$150,000.00. The following resolution, which was introduced and read at the regular meeting of February 17, 2020, and held over until the regular meeting of February 23, 2021, was called up by the Presiding Officer.

RESOLUTION: 21-117-2021

Sponsored by: Councilmembers Manzie & Small 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 set forth in full, subject to the company signing the contract and furnishing the required bonds and insurance. A copy of said executed contract will be 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.

Name of Company: Southern Earth Sciences, Inc.

Project Name: Texas Street Rehabilitation from Ann Street to Broad Street & Ann Street Rehabilitation from Tennessee Street Ditch to Virginia Street, (D#2 & 3) COM

Project No.: 2021-3005-04

Estimated Cost: \$150,000.00

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Small. Following comments by Councilmember Manzie the vote was as follows:

Ayes: Richardson, Manzie, 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 MCCRORY & WILLIAMS, INC. (CONSTRUCTION ENGINEERING/INSPECTION) FOR TEXAS STREET REHABILITATION FROM ANN STREET TO BROAD STREET & ANN STREET REHABILITATION FROM TENNESSEE STREET DITCH TO VIRGINIA STREET, COM PROJECT NO. 2021-3005-04 (D 2 & 3); \$330,875.00. The following resolution, which was introduced and read at the regular meeting of February 17, 2020, and held over until the regular meeting of February 23, 2021, was called up by the Presiding Officer.

RESOLUTION: 21-118-2021

Sponsored by: Councilmembers Manzie & Small 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

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of Mobile and the company listed below, for work as outlined in the contract attached hereto and made a part hereof as set forth in full, subject to the company signing the contract and furnishing the required bonds and insurance. A copy of said executed contract will be 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.

Name of Company: McCrory & Williams, Inc.

Project Name: Texas Street Rehabilitation
from Ann Street to Broad Street
& Ann Street Rehabilitation
from Tennessee Street Ditch to Virginia Street,
(D#2 & 3) COM

Project No.: 2021-3005-04

Estimated Cost: \$330,875.00

The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be adopted, which was seconded by Councilmember Small. Following comments by Councilmember Manzie the vote was as follows:

Ayes: Richardson, Manzie, 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 GRANT APPLICATION TO THE SOUTHERN RAIL COMMISSION FOR AN ALTERNATE SITE ANALYSIS TO SUPPORT THE RETURN OF PASSENGER RAIL SERVICE ALONG THE GULF COAST (MATCHING FUNDS: \$80,100.00). The following resolution, which was introduced and read at the regular meeting of February 17, 2020, and held over until the regular meeting of February 23, 2021, was called up by the Presiding Officer.

RESOLUTION: 31-119-2021

Sponsored by: Mayor Stimpson

BE IT RESOLVED BY THE CITY COUNCIL OF MOBILE, ALABAMA, that the Mayor is authorized to apply, accept and receive from the Southern Rail Commission, a Notice of Award and Memorandum of Agreement for grant assistance in the approximate amount of \$160,200.00, to identify alternate sites needed to support the return of passenger rail service along the Gulf Coast.

BE IT FURTHER RESOLVED that the Council authorizes the expenditure of matching funds in the amount of \$80,100.00 in the event this grant is received.

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 Southern Rail Commission, the Federal Railroad Administration, or any other federal agency. Any agreements for grant assistance, together with the exhibits, shall be filed with the City Clerk after award and execution.

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.

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The resolution was read by the City Clerk; whereupon Councilmember Daves moved that the resolution be tabled, which was seconded by Councilmember Rich. Following comments by Councilmembers Richardson and Daves the vote was as follows:

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

Nays: None

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

AUTHORIZE MANAGEMENT AGREEMENT WITH MOBILE BOTANICAL GARDENS, \$150,000.00. The following resolution, which was introduced and read at the regular meeting of February 17, 2020, and held over until the regular meeting of February 23, 2021, was called up by the Presiding Officer.

RESOLUTION: 21-125-2021

Sponsored by: Councilmember Gregory

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 in the amount of \$150,000.00 with the Mobile Botanical Gardens to assist with operation of the Mobile Botanical Gardens, 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.

The resolution was read by the City Clerk; whereupon Councilmember Gregory moved that the resolution be held over until the regular meeting of March 9, 2021, which was seconded by Councilmember Daves. Following comments by Councilmember Gregory the vote was as follows:

Ayes: Richardson, Manzie, 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 64-012 – 31-130 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 CHAPTER 64 OF THE CITY CODE TO DELETE SECTION 64.4.H, TREE PROTECTION REQUIREMENTS. The following ordinance was held over until the regular meeting of March 2, 2021.

ORDINANCE: 64-012-2021

Sponsored by: Councilmember Gregory

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

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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.

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 was held over until the regular meeting of March 2, 2021.

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:

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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 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.

ORDINANCE TO AUTHORIZE THE SALE OF 2662 FILLINGIM STREET TO DORIS BETTIS. The following ordinance was held over until the regular meeting of March 2, 2021.

ORDINANCE: 88-014-2021

Sponsored by: Mayor Stimpson

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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:

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.

APPROVE PURCHASE ORDER TO SUNSOUTH, LLC, FOR TWO SKID STEER LOADERS, \$70,954.00. The following resolution was held over until the regular meeting of March 2, 2021

RESOLUTION: 08-126-2021

Sponsored by: Mayor Stimpson

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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.

AUTHORIZE CONTRACT WITH LAINE FEDERAL SOLUTIONS, INC., FOR YES INTERN STAFFING SERVICES, \$175,000.00. The following resolution was held over until the regular meeting of March 2, 2021.

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.

AUTHORIZE CONTACT WITH ZEKE-TRICE, LLC, D/B/A ROWE ENGINEERING & SURVEYING, FOR SURVEY OF PROPERTY SOUTH OF MAGNOLIA GOLF COURSE. The following resolution was held over until the regular meeting of March 2, 2021.

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.

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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.

AUTHORIZE THE FY20 STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE (SAFER) GRANT, \$5,183,996.70 (NO MATCH). The following resolution was held over until the regular meeting of March 2, 2021.

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.

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.

ADOPT THE CDBG, HOME AND ESG 2021-22 ACTION PLAN. Then following resolution was held over until the regular meeting of March 2, 2021.

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)

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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

DETERMINE AN APPROPRIATION TO THE LEXINGTON HOMEOWNERS ASSOCIATION, INC. SERVES A PUBLIC PURPOSE AND APPROVE PAYMENT, \$5,500.00. The following resolution was introduced by Councilmember Rich.

RESOLUTION: 60-131-2021

Sponsored by: Councilmember Rich

WHEREAS, Councilmember Rich wish to appropriate \$5,500.00 to Lexington Homeowners Association, Inc., from her discretionary funds; and

WHEREAS, Lexington Homeowners Association, 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 Lexington Homeowners Association, Inc., will be used to help with landscaping and beautification of the front entrance, 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 \$5,500.00 to Lexington Homeowners Association, 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

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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 Rich moved that the resolution be adopted, which was seconded by Councilmember Daves and the vote was as follows:

Ayes: Richardson, Manzie, 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 SOUTHRIDGE HOMEOWNER'S ASSOCIATION SERVES A PUBLIC PURPOSE AND APPROVE PAYMENT, \$1,400.00.

The following resolution was introduced by Councilmember Rich.

RESOLUTION: 60-132-2021

Sponsored by: Councilmember Rich

WHEREAS, Councilmember Rich wish to appropriate \$1,400.00 Southridge Homeowner's Association, Inc., from her discretionary funds; and

WHEREAS, Southridge Homeowner's Association, 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 Southridge Homeowner's Association, Inc., will be used to help with funding to cover the utility cost associated with the common areas in the Southridge Subdivision 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 \$1,400.00 to Southridge Homeowner's Association, 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 Rich moved that the resolution be adopted, which was seconded by Councilmember Daves and the vote was as follows:

Ayes: Richardson, Manzie, 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 STARS OVER MOBILE QUILTS OF VALOR SERVES A PUBLIC PURPOSE AND APPROVE PAYMENT, \$1,250.00.

The following resolution was introduced by Councilmember Rich.

RESOLUTION: 60-133-2021

Sponsored by: Councilmember Rich

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WHEREAS, Councilmember Rich wish to appropriate \$1,250.00 to Stars Over Mobile Quilts of Valor from her discretionary funds; and

WHEREAS, Stars Over Mobile Quilts of Valor is an Alabama unincorporated non-profit association 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 Stars Over Mobile Quilts of Valor, will be used to help with buying supplies for making handmade quilts for our veterans to thank them for their service to our country, 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 \$1,250.00 to Stars Over Mobile Quilts of Valor 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 Rich moved that the resolution be adopted, which was seconded by Councilmember Daves and the vote was as follows:

Ayes: Richardson, Manzie, 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 HILLSDALE HEIGHTS HOME OWNERS ASSOCIATION, INC., SERVES A PUBLIC PURPOSE AND APPROVE PAYMENT, \$10,000.00. The following resolution was introduced by Councilmember Rich.

RESOLUTION: 60-134-2021

Sponsored by: Councilmember Gregory

WHEREAS, Councilmember Gregory wish to appropriate \$10,000.00 to Hillsdale Heights Home Owners Association, Inc., from her discretionary funds; and

WHEREAS, Hillsdale Heights Home Owners Association, 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 Hillsdale Heights Home Owners Association, Inc., will be used to help with upgrading the front entrances of the neighborhood by adding lights to the marquis at each entrance, 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 \$10,000.00 to Hillsdale Heights Home Owners Association, 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.

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

Ayes: Richardson, Manzie, 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.

ANNOUNCEMENTS:

Councilmember Small read an excerpt from the "Negro National Anthem."

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 Gregory reported that Zeigler Boulevard will be closed tomorrow.

Councilmember Rich thanked the Council for voting to amend Ordinance 64-036.

Councilmember Rich announced that a median beautification project on Grelot Road is planned.

Councilmember Richardson offered comments about "Black History Month."

Councilmember Daves stated that the Finance Committee meeting will begin today at 11:45 a.m.

Councilmember Manzie encouraged citizens in need of assistance to call or email the Council office.

Councilmember Manzie encouraged citizens to get the Covid-19 vaccination.

Councilmember Daves moved to adjourn the meeting, which move was seconded by Councilmember Williams and the vote was as follows:

Ayes: Richardson, Manzie, 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 11:34 a.m.

Adopted:

COUNCIL PRESIDENT

CITY CLERK