

There came on for consideration at a duly constituted meeting of the Mayor and Members of the City Council of the City of Gulfport, Mississippi, held on the 18th day of June, 2019, the following Ordinance:

ORDINANCE NO. 3002

AN ORDINANCE OF THE CITY OF GULFPORT, MISSISSIPPI ADOPTING REGULATIONS FOR SMALL CELL TECHNOLOGY, INFRASTRUCTURE, AND FACILITIES IN THE CITY OF GULFPORT, MISSISSIPPI

WHEREAS, the City of Gulfport, Mississippi, (the “City”) seeks to facilitate the availability of reliable, personal wireless communications services for its citizens and the public by permitting the placement of Small Cell Technology Facilities and associated structures along the Rights-of-Way and on private properties in the City, while at the same time providing a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the City; and

WHEREAS, the installation, expansion, and maintenance of Small Cell Technology Facilities and associated structures on or along the Rights-of-Way and on private properties can have significant impacts upon: (1) the aesthetic values and character of the City; (2) safe use and passage on or along the Rights-of-Way by the public; and (3) properties and property values in the City in the areas where such structures are placed; and

WHEREAS, the Federal Telecommunications Act of 1996 (the “Act”) and regulations promulgated with respect to the Act by the Federal Communications Commission (“FCC”) authorize local governments to enact reasonable regulations for the permission, placement, expansion, height, and maintenance of Small Cell Technologies Facilities and associated structures; and

WHEREAS, Section 21-37-3 of the Mississippi Code, Annotated, authorizes the governing authority of a municipality to exercise full jurisdiction in the matter of Rights-of-Way; and

WHEREAS, as provided in this Ordinance and as permitted by Federal and State Law, the City seeks to mandate, where feasible, the collocation of Small Cell Technology Facilities on existing poles and other Structures as opposed to installation of new structures; and

WHEREAS, the above-noted collocation and other provisions of this Ordinance are intended to be consistent with the Act and its associated regulations; and

WHEREAS, this Ordinance, together with siting and/or design standards or guidelines for wireless communications facilities adopted or to be adopted by the City, establishes standards, requirements, and regulations associated with the location and placement of wireless communications facilities / small cell technology facilities in the City of Gulfport; and

WHEREAS, the adoption of the regulations, procedures, and requirements in this Ordinance will permit Applicants and Providers to enhance the provision of personal wireless service and promote and protect the public welfare, health, safety, and interests of the City and its citizens, as well as the City’s visual resources and aesthetic quality and promote coordination, management, and upkeep of the City’s Rights-of-Way and properties; and

WHEREAS, understanding that the coordination of the use of public ways by the City is critical to safeguarding public safety and for the provision of uninterrupted services associated with public safety and other activities important for the efficient, timely, and safe operation of the City and movement of its citizens and visitors, the Governing Authority for the City of Gulfport, Mississippi additionally finds that the adoption of this Ordinance is needed for the immediate and temporary preservation of the public peace, health, and safety.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING AUTHORITY OF THE CITY OF GULFPORT, MISSISSIPPI, AS FOLLOWS:

SECTION 1. That the matters and things set forth in the above preamble are hereby accepted as stated as the findings of the Governing Authority of the City of Gulfport.

SECTION 2. That the Ordinance as drafted and set out below is hereby fully adopted by the City Governing Authority and is to be included and codified into the City’s Code of Ordinances:

SECTION 1. Purpose.

The purpose and intent of this Ordinance is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the City, known or referred to as “Small Cell Technology Facilities” and Structures or facilities and infrastructure in connection therewith. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with these wireless telecommunications facilities. This Ordinance provides standards necessary to: (1) preserve and promote harmonious land uses and the public rights-of-way in the City; (2) promote and protect public health and safety, community welfare, visual resources, and the aesthetic quality of the City consistent with the goals, objectives and policies of the City; (3) provide for the orderly, managed, and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules, and regulations; and (4) encourage new and more efficient technology in the provision of wireless telecommunications facilities.

This Ordinance is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulation for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions or federal law; (5) prohibit any collocation or modification that the City may not deny under federal or state law; or (6) otherwise authorize the City to preempt any applicable federal or state law.

SECTION 2. Definitions.

The terms below have the following meanings for purposes of this Ordinance, regardless of whether in the singular or plural.

A. "Abandonment" or "Abandon(s)" means that, following the placement of DAS and/or Small Cell Technologies Facilities (and associated Accessory Equipment) or Support Structures in the City pursuant to a permit issued to a Provider or an Applicant, any of the following has occurred:

(1) for any reason the Facilities cease to be used to transmit signals, data or messages or otherwise be used for their intended purposes for a period of ninety (90) days;

(2) the City revokes the permit for placement and use of those Facilities due to nonpayment of applicable fees, the failure of the Provider or Applicant to comply with conditions in the permit or in this Ordinance, or other valid reason; or

(3) the Provider or Applicant fails to perform any of its responsibilities, obligations and requirements in this Ordinance or in a permit that relates to the installation, construction, maintenance, use or operation of the Facilities, Accessory Equipment or Support Structures, and that breach remains uncured for a period of sixty (60) days after the City provides written notice of the breach to the Provider or Applicant.

B. "Accessory Equipment" means any and all equipment other than an antenna that is used in conjunction with DAS and/or Small Cell Technology Facility arrangements. This equipment may be attached to or detached from a DAS and/or Small Cell Technology Wireless Support Structure, and includes, but, is not limited to, cabinets, optical converters, power amplifiers, radios, DWDM (dense wavelength division multiplexing) and CWDM (coarse wavelength division multiplexing) multiplexers, microcells, radio units, fiber optic and coaxial cables, wires, meters, pedestals, base stations, power switches, and related equipment on, or in the immediate vicinity of a Support Structure. The term does not include the structure or improvements on, under, or within which the equipment is collocated, wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial or fiber optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.

C. "Antenna" means communications equipment that transmits and receives electromagnetic radio signals, is attached to a DAS and/or Small Cell Technology Wireless Support Structure and is used to communicate wireless service.

D. "Applicant," whether singular or plural, means a Personal Wireless Service Provider, Wireless Infrastructure Provider, or an entity (including one that is not a Provider) that is authorized by a Personal Wireless Service Provider or a Wireless Infrastructure Provider to apply for or receive a permit to install, construct, manage, operate, modify or maintain a DAS and/or Small Cell Technology Facility and related Accessory Equipment or Support Structure in the City, or an entity licensed by the FCC, or an entity certificated by the Mississippi Public Service Commission to provide telecommunication service(s).

E. "Application" means a formal written request submitted to the City on a form created by the City for a permit to install, construct, modify or maintain a DAS and/or Small Cell Technology Facility and related Accessory Equipment or Support Structure.

F. "Building-mounted" means mounted to the side or façade, but not the roof, of a building or another structure such as a water tank, pump station, church steeple, freestanding sign, or similar structure.

G. "Cantenna" means the placement of an antenna in a can shaped structure for amplification or concealment purposes.

H. "City" means the City of Gulfport, Mississippi.

I. "City Council" means the City Council of the City of Gulfport, Mississippi.

J. "Collocation" means the placement or installation of a new DAS and/or Small Cell Wireless Technology Facility or related Accessory Equipment on an existing pole or other Support Structure that is owned, controlled or leased by a utility, the City, or other person or entity. "Collocate" has a corresponding meaning.

K. "Completely Concealed and Integrated Facilities" ("CCIF") means a site that is indistinguishable from the built and/or natural environment of the surrounding area. CCIFs apply camouflaging methods to wireless communications facilities, such as Small Cell Technology Facilities, to blend them into an existing/proposed structure or visual backdrop in a way that renders the Facility completely non-visible.

L. "DAS" or "Distributed Antenna System" is a network of spatially separated Antenna sites connected to a common source that provides wireless service within a geographic area or structure.

M. "Director of Urban Development" ("Director") means the person serving as the Director of the Department of Urban Development in the City of Gulfport or his or her designee who is responsible for the administration of this Ordinance.

N. "Distributed Antenna System Facilities" ("DAS") and/or "Small Cell Technology Facility(ies)" or "Facilities," whether singular or plural, means and includes the following types of structures: (a) Antenna(s); and (b) associated Accessory Equipment.

O. "Facility" means and includes, but is not limited to, "Small Cell Technology Facilities" and small cell wireless facilities and, unless specifically excluded elsewhere in this Ordinance, it also includes their respective attachments, infrastructure, and Accessory Equipment.

P. "FCC" means the Federal Communications Commission or its duly appointed successor agency.

Q. "Personal Wireless Services" means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

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

S. "Planning Commission" means the body created by the City of Gulfport, Mississippi and existing under its ordinances.

T. "Private Property" means real property located in the City that does not lie within the Rights-of-Way.

U. "RF" means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.

V. "Rights-of-Way" or "Right-of-Way," whether singular or plural, means the surface and space in, upon, above, along, across, over and below any public streets, avenues, highways, roads, courts, lanes, alleys, boulevards, ways, sidewalks, and bicycle lanes, including all public utility easements, as the same now or may hereafter exist, that are within the City's corporate boundaries and under the jurisdiction of the City. This term shall not include City property that is not right-of-way or state or federal rights-of-way, unless such rights-of-way is managed or maintained by the City or the City is otherwise responsible for the same by way of agreement, statute/law, or regulation.

W. "Roof-mounted" means mounted directly on the roof of any building or structure, above the eave line of such building or structure.

X. "Small Cell Technology Facility" means a wireless facility that meets both of the following qualifications: (i) each antenna could fit within an enclosure of no more than six (6) cubic feet in volume; and (ii) all other wireless equipment associated with the wireless facility, whether ground- or pole-mounted is cumulatively no more than 28 cubic feet in volume. The following types of Accessory Equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, vertical cable runs for the connection of power and other services.

Y. "Stealth Technology" means a method or methods of concealing or minimizing the visual impact of a DAS and/or 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.

Z. "Support Structure(s)" or "DAS and/or Small Cell Technology Wireless Support Structure," whether singular or plural, means a freestanding structure designed or used to support, or capable of supporting, DAS and/or Small Cell Technology Facilities, including, but not limited to, utility poles, street light poles, traffic signal 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/or architecturally significant street light poles, as those decorative lights are inappropriate for use as a Support Structure.

AA. "Temporary Wireless Facilities" means portable wireless facilities intended or used to provide personal wireless services on a temporary or emergency basis, such as a large-scale special event in which more users than usual gather in a confined location or when a disaster disables permanent wireless facilities. Temporary wireless facilities include, without limitation, cells-on-wheels ("COWs"), sites-on-wheels ("SOWs"), cells-on-light-trucks ("COLTs") and other similarly portable wireless facilities not permanently affixed to a site on which they are located.

BB. "Wireless Infrastructure Provider" means any person, including a person authorized to provide telecommunications service in the State of Mississippi, that builds or installs wireless communication transmission equipment, wireless facilities or wireless support structures, but that is not a wireless services provider.

SECTION 3. Permit Required to Place DAS and/or Small Cell Technology Facilities; Exemptions.

A. A Provider or Applicant must obtain an infrastructure permit from the City before placing, installing, constructing, locating, or operating any DAS and/or Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located on or within the Rights-of-Way, or Private Property, including substantially modifying the position or characteristics of any such existing Facility thereon.

(1) This Ordinance applies to the construction, modification, installation, removal and operation of small wireless facilities installed on, under, within, or along the Rights-of-Way as well as Private Property.

(2) This Ordinance does not apply to video service systems, wireline services, or macro towers.

B. The Director of Urban Development (the “Director”), or his or her designee, will review and administratively process any request for a permit to determine whether, in the exercise of the Director’s reasonable discretion, it should be issued for the location and in the manner requested by the Applicant. In this process, the burden is on the Provider or Applicant to demonstrate that the placement of the proposed DAS and/or Small Cell Technology Facility and associated Accessory Equipment or Support Structure is the minimal physical installation which will achieve the goal of enhancing the provisions of personal wireless services when considering all pertinent factors discussed in the provision immediately below. Except as set forth in this section or if an appeal is taken, this permitting process will be administrative and not require the approval of any City Board or City official other than the Director.

C. *Factors and Guidelines.* The following non-exhaustive factors, standards, requirements, and guidelines may be evaluated and considered by the Director when determining whether to issue a permit for placement of DAS and/or Small Cell Technology Facilities and associated equipment and infrastructure as well as other design requirements, regulations, and guidelines adopted by the City with respect to Facilities and related infrastructure:

(1) Planning Commission approval will be required if a new Support Structure is necessary. In addition to the standard review criteria, the following criteria shall also be considered by the Planning Commission in considering an application for a new Support Structure:

- a. Spacing between Support Structures,
- b. Collocation availability,
- c. Appearance of the proposed Support Structure and Facilities as a whole, taking into consideration design guidelines, standards, and regulations adopted by the City, and
- d. Impact to the surrounding environment;

(2) The visual impact of placing the Support Structures or Facilities in the subject area. All Small Cell Technology Facilities and Accessory Equipment and related infrastructure shall be designed and installed so as to minimize visual impact on the surrounding properties and public streets and rights-of-way;

(3) The ability and specifications of the structures upon which the Facilities and Accessory Equipment are placed to safely support those Facilities and Accessory Equipment;

(4) The character of the area in which the Facilities are proposed for placement, including surrounding buildings, properties and uses. Any proposed new Support Structure shall be designed and installed to minimize clutter within the Rights-of-Way;

(5) Whether the appearance and placement of the requested Facilities are aesthetically consistent with the immediate area and/or needs landscaping or other screening features. Aesthetic considerations shall take into account the proposed location and applicable design guidelines, regulations, and standards adopted by the City and published in advance of the Application therefor. All Small Cell Technology Facilities and Accessory Equipment and related infrastructure shall be designed and installed to be compatible with the character and aesthetics of the immediate area;

(6) Whether the Facilities are consistent with the historic nature and/or unique characteristics of the requested location. All Small Cell Technology Facilities and Accessory Equipment and related infrastructure are to be consistent with the historic nature and characteristics of a requested location. When proposed Facilities are in designated historic districts or adjacent to or near designated landmarks, the Application must be approved by the Historic Preservation Commission or equivalent government body within the City as well as any applicable state and/or federal agency.

(7) Whether the Facilities meet the greater of the height limitations established for the zoned district in which a structure is located or ten (10) feet above the height of existing adjacent vertical infrastructure in the Right-of-Way;

(8) Whether the Facilities and infrastructure comply with design guidelines, regulations, and standards adopted by the City and applicable with respect to the proposed Facilities, Support Structures, Accessory Equipment, infrastructure, or otherwise applicable to the Application;

(9) *Collocation.* To the extent reasonable, 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 or person, with the permission of the owner of such structure. If the Applicant demonstrates that no collocation 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 reasonable collocation opportunity exists. This documentation shall include, but not be limited to, affidavits, correspondence, or other written information that demonstrates that the Applicant has taken commercially reasonable actions to achieve collocation in the requested location or area, that the Applicant has pursued but been denied access to all potential collocation sites in the subject area (and the reasons for any such denial(s)), and otherwise show that the Applicant is unable to collocate on an existing Support Structure, including for technical and other valid reasons; and

(b) the Director recommends the placement of a new Support Structure in the Right-of-Way after thorough review by the City Engineer and Director of Public Works, or their designees; and,

(c) newly constructed Support Structures shall be, to the extent reasonably possible, built in such manner as to readily accommodate collocation by no less than one (1) similar (though potentially competing) entity with equipment of equal or greater size. The owner of such structure shall not unreasonably deny another carrier from collocation. The collocation requirement may be waived by the City of Gulfport for good cause shown. Such waiver will not be unreasonably withheld; and

(d) the City's Planning Commission has approved the new Support Structure.

(10) If a Facility is attached to a utility pole or other Support Structure, no Antenna or other part of the Facility shall extend more than ten (10) feet above the height of such Support Structure or, if applicable, beyond the maximum height established by zoning ordinances specifically regarding or pertaining to small cell technology facilities and/or infrastructure. If the Facility includes an antenna array or associated antenna equipment, the array or portion of such equipment closest to the Support Structure shall be flush mounted within six (6) inches of the Support Structure, or be contained in a canister that is a continuation of the approximate diameter of the Support Structure, and the array and equipment colored to match the Support Structure;

(11) The location of any new Facility shall be subject to review by the Director for its visual impact and to avoid an appearance of “clutter” among other Rights-of-Way uses in the vicinity. In addition, existing Support Structures must be determined to be structurally capable of safely supporting the requested Facilities and Accessory Equipment by a licensed engineer;

(12) All wires and other hardware shall be located internal to the Support Structure or be contained in encasements within design guidelines adopted by the City. Accessory Equipment shall be buried, placed within the pole or in a cabinet under the pole, and in compliance with public safety laws and regulations and with design guidelines, standards, and regulations adopted by the City and applicable to such infrastructure. The combined total volume of Accessory Equipment comprising a Facility shall be no more than twenty-eight (28) cubic feet;

(13) The color of Antennas and Accessory Equipment shall be compatible with that of the Support Structure or in a manner that otherwise attempts to conceal the equipment against the background of the developed or natural environment. All new or replaced Support Structures shall be of neutral color and shall match the color and material of adjacent structures;

(14) The Facility (including the Accessory Equipment) shall not be illuminated unless required by applicable laws and regulations;

(15) Display of logos, branding, or the like on the Facilities in any way that may reasonably be construed as advertising shall be prohibited;

(16) Whether Applicant has provided certification that the proposed installation will not cause harm to the public or pose any undue risk to public safety (*e.g.*, through a means of industry certified reports for EME exposure limits or disruption of visual site triangles related to traffic, etc.);

(17) Whether the proposed installation may interfere with vehicular traffic, passage of pedestrians, or other use of the Rights-of-Way by the public. All Small Cell Technology Facilities and Accessory Equipment and related infrastructure shall be designed and installed so as to not interfere with vehicular traffic, pedestrian or bicycle passage, and other use of the Rights-of-Way by the public, whether existing or planned for the future;

(18) If the proposed installation will disturb conditions on the Rights-of-Way, whether the Applicant can demonstrate its ability and financial resources to restore the subject area to its preexisting condition following installation. The Rights-of-Way shall be restored to its pre-existing condition by Applicant/Permittee following any installation or construction;

(19) Support Structures that have multiple uses, including temporary or seasonal uses, shall not be used unless the Applicant accommodates the multiple uses of such Support Structure;

(20) Support Structures and Facilities, either in their installation or continued operation, shall in no way interfere with the telecommunications capabilities of emergency responders or any public safety personnel;

(21) Overhead wires connecting Antennas to the equipment associated with the Facility (including Accessory Equipment) are not permitted. No additional guy or support wires shall be used in connection with a Facility unless the Facility is to be attached to a pre-existing structure that incorporated guy wires prior to application and the same conforms with City Ordinances and regulations;

(22) All Facilities, including all Accessory Equipment, related equipment and appurtenances, and infrastructure, shall employ stealth technology and methods to conceal the appearance of each Facility and such equipment/infrastructure;

(23) All Facilities proposed to be located on City-owned traffic signal or street light poles on Rights-of-Way shall include a structural analysis of the pole to confirm that the pole can structurally handle the additional load(s). If the pole cannot handle such a load, the Applicant will be required to replace the City-owned pole with another pole approved by the Director if a permit is issued on such Application. The City shall retain ownership of the old pole and the new pole;

(24) To help reduce pole and sidewalk clutter, the Applicant agrees to allow the City to attach street signs and use the Applicant's pole for other public purposes, as the City determines necessary, provided such use by the City does not substantially interfere with the provision of wireless services using the Facilities. The City will provide reasonable advance notice to the Applicant of any such use and allow the Applicant to provide a response to any such proposed use by the City;

(25) Accessory Equipment shall be placed underground in areas where electrical and telecommunications utilities are then currently placed underground, provided such requirements shall not prohibit the replacement of existing structures;

(26) All proposed Facilities shall be no closer than two-hundred and fifty (250) linear feet from any other similar Facility unless collocating on the same support structure. The Director of Urban Development or his or her designee shall have the authority to allow proposed Facilities to be less than two-hundred and fifty (250) linear feet based on a determination of specific technological need or physical or other line of sight obstruction;

(27) The proposed installation shall not interfere with the visual sight triangle as determined by the City Engineer or his or her designee;

(28) The maximum height of a Facility mounted to an existing Support Structure shall be no more than ten percent (10%) taller than the Support Structure on which the Facility is located and shall not exceed fifty (50) feet in height, including antennas unless otherwise approved by the Director of Urban Development or his or her designee.

(29) The maximum height of a new Support Structure shall be no more than ten percent (10%) taller than other adjacent existing structures and shall not exceed fifty (50) feet in height, including antennas, unless otherwise approved by the Director of Urban Development or his or her designee.

(30) All Support Structures installed in the Rights-of-Way must be designed to the current version of the AASHTO ("American Association of State Highway and Transportation Officials") standards or specifications for wind and load calculations.

(31) That the Applicant covenants and agrees to indemnify, defend, save, and hold harmless the City, and its agents, officials, officers, and employees from and against any and all claims, injuries, losses, liabilities, damages, charges, costs, and expenses (including reasonable attorneys' fees and costs), whether suffered by the Applicant or any other person (including the City, its agents, or employees), which may occur on the property of the City or elsewhere, on

account of or by reason of any matters which arise during, or from or out of, the issuance of the permit described herein or which may materially affect the issuance of the permit described herein, except to the extent that any such matter is caused by the sole negligence or intentional act of the City.

D. The following are exempt from having to obtain a permit under this Ordinance and no permit is required:

(1) A Small Cell Technology Facility owned by the City or State or Federal Government erected for a state of emergency officially declared by a federal, state, or local government and where the Mayor or City's Governing Authority has made a written determination of public necessity for the Facility, and only during the duration of the state of emergency; and

(2) A public safety facility owned by the City, State, or Federal Government.

(3) A Facility owned and operated by the City for public purposes.

SECTION 4. Application Process.

The application process for locations involving DAS and/or Small Cell Technology Facilities (and associated Accessory Equipment), within the City is as follows:

A. Applications for locations on Rights-of-Way or private property, including, but not limited to, additions to existing structures on private property, are required to be reviewed by the Director of Urban Development, or his designee, subject additionally to the City's Planning Commission (for new Support Structures), Building Code and construction permitting processes. The Director may also rely on a review by other Departments as deemed necessary.

B. At a minimum, each application for a permit shall contain the following:

(1) The Applicant's name, address, telephone number, and e-mail address;

(2) The names, addresses, telephone numbers, and e-mail addresses of all duly authorized representatives and consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application;

(3) A general description of the equipment, the technology (including, for example, spectrum usage and transmitter power) and the services to be provided by the proposed Facilities;

(4) A statement that the proposed DAS and/or Small Cell Technology Facility (and associated Accessory Equipment) shall comply with all applicable codes and regulations;

(5) Site plans and drawings to scale stamped by a licensed engineer depicting the type of Facilities, Support Structure, and means and points at which such Facilities and associated Accessory Equipment will be attached to a Support Structure;

(6) Map(s) designating with specificity the location(s) of the requested Facilities and all other existing or proposed locations of the application by the Applicant within 1,000 feet;

(7) The geographic coordinates of all antennas and other proposed Facilities of the Applicant included in the Application;

(8) If the Facilities will be located within the Rights-of-Way on a Support Structure that is owned by any entity other than the City or the Applicant and which was located or situated there with authority from the City, a copy of any license, lease, agreement, letter or other documentation evidencing that the owner of that Support Structure authorizes the Facilities to be attached thereto or agrees in principle to authorize that attachment; provided that, if a representation is made to the City that the attachment has been authorized in principle by the owner of the Support Structure but the Applicant subsequently fails to furnish the City documentation that finalizes any such agreement, the City may refuse to issue the requested permit until that documentation is provided, or, if the City issues the requested permit before receiving such final documentation, the subject permit may be revoked and any license, permit, or permission to use that part of the Right-of-Way may be rescinded;

(9) If the Applicant requests permission to place Facilities on a new Support Structure, other requirements contained in this Ordinance shall be met, including but not limited to applying for approval from the City's Planning Commission; and

(10) Photo-simulated post-construction renderings depicting the proposed Facilities and equipment, including any and all Accessory Equipment, equipment cabinets, ancillary structures, coloration, and landscaping.

C. An Application shall not be deemed complete until the Applicant has submitted all documents, information and forms specifically enumerated in this Ordinance that pertain to the location, construction, or configuration of the Facilities or Support Structures at the requested location(s). Within ten (10) 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. Once the completed Application is submitted and received, the Director shall make the final decision to approve or deny a complete Application within 60 days. Applications for a new Support Structure requiring approval from the Planning Commission shall be approved or denied within ninety (90) days of the submission of the completed application.

D. *Additional Requirements.* Any Provider or Applicant to whom a permit is issued and who places Facilities and associated Support Structures on the Rights-of-Way, shall comply with the following requirements so long as those Facilities and Support Structures are on or under the Rights-of-Way:

(1) Prior to installing the Facilities or Support Structures, the Applicant shall provide the City a certificate(s) of insurance, or of self-insurance, evidencing that it has obtained and will maintain the following types of insurance in connection with its operations on or use of the Rights-of-Way:

(a) Commercial General Liability coverage insuring the risk of claims for damages to persons or property arising from or related to the installation, construction, maintenance, operation or any use of Facility or Support Structure placed on or along the Rights-of-Way by the Applicant with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate; and

(b) Workers Compensation Insurance as required by statute. The required General Liability coverage shall include the City as an additional insured as its interest may appear under this Ordinance.

(c) Applicant shall require any contractors and subcontractors to obtain and maintain substantially the same insurance with substantially the same limits as required of Applicant, including the City as an additional insured as its interest may appear under this Ordinance, and providing to the City a certificate of insurance evidencing such coverage.

All required insurance policies shall be furnished by insurers who are eligible to transact business in the State of Mississippi and are rated at least A-VII by AM Best. Following initial installation, if any changes in coverage occur, the Applicant shall furnish the City a new Certificate indicating that the above-noted coverage(s) remains and will remain in effect. In lieu of the insurance requirements above, an Applicant may provide a certificate of self-insurance sufficient to satisfy the above amounts.

(2) All Facilities and associated Support Structures shall be installed, erected, maintained and operated in compliance with applicable federal and state laws and regulations, including, but not limited to, regulations of the FCC, as well as all the City Ordinances, including, but not limited to, the City's Comprehensive Zoning Ordinance as well as all design guidelines, standards, and regulations adopted by the City.

(3) All Facilities shall utilize the smallest, least visually intrusive Antennas, components, and other necessary equipment and infrastructure.

(4) The Applicant shall use all reasonable means to conceal or minimize the visual impacts of the Facilities and Accessory Equipment through integration. Integration with existing structures or among other existing uses shall be accomplished through the use of architecture, landscape, and siting solutions.

(5) All equipment associated with Facilities shall be located within an existing building envelope, whenever possible.

(6) Following the installation of any Facilities and associated Support Structures, the Provider or Applicant, upon reasonable request and for good cause, shall furnish the City Clerk a written certification from a duly licensed professional engineer stating that those structures have been inspected and are being maintained, operated and used in compliance with all applicable laws and regulations, including those of the FCC that pertain to the transmission of wireless communication signals. For purposes of this provision, "good cause" shall mean circumstances have arisen that indicate the Facilities and/or associated Support Structures have been damaged, are not functioning in compliance with applicable laws and regulations, or otherwise pose a hazard to the public. If those Facilities or Support Structures should fail at any time to comply with applicable laws and regulations, the Provider or Applicant, at either of their expense, shall cause those Facilities, equipment, infrastructure, and structures to be brought into compliance with said laws and regulations within thirty (30) days of the date of any written notice to them from the Director of Urban Development or his or her designee of non-compliance, or cease all personal wireless service operations related to those Facilities, equipment, infrastructure, or structures until the Applicant or Provider comes into full compliance with said laws and regulations. If within ninety (90) days of the date of written notice of non-compliance the Applicant has not brought the structure into compliance, the City may remove said Facilities, equipment, infrastructure, and structures from the Rights-of-Way in accordance with Section 6(1), (2), (3), and (4).

(7) All Applications must comply with and all permits issued are subject to design guidelines, standards, and regulations adopted by the City.

(8) The Facilities and associated Support Structures must be maintained in good and safe condition.

(9) Each Applicant or Provider that applies for a permit to place Facilities (including the Accessory Equipment) and Support Structures on the Rights-of-Way and installs and utilizes those structures shall defend, indemnify and hold the City and its employees or officials, harmless from all demands, losses, expenses (including attorney's fees and court costs), claims for personal injury or property damage, judgments or liabilities of any type that may be asserted or claimed against the City (or its employees or officials) by any third person, firm or entity that arise out of or relate in any manner to the following:

(a) the installation, construction, maintenance, location, use or operation of the permitted Facilities, Accessory Equipment or any Support Structure on or about the Rights-of-Way; and/or

(b) the failure of the Provider or Applicant to perform any of their respective responsibilities, obligations and permit requirements in this ordinance. Notwithstanding the foregoing, the Provider or Applicant shall not be obligated to indemnify the City for claims against the City resulting from the sole negligence or willful acts of the City.

E. *Duration of Permit.*

(1) Permits for the construction of new facilities or the placement of collocated equipment shall be good for twelve (12) months following issuance of the permit. If construction or installation is not completed in that amount of time, the Permit will terminate, and the Applicant must remove any partially installed equipment.

(2) The City may take applications for the same or nearby locations and hold them in standby until it is known whether full installation/construction on an active permit is completed. If or when construction or installation is underway but delayed due to unforeseen circumstances, including, but not limited to, the lack of available commercial power or communications facilities to the site, the City may consider a request for a six (6) month extension to a permit.

F. *Non-Refundable.* Permit fees shall be non-refundable.

G. *Franchise Agreements for Other Uses of Rights-of-Way.* This Ordinance regulates the placement of DAS and/or Small Cell Technology Facilities (and associated Accessory Equipment) on or in the immediate vicinity of Support Structures that are located or proposed to be located on the Rights-of-Way or private property. No provision of this Ordinance is intended to permit, regulate or authorize the placement by a Provider or Applicant of fiber optic lines, coaxial cable, switches, pedestals or networking equipment of any type that is used to transport telecommunication signals, data or messages between Support Structures or between any other points on the Rights-of-Way. In the event any such Provider or Applicant desires to place telecommunications equipment or Facilities along the Rights-of-Way at points not regulated by this Ordinance, the City may enter into a franchise or similar agreement that authorizes, governs and applies to such use of other locations on or along the Rights-of-Way.

SECTION 5. Compensation.

A. *Permit and License Fees on Rights-of-Way or City-Owned Property Not Part of the Right-of-Way.* The Applicant for a permit to place Facilities or associated Support Structures on the Rights-of-Way or on City-owned property that is not part of a Right-of-Way shall pay the following types of fees:

(1) for Facilities, a \$500.00 non-recurring permit application fee that may include up to five Facilities, with an additional \$100.00 for each Facility beyond five; each location in a combined application shall be required to receive a unique permit per location; or

(2) for Support Structures (i.e., a new pole, and not a collocation, intended to support one or more Small Wireless Facilities) a \$1,000.00 non-recurring permit application fee; and

(3) a \$270.00 annual license fee per/Small Wireless Facility due on or before December 31 every year the Facility remains in operation, except as provided in Section 5 B.

B. *Annual License Fee Payments.* In the first year of this Permit, the Provider's or Applicant's annual license fee shall be due upon completion of a structure or installation and payable within thirty (30) days therefrom and is not prorated. In the first year of this Permit, the license fee shall be \$270.00 for Facilities completed and/or installed between January 1 and June 30 and shall be \$135.00 for Facilities completed and/or installed between July 1 and December 31. Thereafter, the Provider's or Applicant's annual license fee payable under Section 5A(3) shall be due and payable to the City annually on or before December 31 for the following calendar year. All payments due under this Permit shall be made to the City of Gulfport.

C. Annual license fee payments not received by the City on or before the due date shall be assessed interest of 1% per month commencing on the first day after the due date. Failure to make full payment including applicable interest charges, after thirty (30) days advance written notice, within sixty (60) days of the applicable payment date shall constitute a violation of this Permit.

D. *Permit and License Fees on Private Property.* The Applicant for a permit to place Facilities or associated Support Structures on Private Property shall pay the following types of fees:

(1) for Facilities, a \$500.00 non-recurring permit application fee that may include up to five Facilities, with an additional \$100.00 for each Facility beyond five; each location in a combined application shall be required to receive a unique permit per location; and

(2) for Support Structures (i.e., a new pole, and not a collocation, intended to support one or more Small Wireless Facilities) a \$1,000.00 non-recurring permit application fee.

E. *Completely Concealed and Integrated Facilities ("CCIFs").* No annual license fee required under this Section is required to be paid for a period of fifteen (15) consecutive years for a facility that is determined to be a CCIF by the Director of Urban Development, provided that such facility maintains such CCIF status for the entire fifteen (15) year period of time. Such temporary exemption from an annual license fee shall be pro rated if a facility is converted to be a CCIF during the course of a year.

SECTION 6. Abandonment of Facilities on Rights-of-Way.

A. If a Provider or Applicant abandons any Facility (including the Accessory Equipment) or an associated Support Structure (collectively "Facilities" for purposes of this Section) that is located within, under, over, or on the Rights-of-Way, the Provider shall notify the Director in writing within thirty (30) days of the abandonment and the following rights and obligations shall exist. The City may require the Provider or Applicant, at their expense, to remove and reclaim the abandoned Facilities and/or related or associated infrastructure within six (6) months 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 and/or related or associated infrastructure are located to that existing before they were installed. If the Provider or Applicant fails to remove and reclaim its abandoned Facilities and/or related or associated infrastructure within such six (6) month period and the Facilities and/or related or associated infrastructure are located within, under, over, or on the Rights-of-Way, the City shall have the rights to:

(1) remove them and charge its expense of any such removal operation to the account of the Provider or Applicant,

(2) at the City's discretion, either resell the abandoned Facilities and related or associated infrastructure to a third party or dispose and salvage them; provided that the net proceeds of any resale of abandoned Facilities and related or associated infrastructure by the City to a third party shall be credited to the account of the Applicant or Provider, if the same then exists and is readily known, that used those Facilities or related or associated infrastructure before the abandonment,

(3) charge any expense incurred by the City to restore the Rights-of-Way to the account of the Provider or Applicant, and

(4) pursue any other or additional remedies available to the City at law and/or in equity.

SECTION 7. Non-Applicability.

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

(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 Chapter are supplemental to, and not intended to alter, affect or modify any other provisions in the City of Gulfport’s ordinances that may be applicable to the placement or use of macro Telecommunications Towers.

SECTION 8. Posting of Permits.

At all times while work or construction is in progress, a copy of the permit must be located at or near the work or construction site and shall, on request, be shown to the Director or his or her designee or to any public safety or code officer.

SECTION 9. Suspension; Revocation of Permit.

If work under an issued permit fails to conform to the conditions of the permit or the requirements of this Ordinance or existing ordinances of the City of Gulfport, and such nonconformance is not cured within thirty (30) days of written notice from the City, the permit may be revoked or suspended. If the permit is suspended, work shall be stopped until the permittee gives assurance to the Director of his or her ability and intention to complete the work in accordance with the conditions of the permit and this Ordinance and the other ordinances of the City. Any notice of revocation, suspension or stop work order shall be delivered in writing to the permittee or his or her designee or to a representative of the permittee, such as the project manager or the person who is overseeing or managing the work or construction, and shall state the reasons for such action.

SECTION 10. Liability of the City.

Neither the City nor any officer or employee thereof shall be held responsible for any damages caused by any work or construction in any street, alley, sidewalk, rights-of-way, or other public place made by any person under the authority of a permit issued pursuant to the provisions of this Ordinance. The permittee shall be solely liable for any damage or loss occasioned by any act or omission occurring in connection with such work or construction, and shall fully indemnify, hold harmless and defend City, its officers, officials, and employees from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind to which the City and its officers, officials, and employees may be subjected for injury of any type, death, and/or property damage in any way arising out of ~~from~~ or connected with any such act or omission. The City shall promptly notify a permittee, at the address(es) set forth in the permit or Application, of any claim or suit served upon the City and alleging negligent or wrongful conduct by the permittee in connection with work or construction that is the subject of a permit.

SECTION 11. Violations and Penalties.

A. Any person or entity violating any of the provisions of this Article shall be guilty of a misdemeanor. Each person shall be deemed guilty of a separate offense for each day or portion thereof during which that person knowingly commits any violation of any of the provisions of this Article. Upon conviction of any such violation, said violator(s) shall be punished by a fine of not more than one thousand dollars (\$1,000.00) for each such violation.

B. No person or entity who has violated any provision of this Article shall be issued another permit hereunder, nor shall any contractor or agent apply for or be issued such a permit on such person's behalf, until the outstanding violation is corrected or a plan for correction is approved by the Director, which approval shall not be unreasonably withheld. The foregoing requirement or penalty is in addition to any penalty or remedy for violation that may be imposed or sought by the City at law or equity.

SECTION 12. Other Ordinances; Severability; Miscellaneous Provisions.

A. All provisions of the ordinances of the City of Gulfport in direct conflict with the provisions of this Ordinance are subordinated to this Ordinance and all other provisions of the ordinances of the City of Gulfport not in conflict with the provisions of this Ordinance shall remain in full force and effect.

B. If any sentence, paragraph, subdivision, clause, phrase, or section of this Ordinance or the application thereof to any person or circumstances be adjudged or held to be unconstitutional, illegal, invalid, or unenforceable by a court of competent jurisdiction, such finding or such invalidity shall not serve as an invalidation or affect the validity or enforceability of any other section or provision of this Ordinance and to this end, the provisions of this Ordinance are declared to be severable. Such an invalid sentence, paragraph, subdivision, clause, phrase, or section shall also not affect the validity of the Code of Ordinances as a whole.

C. Permits issued pursuant to this Ordinance, and the Permittees thereof, are subject to the provisions of the City's rights-of-way management ordinances regulating the excavation of streets, alleys, or public ways and all amendments thereto, including, but not limited to, the "Street Trenching and Right-of-Way Management" Ordinance adopted by the City's Governing Authority and codified in Article VI, Section 7-250, *et seq.* in the City's Code of Ordinances, as amended. Permittees must restore rights-of-way to their former condition at the completion of all maintenance and construction activity(ies).

D. No term, condition, provision, regulation or requirement set forth in this Ordinance shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, exemptions from liability, and other provisions of Mississippi's Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq. (Rev. 2012), or under any other applicable law.

E. Applications issued under this Ordinance are issued subject to the understanding that the City permits other persons and entities to install utilities and facilities in the Rights-of-Way and that in permitting such other work to be done or to occur by others, the City shall not be liable or responsible for any damage caused by those persons or entities or their agents, contractors, or representatives.

F. *No Interference with Public Safety Communications.*

(1) Applicants shall, regardless of the type of Facility, comply with "Good Engineering Practices" as defined by FCC regulations and shall provide a composite analysis of all users of the site to determine that the proposed Facilities will not cause radio frequency interference with any governmental public safety communications and shall implement appropriate technical measures and means to prevent such interference.

(2) When the City notifies a permittee, Provider, or Applicant, as the case may be, that it believes their Facility(ies) are creating such interference, then then same shall investigate and mitigate the interference, if any, utilizing the procedures set forth in the joint wireless industry-public safety “Enhanced Best Practices Guide,” released by the FCC in Appendix D of FCC 04-168 (released August 6, 2004), including the “Good Engineering Practices,” as may be amended or revised by the FCC from time to time in any successor regulations.

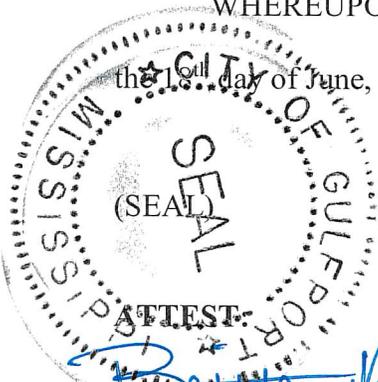
(3) If the permittee, Provider, or Applicant fails to comply with this subsection (F), including, but not limited to, by initiating an appropriate response within twenty-four (24) hours of the City’s notification, such person(s) and/or entity(ies) and the property owner, if any, shall be jointly and severally responsible for reimbursing the City for all costs associated with ascertaining and resolving the interference.

SECTION 3. To provide for the immediate and temporary preservation of the public peace, health and safety, this Ordinance shall be in full force and become effective immediately upon its passage by unanimous vote and enactment according to law and shall be spread on the minutes of the Gulfport City Council. The Ordinance shall be published according to law and, for failure to pass unanimously, shall take effect thirty (30) days after the date of passage.

The above and foregoing Ordinance, after having been first reduced to writing and read by the Clerk, was introduced by Councilmember Pucheu, seconded by Councilmember Walker, and was adopted by the following roll call vote:

<u>YEAS:</u>	<u>NAYS:</u>	<u>ABSENT:</u>
Casey	None	None
Roland		
Holmes-Hines		
Walker		
Sharp		
Flowers		
Pucheu		

WHEREUPON the President declared the motion carried and the Ordinance adopted, this the 19th day of June, 2019.



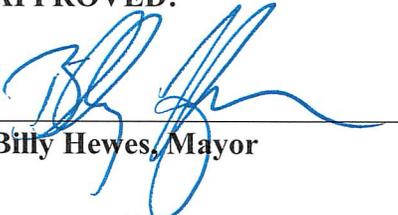
ATTEST:

Brittany Rodgers, Clerk of Council

ADOPTED:

F.B. “Rusty” Walker, IV, President

The above and foregoing Ordinance having been submitted to and approved by the Mayor, this the 19th day of June, 2019.

APPROVED:

Billy Hewes, Mayor