

**CITY OF ARAB, ALABAMA**  
**Ordinance No. 2023-2**

ORDINANCE TO ESTABLISH SMALL CELL FACILITIES REGULATIONS

**WHEREAS**, the city of Arab desires to establish policies and procedures for the placement of small wireless facilities in rights-of-way within the city's jurisdiction, which will provide public benefit consistent with the preservation of integrity, safe usage, and visual qualities of the city rights-of-way and the city as a whole; and

**WHEREAS**, the city of Arab desires in enacting this ordinance, to establish uniform standards to address issues presented by small wireless facilities, which the city believes the regulation of such would be in the best interest of the citizens of Arab.

**NOW, THEREFORE BE IT ORDAINED** by the City Council of Arab, a municipal corporation as follows:

**Sec. 1. Purpose and scope.**

- (a) The purpose of this article is to establish policies and procedures for the placement of small wireless facilities in rights-of-way within the city's jurisdiction, which will provide public benefit consistent with the preservation of integrity, safe usage, and visual qualities of the city rights-of-way and the city as a whole.
- (b) In enacting this article, the city is establishing uniform standards to address issues presented by small wireless facilities, including without limitation, to:
  - (1) Prevent interference with use of streets, sidewalks, alleys, parkways, and other public ways and places;
  - (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 public property;
  - (4) Protect against environmental damage, including damage to trees;
  - (5) Preserve the character of the neighborhoods in which facilities are installed; and
  - (6) Facilitate rapid deployment of small cell facilities to provide the benefits of advanced wireless services, which include a competitive array of options for consumers and businesses.
- (c) No warranty. The city makes no express or implied representation or warranty regarding its right to authorize or permit the installation of small cell facilities or support structures on any particular segment of the rights-of-way or the location or dimensions of any particular segment of the rights-of-way, nor does the city make any express or implied representation or warranty regarding its right to authorize the construction or placement of any small cell facilities or support structure in any public utility easement. The burden and responsibility for making all such determinations in advance of installation shall be entirely upon the applicant.
- (d) Nothing in this ordinance shall be construed to relieve the applicant from complying with the city's then-current zoning laws to the extent that such laws are applicable to the small cell facilities or support structures on separate property.

**Sec. 2. Definitions.**

The terms below have the following meanings for purposes of this article. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular. The word "shall" is always mandatory and not merely permissive.

*Abandonment* or *abandon(s)* means that, following the placement of small cell facilities (and its associated accessory equipment) or support structures in the city pursuant to a permit issued to an applicant, any of the following has occurred: (a) for any reason the facilities cease to be used to transmit signals, data or messages or otherwise be used for their intended purposes for a period of ninety (90) days; (b) the city revokes the permit for placement and use of those facilities due to nonpayment of applicable fees, the failure of the applicant to comply with conditions in the permit or in this article concerning them, or other valid reason; or (c) the applicant fails to perform

any of its responsibilities, obligations and requirements in this article or in a permit that relate to the installation, construction, maintenance, use or operation of the facilities, accessory equipment or support structures, and that breach remains uncured for a period of sixty (60) days after the city provides written notice of the breach to the applicant.

*Accessory equipment* or *equipment* means any equipment other than an antenna that is used in conjunction with small cell facility arrangements. This equipment may be attached to or detached from a small cell wireless support structure, and includes, but, is not limited to, cabinets, optical converters, power amplifiers, radios, DWDM and CWDM multiplexers, microcells, radio units, fiber optic and coaxial cables, wires, meters, pedestals, power switches, and related equipment on or in the immediate vicinity of a support structure.

*Administrative fee* means a permit application fee assessed pursuant to section 4 for city staff review of a small cell site application.

*Annual license fee* means the annual rate described in section 4 of this article.

*Antenna* means communications equipment that transmits and receives electromagnetic radio signals, is attached to a small cell support structure and is used to communicate wireless service.

*Applicable codes* means codes, regulations, and specifications adopted by the city and uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes which such local amendments were enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with the terms in this article.

*Applicant*, whether singular or plural, means a personal wireless service provider, a wireless infrastructure provider such as an entity that is authorized by a personal wireless service provider to apply for or receive a permit to install, construct, modify or maintain a small cell technology facility and related accessory equipment or support structure in the city, an entity certificated by the Alabama Public Service Commission to provide telecommunication service or the applicant's successors-in-interest and anyone owning and maintaining the wireless facilities. For purposes of this article, "applicant" shall refer to those applying and the actions required upon award of permit.

*Application* means a request submitted by an applicant (i) for a permit to collocate small wireless facilities; or (ii) to approve the installation or modification of a utility pole or small cell wireless support structure.

*City* means the City of Arab, Alabama.

*City council* means the City Council of the City of Arab, Alabama.

*City-owned facility* or *city-owned structure* means any facility, structure or infrastructure to which the city holds title, easement, or a leasehold interest, including, but not limited to, communications facilities, utility poles, towers, buildings, and communications infrastructure, regardless of whether located within or outside the public rights-of-way.

*City-owned pole* means (i) a utility pole owned or operated by the city in the rights-of-way, including a utility pole that provides lighting or traffic control functions, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the city in the ROW that supports only wireless facilities. Notwithstanding the foregoing, the term does not include the utility facilities, including utility poles and light poles of an electrical, cable or broadband utility provider. Applicants and grantees must obtain access to the facilities of an electrical, cable or broadband utility provider through separate agreements with any such utilities.

*Day* means calendar day.

*Mayor* means the chief administrative official of the City of Arab. For purposes of this article, the mayor includes any designee of the mayor to perform the responsibilities in this article such as the building official, city engineer or city attorney.

*Cluttered* shall mean placement in a confused, disordered, disorganized, or jumbled or crowded state, which can occur when too much is located in too small of an area given the reasonable location context.

*Collocation* means the placement or installation of a new small cell wireless facility or related accessory equipment on an existing pole or other support structure that is owned, controlled or leased by a utility, the city, or other person or entity.

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



*Eligible facilities request* means any request for modification of an existing small cell facility or related accessory equipment on an existing pole that involves collocation of new transmission equipment; removal of transmission equipment; or replacement of transmission equipment; provided that no such modification can substantially change the physical dimensions of such facility.

*Emergency* means a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the right-of-way to be unusable and result in loss of the services provided.

*FCC* means the Federal Communications Commission of the United States.

*Occupy or use* means, with respect to a right-of way, to place a tangible thing in the rights-of-way, including attaching to existing or new small cell wireless support structures for any purpose, including, but not limited to, constructing, repairing, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or facilities necessary for the delivery of any services provided by wireless provider.

*Permit* means a written authorization required by an authority to perform an action or initiate, continue, or complete a project or deployment of small cell facilities.

*Person* means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.

*Personal wireless service provider* means an entity that provides personal wireless communication services to the public or citizens of the city on a commercial basis and is authorized by the FCC to provide those services.

*Point of demarcation* means the point of where the transmission media of small cell equipment terminates and interconnects with broadband backhaul transmission facilities which is the point that the small cell connects into fiber or other wired mediums to transmit or assist in the transmission of data, whether provided by landline or wireless communications infrastructure.

*Private property* means real property located in the city that does not lie within the right-of-way including such appurtenant or easements that are attached to or associated with said property.

*Project* means a managed plan to deploy multiple facilities or nodes within [a] three- to six-month time period, in that upon application, a person can provide multiple site locations (up to thirty (30) nodes per project) in one (1) consolidated application and provide one (1) application fee, pursuant to the terms contained in section 8(g) and not otherwise inconsistent with this article.

*Replacement* means constructing a new small cell wireless support structure of comparable proportions and of comparable height to a preexisting small cell wireless support structure in order to accommodate collocation of small cell facilities; and the associated removal of the preexisting wireless facilities or small cell wireless support structure.

*Right(s)-of-way*, whether singular or plural, means the surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, any other land dedicated or otherwise designated for a compatible public use, which is maintained by the city. This excludes a private easement or any property owned by the county, state or federal rights-of-way or any property owned by any person other than the city.

*Small cell facility(ies) or wireless facilities*, whether singular or plural, means and includes the following types of facilities:(a) antenna; and (b) associated accessory equipment, which is more particularly known as wireless facilities that, individually and collectively, are part of a system that meets the following qualifications: (1) each antenna of no more than six (6) cubic feet in volume or such greater limits as the federal communications commission has excluded from review under Section 106 of the National Historic Preservation Act; (2) the equipment enclosure is cumulatively no larger than twenty-eight (28) cubic feet in volume or such higher limits as the federal communications commission has excluded from review under Section 106 of the National Historic Preservation Act; and (3) the increased or resulting height of the wireless support structure on which the small cell facility is placed is no more than ten (10) feet higher than before, or no more than fifty (50) feet high overall, whichever is greater; or if placed on a new utility pole, the new utility pole is no more than ten (10) feet higher than existing utility poles adjacent to the new pole, or no more than fifty (50) feet high overall, whichever is greater. Accessory equipment is not to be included in the calculation of equipment volume and may be located outside the equipment enclosure. The term small cell facility includes micro facilities, DAS and other wireless technologies meeting the above qualifications and may be referred to as a "node(s)" when referencing the numbers of facilities per application or elsewhere in this article.

*Small cell support structure or support structure*, whether singular or plural, means a freestanding structure designed or used to support, or capable of supporting, small cell facilities, including, but not limited to, utility poles, street light poles, traffic signal structures, rooftops, attics, or other enclosed or open areas of a building or accessory

structure, a sign, or a flag pole. These terms do not include the city's decorative and architecturally significant street light poles as those decorative lights are inappropriate for use as a support structure, and replacement or make ready use for these decorative and architecturally significant poles may be limited or declined.

*Stealth technology* means a method(s) of concealing or minimizing the visual impact of a small cell technology facility (and associated accessory equipment) and support structure by incorporating features or design elements which either totally or partially conceal such facilities or equipment. The use of these design elements is intended to produce the result of having said facilities and associated structures blend into the surrounding environment and/or disguise, shield, hide or create the appearance that the facilities are an architectural component of the support structure. Photographs and illustrations of examples of the types of acceptable colocation, stealth technology, and other design aesthetics that may be used when placing small cell facilities in the city and/or for when buildings utilized as support structures and other applications of stealth technology that are currently contemplated shall be maintained by the planning administrator.

*System* means one (1) or more of the protocol-agnostic, fiber-based optical networks which may incorporate small cell facilities and equipment that may be owned, leased, or controlled by the wireless infrastructure provider or third parties and is provided by the wireless infrastructure provider to personal wireless service providers or to a personal wireless service provider's customers.

*Transmission media* refers to the point which the waves from the facilities are guided along a physical path; examples of guided media include phone lines, twisted pair cables, coaxial cables, and optical fibers.

*Utility pole* means a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, street lights or other lighting, cable television, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure fifteen (15) feet in height or less unless an authority grants a waiver for such use.

*Wireless facility or wireless facilities* means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, distributed antenna systems ("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 includes small cell facilities and the term does not include: (a) the structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated; (b) wireline backhaul facilities; or (c) 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 wireless communication transmission equipment, wireless facilities or support structures, but that is not a wireless services provider.

### **Sec. 3 Grant of authority.**

Upon application by a wireless provider on forms provided by the city, the city may, where the city has the right and authority to do so, grant a non-exclusive franchise or license to construct, maintain and operate small cell facilities within the city to any person who complies with the provisions of this article and acceptable terms as negotiated by the city. This grant of authority will be administered through an initial permit for construction and installation from the building official and a subsequent annual licensing process from the city clerk or his/her designee that will allow annual renewals pursuant to the terms of this article.

### **Sec. 4 Permitted use; application and fees.**

- (a) *In general, application and permit required.* Any person desiring to obtain the ability to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate and replace small cell facilities within the city right-of-way, on city-owned support structures or facilities, utility poles, or any private property within the corporate limits of the city must file an application, pay the appropriate fees required, and obtain a permit, except as otherwise provided in this article. The city council may upon determination of a public purpose, waive, reduce, or otherwise modify the provisions of this article and the permitted use as necessary to achieve the desired saturation of small cell in the city.
- (b) *Application required for each small cell facility and equipment.* A permit application must be submitted for each project on a form, paper or electronic, provided by the city. If any information is deemed proprietary or confidential, then the applicant must mark each page accordingly. Also, photographs and illustrations of examples of the types of acceptable colocation, stealth technology, and other design aesthetics that may be used when placing small cell facilities in the city and/or for buildings utilized as support structures and other



applications of stealth technology that are currently contemplated shall be maintained by the planning administrator.

- (c) *Consolidation application permitted.* One (1) permit application may be submitted per thirty (30) nodes or small cell facilities and must comply with the design standards as provided in section 7, section 8, and section 9 of this article. The purpose is to expedite review of a project for deployment. Also, photographs and illustrations of examples of the types of acceptable collocation, stealth technology, and other design aesthetics that may be used when placing small cell facilities in the city and/or for buildings utilized as support structures and other applications of stealth technology that are currently contemplated shall be maintained by the planning administrator.
- (d) An initial nonrefundable permit/administrative fee of five hundred dollars (\$500.00) is assessed for each permit application submitted to place and operate up to five (5) small wireless facilities on public right-of-way or other public property, or on private property, with an additional one hundred dollars (\$100.00) for each small wireless facility beyond five (5).

An initial nonrefundable permit/administrative fee of one thousand dollars (\$1000.00) for each new pole and/or new support structure (i.e., not a collocation) intended to support one (1) or more small wireless facilities.

- (e) An annual license fee of two hundred seventy dollars (\$270.00) is assessed per small wireless facility in the public right-of-way or on other public property not collated on a city-owned pole.

An annual license fee of two hundred dollars (\$200.00) is assessed per small wireless facility collocated on a city-owned pole. This annual fee does not include any applicable rental or attachment fee charged by the city utilities; however, such total cost shall not exceed two hundred seventy dollars (\$270.00) per small wireless facility collocated on a city-owned pole.

- (f) *Removal fee may be applicable.* A fee for removal of facilities and/or their respective equipment may be applicable and is hereby authorized as necessary. Such fee may be waived by the mayor or his designee, in their sole and absolute discretion, if the above fees in subsections (d) and (e) have already been tendered for the year of request and their removal does not hinder an ongoing city project or improvement and/or no additional city personnel is necessary to ensure safe removal.
- (g) *Additional fee for attachment to city-owned utility/traffic poles and structures.* The city shall determine the cost of any required make-ready construction including reasonable engineering and overheads and provide a good faith estimate for any make-ready work necessary to enable the city-owned pole or structure to support the requested small wireless facility, including pole replacement if necessary within sixty (60) days after receipt of a completed written request. The quote will remain valid for sixty (60) days. One hundred (100) percent of the make-ready cost shall be paid and the quote signed and returned to the city before construction work will be scheduled. Make-ready construction work including any pole attachment shall be completed within sixty (60) days of written acceptance of the good faith estimate and payment in full by the wireless provider. Applicant is responsible for any additional cost incurred by the city that exceeds the advanced estimated payment amount for make ready-work. Failure to pay the additional make-ready cost by the applicant within sixty (60) days shall constitute a violation of this article. All attachment work by the applicant must be completed within a one hundred twenty-day period following the granting of a permit. The applicant and city shall collaborate on design and construction for the work necessary, and the applicant may undertake the make-ready work necessary at their own expense upon written approval from the city utility engineer in order to meet a more stringent timeframe. Nothing herein relieves the applicant from any applicable pole rental agreement which must be entered into with the city utilities.
- (h) *No application fee required for pre-approved eligible facilities request.* A permit application fee shall not be required for routine maintenance and/or the replacement of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height, so long as, such replacement meets the provisions of this article and notification of working in right-of-way is received; however, a standard city electrical permit is required.

#### **Sec. 5. Notice of transfer, sale or assignment of assets in public right-of-way.**

- (a) If an applicant transfers, sells or assigns its assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this article.
- (b) Written notice of any such transfer, sale or assignment shall be provided to the city within twenty (20) days after the effective date of the transfer, sale or assignment.

**Sec. 6. Placement and maintenance of facilities in public rights-of-way.**

- (a) The city shall allow placement of small cell facilities (including accessory equipment) including any support structure on the public right-of-way for any applicant who adheres to the provisions of this article through an administrative application review process as described herein.
- (b) To ensure the public health and safety, the written recommendations for the addition of facilities and their equipment will be required after submission of the permit application from the Planning, Building and Inspection Department as well as the Arab Electric Cooperative.
- (c) The mayor or his designee will review and administratively process any request for a permit to determine, whether in the exercise of the mayor or his designee's reasonable discretion and with review of the recommendations as provided in subsection (b), that the facilities should be issued for the location and the manner requested by the applicant.
- (d) Burden is on the applicant to demonstrate that the placement of the proposed facilities and their associated accessory equipment or support structure on the right-of-way is the minimal physical installation which will achieve the goal of enhancing the provision of personal wireless services when considering all pertinent factors contained in section 8.
- (e) *Prohibitions.*
  - (1) No wireless facilities other than small cell technology or its related accessory equipment shall be installed in the city's right-of-way without a permit.
  - (2) Wireless facilities, other than small wireless facilities and micro wireless facilities are strictly prohibited within the city right-of-way unless a waiver is granted by the city.
  - (3) No facility or equipment shall materially interfere with the safe operation of traffic control equipment.
  - (4) No facility or equipment shall materially interfere with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
  - (5) No facility or equipment shall materially interfere with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
  - (6) No facility or equipment shall materially interfere with compliance with the Alabama Department of Transportation Utility Manual, as it may be applicable and amended.
  - (7) No facility or equipment shall fail to comply with the applicable codes, including, but not limited to, the latest editions of the National Electric Code and National Electrical Safety Code.
  - (8) No facility or equipment shall be closer than five (5) feet from the street curb or edge of pavement if no curb is present, unless otherwise approved by the city engineer.
  - (9) There shall be no attachment to a utility pole owned by any utility not owned or operated by the city unless an express written waiver is provided from said owner.
  - (10) No facility or equipment shall be placed on any arms or any horizontal structure used to support or mount traffic control signals or other traffic control devices.
  - (11) No facility or equipment shall materially interfere with electrical lines, cable lines, or their associated equipment, in that wireless facilities must be placed at least twenty (20) feet away from energized electrical distribution lines, unless otherwise approved in writing by the appropriate utility company or the city utilities, where applicable.
  - (12) No wireless facility may be hung from energized lines or mounted on poles suspending energized lines or on poles to be removed in conjunction with the city's desire to utilize undergrounding of electrical utilities in a particular area.
- (f) The applicant or its successor(s) must remove the small cell facilities at any time if warranted by public health or safety as determined by the city.
- (g) *Limitations.*
  - (1) Wireless facilities collocated, if allowed, on the same utility pole as a street light shall be on the same disconnect as the street light, where practicable.
  - (2) Facilities shall be grounded and otherwise comply fully with all applicable electrical codes.



- (3) Whenever a conduit of wireless facilities crosses telephone or electric power wires, wires shall cross and be maintained in accordance with the National Electrical Code, the National Electrical Safety Code, and as promulgated by the city utility and building departments and other city departments as determined by the city.
- (4) Facilities must comply with the applicable structural requirements with respect to wind speed.
- (h) Applicant shall at all times comply with and abide by all applicable provisions of the state and federal law and city ordinances, codes, and regulations in placing and maintaining facilities in the city right-of-way.
- (i) The burden of proof shall at all times be on the applicant to establish compliance with requirements under this article and state and federal law.
- (j) No placement or maintenance of small cell facilities or their operation thereof shall commence until all applicable permits are obtained, and no operation shall occur unless the city has conducted a final inspection and issued a certificate of completion and license to continue, except in case of emergency. The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. A permit shall still be required after-the-fact within thirty (30) days if a permit would have originally been required to perform the work undertaken in the city right-of-way in connection with the emergency. Once the emergency is abated, the small cell facilities in question must be removed unless otherwise permitted without the emergency as a basis.
- (k) *Factors considered in awarding permit.* When determining whether to issue a permit for placement of small cell facilities and associated structures on the right-of-way, the mayor or his designee and/or/subsequently upon appeal or request, the planning commission, may consider as follows:
  - (1) The demonstrated need for placing the structures at the requested location and geographic area in order to deliver or enhance personal wireless service;
  - (2) The visual impact of placing the support structures or facilities in the subject area;
  - (3) The character of the area in which the structures are requested, including surrounding buildings, properties and uses;
  - (4) Whether the appearance and placement of the requested structures are aesthetically consistent with the immediate area;
  - (5) Whether the structures are consistent with the historic nature and characteristics of the requested location;
  - (6) The applicant's network coverage objective and whether the applicant should use available or previously unconsidered alternative locations to place the support structures or facilities;
  - (7) *Colocation.* To the extent practical, all facilities and associated accessory equipment that are placed in the city shall be attached to a pre-existing support structure that is owned, controlled or leased by a utility, franchisee, the city or other entity. If the applicant demonstrates that no colocation opportunities exist in the area where a technologically documented need for a facility exists, the applicant may request that a new pole or other support structure be installed in that area for purposes of constructing the facilities. Before any new support structure is permitted, each of the following must occur:
    - a. The applicant must have provided the city written evidence that no practical colocation opportunity exists. This evidence shall include, but not be limited to, affidavits, correspondence, or other written information that demonstrates that the applicant has taken all commercially reasonable actions to achieve colocation in the requested location or area, that the applicant has pursued but been denied access to all potential colocation sites in the subject area (and the reasons any such denial(s)), and otherwise show that the applicant is unable to co-locate on an existing support structure;
    - b. When placed near a residential property, the new support structure must be placed in front of the common side yard property line between adjoining residential properties. In the case of a corner lot, the new support structure must be placed in front of the common side yard property line between adjoining residential properties, or on the corner formed by two (2) intersecting streets;
    - c. The city engineer must recommend the placement of a new support structure in the right-of-way; and
    - d. The building official or mayor's designee will approve the recommendation of the city engineer to allow the issuance of a permit that includes placement of a new support structure in the right-of-way as soon as practical after the recommendation is made.

- (8) If a facility is attached to a utility pole or other support structure in the right-of-way, no antenna or other part of the facility shall extend more than ten (10) feet above the height of that structure; provided that, in the event that the applicant demonstrates that National Electric Safety Code, National Electric Council, or International Code regulations (as maintained and adopted by the city) or other factors create an undue hardship in complying with this height requirement, the building official may permit a facility to extend up to fifteen (15) feet above the height of such support structure unless it creates a life safety issue;
  - (9) The accessory equipment shall, if reasonably possible, be placed at least eight (8) feet above the ground;
  - (10) The color of antenna and accessory equipment shall be compatible with that of the support structure;
  - (11) The facility (including the accessory equipment) shall not be illuminated unless required by federal regulations;
  - (12) The facility (including the accessory equipment and wires) shall be installed in a neat and orderly fashion without clutter and excessive or cluttered exposed wires;
  - (13) Whether the proposed installation poses a risk to public health, safety, or welfare;
  - (14) Whether the proposed installation may interfere with vehicular traffic, passage of pedestrians, or other use of the right-of-way by the public; and
  - (15) If the proposed installation will disturb conditions on the right-of-way, whether the applicant can demonstrate its ability and financial resources to restore the subject area to its pre-existing condition following installation; and
  - (16) If the proposed new pole will be compatible with the design and character of the surrounding neighborhood and/or area.
- (l) As the city recognizes that a lack of competitive land-based internet access options may exist for certain residential areas (which means an area with fewer than two (2) options via coaxial cable, copper lines, fiber, or other land-based internet), the building official may approve an applicant for permit and placement of small cell facilities in the city right-of-way solely to provide increased internet coverage. This provision shall not be a cause for denial of a permit or placement by a wireless service provider or wireless infrastructure provider.

**Sec. 7. Placement and maintenance of facilities on private property.**

- (a) In any instance when an applicant desires to place facilities or its equipment on private property the following factors, provisions, and requirements that the building official or mayor's designee may consider and will apply when determining whether to issue a permit for placement of facilities and any associated accessory equipment or support structure on private property include, but are not limited to, the following:
  - (1) The factors and requirements set forth in section 6(k);
  - (2) *Colocation.* The provisions in section 6(k)(7) to utilize existing poles and support structures for the placement of facilities and accessory equipment are also applicable when considering whether to permit the installation of those facilities and support structures on private property.
  - (3) Applicant shall use stealth technology when installing the facilities and associated accessory equipment on any building or accessory to that building that is located on private property. Further, stealth technology should be used when placing facilities on other types of support structures on private property unless the applicant can reasonably demonstrate that, given the nature of the requested application, the use of such technology is (a) unnecessary; or (b) impractical.
  - (4) If facilities are placed on an existing or new building or accessory to that building, the following dimensional regulations shall apply:
    - a. Facade-mounted antennas shall not extend above the face of any wall or exterior surface of the building.
    - b. Roof-mounted antennas and accessory equipment may be permitted on buildings in accordance with the following table:

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



- c. The antenna component of the facilities shall be limited to a maximum height of three (3) feet and a maximum width of two (2) feet; provided that authorization to install antenna up to six (6) feet in height may be permitted if a showing of the technological need for such equipment is made and other requirements of this section are met.
- d. Accessory equipment must be located in an equipment cabinet, equipment room in an existing building or in an unmanned equipment building. If the equipment building is freestanding prior written approval from the building official must be obtained, and it shall conform to City of Arab Code of Ordinances, including, but not limited to, the City of Arab Zoning Ordinance, as amended, with respect to building setbacks. Further, if an equipment building or cabinet is located in a residential zone, or the nearest adjoining property is in a residential zone, that building or cabinet shall include an exterior façade that mimics the character of homes in that area and be surrounded by landscaping to provide a screen of the same height as the building or cabinet.

**Sec. 8. Application review; decisions; time-frames.**

- (a) Review of applications shall be in light of its conformity with applicable provisions of this article and shall be issued on a nondiscriminatory basis.
- (b) *Notice of incomplete application.* Within thirty (30) days after receiving an application, the city shall determine and notify the applicant by electronic mail to the email address provided in the application as to whether the application is complete. If an application is deemed incomplete, the city shall specifically identify the missing information. An application is deemed complete if the city does not provide notification to the applicant within thirty (30) days; however, this does not otherwise prohibit the city from requesting additional information or clarification as to answers or documents provided.
- (c) *Application review period within maximum of ninety (90) days.* The mayor or his designee shall approve or deny an application within sixty (60) days after receipt of the complete application for collocation on an existing support structure. The mayor or his designee may extend review of an application to attach facilities to a new support structure up to thirty (30) additional days or immediately refer it to be placed on the next available regular or called meeting agenda of the planning commission for determination. The intent is for the application review period to be complete within a maximum of ninety (90) days.
- (d) If the city fails to act on an application within sixty (60) days for collocations or ninety (90) days for new support structures, the applicant may provide written notice that the time period for acting has lapsed and the application is then deemed approved.
- (e) *Notification procedure.* The city shall notify the applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific provisions of this article and/or code provisions, if applicable, on which the denial was based, and send the documentation to the applicant on or within twenty-four (24) hours of the day the city denies the application.
- (f) *Opportunity to cure deficiencies.* The applicant may cure the deficiencies identified by the city and resubmit the application within thirty (30) days of the denial without paying an additional application fee. The city shall approve or deny the revised application within thirty (30) days of receipt of the amended application. The subsequent review by the city shall be limited to the deficiencies cited in the original denial, unless there are new deficiencies contained in the revised application.
- (g) *Consolidated applications.* An applicant may file a consolidated application and receive a single permit for approval of up to thirty (30) small wireless facilities. If the application includes facilities, then the city may separately address each collocation for which incomplete information has been received or which are denied.
- (h) *Alternative collocations.*
  - (1) If an applicant seeks to place a wireless facility upon a city utility pole or seeks to install a new utility pole, the city may, within thirty (30) days after the date that a wireless facility application is filed, request the proposed location of the wireless facility be moved to another location in the right-of-way and placed on an alternative city utility pole or support structure or may place a new utility pole.
  - (2) The city and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for thirty (30) days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the city of such acceptance in writing and the application shall be deemed granted for any new location for which there is agreement.

- (3) If an agreement is not reached as to a requested alternative location, the applicant must notify the city of such non-agreement and may petition for review by the planning commission of the sole location at issue. The planning commission shall hear this at the next available scheduled meeting and shall have the final say in a dispute about collocation on the sole location presented if such request cannot be resolved by the utility department and building official. The remaining locations as contained in the original application may proceed forward while review occurs on the disputed requested location.
- (4) Electronic mail is a sufficient writing for the purposes of alternative collocation correspondence only and does not extend to this article as a whole.
- (i) *Building official or mayor's designee.* The mayor or his designee will take reasonable steps to expeditiously determine if a permit application is to be issued and may establish an expedited time process for consideration and processing of applications, so long as the requisite factors of consideration and applicable codes as contained in this article are preserved.
- (j) *Appeal of decision by building official or mayor's designee.* Upon denial by the building official or mayor's designee, the applicant may provide a written appeal to the planning and zoning administrator within fifteen (15) days for reconsideration by the planning commission and placement on the next available regularly scheduled agenda of the planning commission. Prior to the next regularly scheduled meeting, notification shall be sent to all within five hundred (500) feet of the proposed location, notifying each residence and/or business of the time, place and location of the hearing before the planning commission. The commission shall request the recommendations and/or advice of, at minimum, the city utilities department, city engineer, building official, zoning administrator, fire department, and police department, as to the effect of the facilities and equipment regarding the safety, character, and style of the surrounding area. A majority of the quorum present shall be determinative of whether or not the permit is to be granted or denied by the appropriate official.
- (k) *Appeal to circuit court.* Any appeals from the final judgement or decision of the planning commission shall be filed in the Circuit Court of Marshall County, Alabama within fifteen (15) days of the commission's decision.

**Sec. 9. Application requirements and process.**

- (a) Except as otherwise provided, a permit to construct or install facilities shall not be granted under this article except upon approval by the building official or mayor's designee, planning commission, or as otherwise designated by city council resolution or ordinance to consider an application under this article, in which the applicant must sufficiently describe the manner, form, design, placement, its effect and impact, and other pertinent information, as determined by the city council, with regard to placement and maintenance of facilities in the city right-of-way and/or on private property.
- (b) An application must be submitted for every small cell facility, equipment, or support structure. For consolidated applications, up to thirty (30) facilities or nodes may be included in one (1) permit application, provided that section ~~9(c)(2)-(20)~~ is complied with along with all other provisions of this article.
- (c) At a minimum every permit application (the "small cell site application") shall include the following:
  - (1) (a) The applicant's name, address, telephone number, and e-mail address; (b) the names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application; (c) a general description of the proposed work and the purposes and intent of the small wireless facility. 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 work proposed.
  - (2) Site plan and engineering design and specifications for installation of facilities, including the location of radios, antenna facilities, transmitters, equipment shelters, cables, conduit, point of demarcation, backhaul solution, electrical distribution panel, electric meter, and electrical conduit and cabling.
  - (3) Design documents should include photo(s) of the existing pole, and photo simulation of pole with attached equipment. Where applicable, the design documents should include specifications on stealth design, pole modification, and ADA compliance.
  - (4) Map(s) designating with specificity the location(s) of the requested facilities.
  - (5) The geographic coordinates (GIS) of all antenna and other proposed facilities.
  - (6) For city traffic light poles, verification that the pole is eligible for attachment. Also include a load bearing study that determines whether the pole requires re-enforcement or replacement in order to accommodate attachment of facilities and/or equipment. If pole re-enforcement or replacement is warranted, the design documents should include the proposed pole modification.



- (7) Copy of the manufacturer's detailed specifications for small cell equipment and antennas, including photographs or illustrations and a complete description of all pertinent physical and electrical characteristics.
  - (8) Supporting information if stealth modifications are required in order to comply with the design standards (i.e. to blend with the character and style of the surrounding area) and criteria for installations.
  - (9) Supporting information if the proposed installation requires a new pole; provide design and specification drawings for the new pole, including smart poles (poles that have all facilities integrated within the pole itself and is not visible except the visibility of an antenna at the very top) and a statement regarding the reasons for and what other alternatives were identified but not utilized and why.
  - (10) Applicable design and specification drawings if the proposed installation will require reinforcement or replacement of an existing pole.
  - (11) The number, size, type, and proximity to the facilities of all communications conduit(s) and cables to be installed.
  - (12) Description of the utility services required to support the facilities to be installed.
  - (13) Description of interference restrictions associated with other wireless providers.
  - (14) If the facilities will be located on a support structure on the right-of-way that is owned by any entity other than the city or the applicant, a copy of any permit, license, lease, agreement or other documentation evidencing that the owner of that support structure authorizes the facilities to be attached thereto or agrees in principle to authorize that attachment (which documentation may be redacted as to business terms including rent or other fee or payment information); provided that, if a representation is made to the city that the attachment has been authorized by law or regulation or in principle by the owner of the support structure but the applicant subsequently fails to furnish the city documentation that finalizes any such agreement, the city may refuse to issue the requested permit until that documentation is provided, or, if the city issues the requested permit before receiving such final documentation, the city shall have the right to revoke the subject permit and any license to use that part of the right-of-way shall be rescinded.
  - (15) If the applicant requests permission to place facilities on a new support structure, applicant's network coverage objective and whether the applicant should use available or previously unconsidered alternative locations to place the support structures or facilities.
  - (16) All permits and letters of authorization.
  - (17) Valid FCC license, where applicable or other appropriate certificates or permits as required.
  - (18) List of the contractors and subcontractors, and their contact information, authorized to work on the project.
  - (19) A statement that all facilities and equipment comply with all federal, state and local laws, regulations and ordinances and all applicable codes.
  - (20) An application shall not be deemed complete until the applicant has submitted all documents, information, forms and fees contained in this article that pertain to the facilities or support structures at the requested location(s). Within thirty (30) calendar days after an application for permit is submitted, the city shall notify the applicant in writing if any additional information is needed to complete that application or supplemental information is required to process the request. If the city does not notify the applicant in writing that the application is incomplete within thirty (30) days following its receipt, the application is deemed complete.
- (d) Objective design standards; other requirements as deemed appropriate and reasonable by the city.
- (1) *Similar character and style of area required.* Applicant shall make every effort to provide a reasonable location, context, color, stealth and concealment necessary to maintain the character and style of the surrounding areas so as to minimize the visibility and environmental impact. Photographs and illustrations of examples of the types of acceptable colocation, stealth technology, and other design aesthetics that may be used when placing small cell facilities in the city and/or for buildings utilized as support structures and other applications of stealth technology that are currently contemplated shall be maintained by the planning administrator.
  - (2) *New structures; availability of alternatives.* No new utility pole, pole-type structure, or other freestanding structure shall be allowed in the right-of-way unless the applicant demonstrates and the mayor or his designee and/or planning commission (when applicable) determines that no existing

structure that does not require the placement of a new structure in the right-of-way can accommodate the applicant's proposed facility or antenna.

- (3) *Collocation is a priority and preferred.* To promote the public interest that is served by collocating facilities and associated accessory equipment on existing support structures and thereby mitigating the installation of additional support structures throughout the city, no person or entity (including any provider, applicant, utility, or franchisee) that utilizes an existing support structure that is located on right-of-way in the city and has space available thereon may not unreasonably deny an applicant the right to use or access an existing support structure for purposes of attaching facilities permitted by this article without sound operational, technological, or other good reason.
  - (4) *Limitations; no property right.* A permit from the city constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this article and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.
  - (5) *Limitations: Use of city-owned poles or structures.* City-owned structures or poles may not be available, and the city may determine that an additional structure is detrimental or otherwise not desired and such decisions will be final. Availability will be on a first come, first serve basis and, if the city determines collocation on such city-owned poles or structures has reached its maximum, is aesthetically undesirable or otherwise not permitted, the city may seek alternative collocation as provided in section 7(h). At no point will the mayor or his designee allow cluttered placement of facilities and or equipment within the right-of-way.
  - (6) *Coordination of work.* Upon request of the city, applicant shall be required to coordinate placement or maintenance activities under a permit with any work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable time frame in the subject public rights-of-way and applicant shall be required to reasonably alter its placement or maintenance schedule as necessary to minimize disruptions.
  - (7) *Undergrounding provisions.* From time to time, as both residential and commercial developments continue within the city, new regulations relating to undergrounding utilities and their placement may require relocation of facilities or replacement thereof to deploy stealth design of facilities to camouflage with the undergrounding of utilities including relocation of equipment to enhance compatibility and blend into the character and style of a the surrounding area in a manner that reduces visibility and is aurally unobtrusive. Applicant shall comply with nondiscriminatory undergrounding requirements that prohibit electric utilities, telecommunications, or cable providers from installing aboveground structures in the rights-of-way, provided such requirements shall not prohibit the replacement of existing structures.
- (e) *Submission of application.* Upon the applicant meeting the requirements as provided herein and submitting the small cell site application, the city shall review, decide, and, if approved, issue permits within the timeframes and processes provided herein.

#### **Sec. 10. Removal, relocation or modification of small wireless facility in the right-of-way.**

- (a) *Ninety-day notice to remove, relocate or modify.* Whenever the city reasonably determines that the relocation is needed as described below, then within ninety (90) days following written notice from the city, the applicant shall, in compliance with the terms of the city notice, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the city has determined that such removal, relocation, change or alteration, is reasonably necessary for (excluding beautification only projects) the following:
  - (1) The construction, repair, maintenance, or installation of any city improvement in or upon, or the operations of the city in or upon, the rights-of-way; and/or
  - (2) If required for the construction, completion, repair, relocation, or maintenance of a city improvement or project in or upon, or the operations of the city in or upon, the rights-of-way; and/or
  - (3) Because the small cell facility or its related equipment is interfering with or adversely affecting proper operation of any city-owned utility poles, traffic signals, or other equipment in the public way; and/or
  - (4) To protect or preserve the public health or safety.
  - (5) In any such case, the city shall use its best efforts to afford applicant a reasonably equivalent alternate location. If applicant shall fail to relocate any equipment as requested by the city within a reasonable time under the circumstances in accordance with the foregoing provision, the city shall be entitled to relocate the equipment at applicant's sole cost and expense, without further notice to applicant. If, at any time during the term for which the permit is granted, the city determines that utility facilities will be placed



underground in an area including any city-owned facilities upon which applicant has installed equipment, applicant and the city will cooperate in good faith on the design and installation, at applicant's cost, of suitable replacement of applicant's facilities, including decorative streetlight poles; and applicant agrees that if reasonably required by the mayor or his designee, or upon final approval on appeal by the planning commission, in order to ensure appropriately even and level lighting within a previously unlighted area, additional facilities, which may include decorative streetlight poles beyond or more numerous than those required for applicant's facilities, shall be installed. Applicant agrees that decorative streetlight poles may be required by the city in the future in the place of initially-installed standard-design streetlight poles, in which replacement of the applicant's facilities and equipment on decorative streetlights that were initially installed standard-design streetlight poles shall be solely at applicant's cost. Further, applicant agrees that in such instances and at such time as replacement poles are installed, the city may reasonably require that the configuration and/or location of ground furniture (which references any equipment on the ground that is needed to supply power or backhaul services to the small cell facility) and/or pole-mounted equipment or equipment cages be changed (such as changing from pole-mounted equipment cages to ground furniture), in the discretion of the city.

- (b) *Emergency removal or relocation of facilities.* The city retains the right and privilege to cut or move any small wireless facility or related structure located within the rights-of-way of the city, as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, as determined by the city in its sole and absolute discretion, the city shall notify the applicant and provide the applicant an opportunity to move its own facilities, if possible, prior to cutting electrical service or removing a facility and shall notify the wireless provider after cutting or removing a small wireless facility.
- (c) *Abandonment of facilities.* If an applicant abandons any facility (including the accessory equipment) or an associated support structure (collectively "facilities" for purposes of this section) that is located on the right-of-way, the following rights and obligations shall exist. The applicant shall notify the city in writing of such abandonment within thirty (30) days thereof. The city shall have the right to require the applicant, at their expense, to remove and reclaim the abandoned facilities within sixty (60) days from the date of written notice of abandonment given by the city to them and to reasonably restore the condition of the property at which the facilities are located to that existing before they were installed. If the provider or applicant fails to remove and reclaim its abandoned facilities within such sixty-day period and the facilities are located on the right-of-way, the city shall have the right to (a) remove them and charge its expense of any such removal operation to the account of the provider or applicant, and (b) purchase all abandoned facilities at the subject location from the provider or applicant in consideration for one dollar (\$1.00), and (c) at the city's discretion, either resell the abandoned facilities to a third party or dispose and salvage them; provided that the net proceeds of any resale of abandoned facilities by the city to a third party shall be credited to the account of the applicant that used those facilities before the abandonment, and (d) charge any expense incurred by the city to restore the right-of-way to the account of the provider or applicant.

#### **Sec. 11. Effect of permit.**

- (a) *Authority granted; no property right or other interest created.* A permit from the city authorizes an applicant to undertake only certain activities in accordance with this article and 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 permit issued under this article shall be valid for a period greater than one (1) year. If the applicant has complied with all terms and conditions of this article, the building official may make one (1) extension of the permit for a single period up to one (1) year from the date when the permit would otherwise expire. An extension may be granted if the building official concludes that the applicant has proceeded with due diligence and in good faith, and that conditions have not changed substantially so as to warrant a new application. All such requests for extensions must be submitted in writing no less than thirty (30) days before the expiration of the permit stating the reason for the time extension request.
  - (2) *Limitations on construction.* When the application is approved to undertake the activities described in this article, every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within one hundred eighty (180) days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of one hundred eighty (180) days after the time the work is commenced. The building official is authorized to grant, in writing, one (1) or more extensions of time, for periods not more than one hundred eighty (180) days each, provided that the extension shall be requested in writing with justifiable cause demonstrated, such that (i) If no timely request for extension is received or if received and not granted, then the permit will be invalidated; (ii) If construction has not commenced by the one hundred eightieth (180<sup>th</sup>) day of permit issuance or

completed by the one (1) year anniversary of the permit issuance unless an extension has been granted as provided herein or if the permit has been invalidated as provided herein, then the applicant must re-apply and be subject to the same provisions as if the applicant is applying for the first time; and (iii) No portion of this section shall be construed as to give applicant a period for use of the right-of-way greater than twelve (12) months without submitting for annual renewal, unless otherwise modified by the city council through agreement or subsequent regulation.

- (c) *Entry on right-of-way authorized.* Provided the applicant complies fully with the permitting and other provisions in this article and as negotiated by the city, the city shall authorize entry upon the right-of-way and/or attachment to city-owned support structures for the purposes of operating their equipment and facilities including the right to draw electricity for the operation of its small cell facilities from the power source (if any) that the city furnishes or is made available for that support structure at the sole cost of applicant.
- (d) *Make-ready for collocation.* For a city-owned utility pole or structure that does not support an aerial facility used to provide electric service, the applicant seeking to collocate a small wireless facility shall provide a make-ready estimate of the costs, at the applicant's expense, for the work necessary to support the facility, including pole replacement, and the applicant shall perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The replaced or altered utility pole shall remain the property of the city.
- (e) The city shall not require more make-ready work than is required to meet applicable codes, industry standards, and the provisions of this article.
- (f) Fees for make-ready work shall not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to communication service providers other than wireless services providers for similar work and shall not include any consultant fee or expense. This is applicable only if the city performs the make-ready work.
- (g) Fees for make-ready work must be paid to the city, even if they exceed the applicant's estimate, before the wireless facilities shall be operational, unless otherwise agreed.
- (h) *No warranties: vacation of right-of-way.* The city makes no warranties or representations regarding the fitness, suitability, or availability of the city's public right-of-way, city-owned structures, and city-owned real property for the facilities. Any performance of work, costs incurred or services provided by applicant is at their sole risk.
- (i) *Suspension or termination of permits.* The city may suspend or terminate a permit for work in the public right-of-way for one (1) or more of the following reasons:
  - (1) Violation of permit conditions, including conditions set forth in the permit, provisions of this article or other applicable city ordinances, codes or regulations governing placement or maintenance of small cell facilities in public rights-of-way and/or on private property;
  - (2) Misrepresentation or fraud by the applicant in application to the city or in other documents or proceedings relating to the permit;
  - (3) Failure to properly relocate or remove facilities as may be lawfully required by the city.
  - (4) Opportunity to cure any violation shall be reasonable under the circumstances.



**Sec. 12. Insurance and indemnification.**

- (a) Prior to the commencement of any work under this article or the installation of any facilities or support structures and/or any accessory equipment, the applicant shall provide the city acceptable evidence of self-insurance at coverage levels at least equal to those set forth below, or a certificate(s) of insurance evidencing it has obtained and will maintain in effect at all times the following types of insurance in connection with its operations on or its use of the right-of-way. All insurance policies shall be furnished by insurers that are reasonably acceptable to the city and authorized to transact business in the state. On an annual basis following initial installation, the applicant also shall furnish the city a certificate indicating that the above-required coverage remains and will remain in effect:
- (1) Liability coverage insuring the risk of claims for damages to persons or property arising from or related to the installation, construction, maintenance, operation, or any use of facility or support structure placed on or along the right-of-way by the applicant (or any of their contractors) with the following minimum limits:
    - a. Commercial automobile liability insurance including hired and non-owned auto liability: \$1,000,000.00 combined single limit of liability;
    - b. Commercial general liability insurance: \$1,000,000.00 combined single limit per occurrence/\$2,000,000.00 aggregate limit of liability; \$1,000,000.00 personal and advertising injury; \$2,000,000.00 products and completed operations liability.
  - (2) Workers compensation and employers liability insurance: Insurance must meet the insurance requirements in the current Workers' Compensation Act of the State of Alabama. Minimum employer's liability limits: \$1,000,000.00 each accident; \$1,000,000.00 disease each employee; \$1,000,000.00 disease policy limit.
  - (3) The liability coverage shall list the City of Arab as "additional insured, primary and non-contributory" and may be provided through a combination of a primary and umbrella policies.
- (b) The applicant shall provide the city with thirty (30) days prior written notice of suspension, non-renewal, or cancellation of coverage.
- (c) Within thirty (30) calendar days of the above notice provided to the city of suspension, cancellation or non-renewal of coverage, the applicant shall provide a replacement certificate of insurance and applicable endorsements to the city which fully complies with all requirements herein. The city shall have the option to suspend the applicant's license or permit should there be a lapse in coverage at any time. Failure to provide insurance as required herein shall be a material breach and violation of the applicant's permit and license to place facilities on the right-of-way in the city.
- (d) Except as to the sole negligence or sole willful misconduct of the city, its officials, officers, agents and employees, each applicant or provider that applies for a permit to place facilities (including the accessory equipment) and support structures on the right-of-way and/or any other city property and installs and utilizes those structures shall defend, indemnify, and hold the city and its officials, officers, agents, and employees harmless from all demands, losses, expenses (including attorneys' fees and court costs), claims for personal injury (including death), claims for any property damage, judgments, or liabilities of any type that may be asserted or claimed against the city (or its employees or officials) by any third person, firm, or entity that arise out of or relate in any manner to the following:
- (1) The installation, construction, maintenance, use, or operation of the permitted facilities, accessory equipment, or any support structure on or about the right-of-way; and
  - (2) The failure of the provider or applicant to perform any of their respective responsibilities, obligations or permit requirements in this article.
- (e) *Surety bond may be required by building official.* The building official or his designee may require that an acceptable surety bond be obtained by applicant if it is determined that the construction of the facilities and placement of small cell by the applicant would interfere with or disturb a sidewalk, street or streetscape, or property belonging to or under the control of the city. The purpose is to maintain the overall design aesthetics of the area the facilities are proposed to be in and will be reviewed on a case by case basis. "Interfere with or disturb" means movement of earth such that the sidewalk or street or streetscape has to be dug up and either replaced or repaired from the work by applicant to bring their facilities and equipment online. If required, the applicant shall obtain and maintain at its sole cost a corporate surety bond securing performance of its obligations and guaranteeing the faithful adherence to the requirements under this article. The surety bond must be:

- (1) In the amount equal to two (2) times the value of the facilities and the work performed;
  - (2) Issued by a surety company licensed to do business in the State of Alabama;
  - (3) Under terms and conditions acceptable to the building official and the city attorney;
  - (4) Obtained no later than the effective date of the permit consistent with the terms of this article.
  - (5) The rights reserved to the city under this bond are in addition to all other rights. No action proceeding or exercise of a right regarding the bond shall affect the city's right to demand full and faithful performance under the franchise or license agreement or limit the applicant's liability for damages.
- (f) Notwithstanding the foregoing, the provider or applicant shall not be obligated to indemnify the city for claims resulting from the sole negligence or sole willful acts of the city or city employees.

**Sec. 13. Operation of facilities and support structures.**

- (a) All facilities and associated support structures shall be installed, erected, maintained and operated in compliance with applicable federal, state and local laws, regulations and ordinances, and all applicable codes, including, but not limited to, regulations and orders of the FCC.
- (b) The facilities, associated support structures, and any accessory equipment must, at all times, be maintained in good and safe condition. At least every five (5) years, the city officials may request the provider or applicant, at its expense, furnish certification from a state-licensed professional engineer stating the facilities, support structures, and any accessory equipment are in sound condition. Should that engineer deem those structures unsound, the provider or applicant shall furnish to the city officials a plan to remedy any unsafe conditions or structural defect(s) and take that remedial action at the provider or applicant's expense, as directed by the building official, city engineer, and/or mayor or his/her designee.
- (c) If at any time, a facility, support structure, and/or accessory equipment fails to comply with all provisions of this article and section 13 (a) above, the provider or applicant shall begin to cause those structures to be brought into compliance with said laws and regulations within fifteen (15) days of the date of any written notice to either of them of such non-compliance, and such structures shall be brought into full compliance within sixty (60) days of said written notice, unless an extension is granted by the building official, or cease all personal wireless communications operations related to those structures until the provider or applicant comes into full compliance with applicable laws and regulations.

**Sec. 14. Franchise agreements for other uses of right-of-way.**

- (a) This article regulates and permits the placement of small cell technology facilities (and associated accessory equipment) on or in the immediate vicinity of support structures located or proposed to be located on the public right-of-way. No provision in this article is intended to permit, regulate, or authorize the placement by a provider or applicant of fiber optic lines, coaxial cable, switches, pedestals, or networking equipment of any type used to transport telecommunication signals, data, or messages between support structures or between any other points on the public right-of-way. In the event any such provider or applicant desires to place telecommunications equipment or facilities along the right-of-way at points not regulated by this article, the city may enter into franchises or similar agreements that authorize, govern, and apply to such use of other locations on or along the public right-of-way.
- (b) Further, this article shall not apply to any other telecommunications provider or company providing wireless services that, prior to the enactment of this article, has entered into a franchise agreement with the city that addresses the placement of small cell technology facilities, support structures, and/or accessory equipment.

**Sec. 15. Non-applicability.**

The placement of an antenna(s), facilities or equipment related to the following types of wireless communication services are exempt from regulation under this article: (a) amateur radio service that is licensed by the FCC if the facilities related thereto are not used or licensed for any commercial purpose; and (b) facilities used 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 any current, existing franchise agreement.

1. All other provisions of the City of Arab ordinances shall remain in full force and effect.
2. Should any section or provision of this ordinance be held invalid it shall not affect the validity of any other section or provision hereof which is not of itself invalid.



3. This ordinance shall become effective upon its adoption and publication as required by law.

**PASSED AND ADOPTED** this 3<sup>rd</sup> day of April, 2023.

APPROVED:  \_\_\_\_\_

Bob Joslin, Mayor

ATTEST:  \_\_\_\_\_

Tony Willis, City Clerk





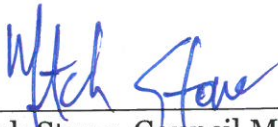
**City of Arab, Alabama**

**Ordinance No. 2023-2**

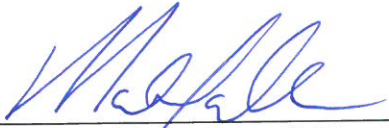
**Adopted: APRIL 3, 2023**



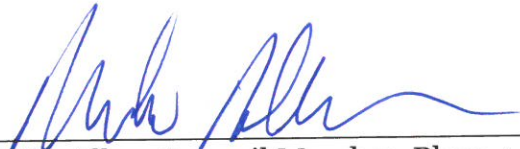
Johnny H. Hart, Council Member, Place 1



Mitch Stone, Council Member, Place 2



Mark Gullion, Council Member, Place 3



Mike Allen, Council Member, Place 4

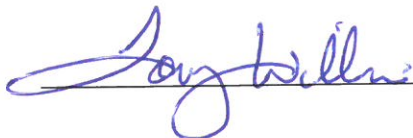


Alan Miller, Council Member, Place 5



R.D. Joslin, Mayor

ATTEST:



Tony Willis, City Clerk

