

ORDINANCE NO. 582-2021

AN ORDINANCE ESTABLISHING REGULATIONS AND PROCEDURES RELATED TO THE PERMITTING, INSTALLATION AND CONSTRUCTION OF SMALL WIRELESS FACILITIES IN THE CITY OF SPANISH FORT, ALABAMA CITY OF SPANISH FORT

WHEREAS, it is in the best interests of the public health, safety and welfare that the City Council of the City of Spanish Fort adopt regulations and procedures related to the permitting, installation and construction of small wireless facilities in the City of Spanish Fort.

WHEREAS, the City Council of the City of Spanish Fort, Alabama seeks to establish policies and procedures for use of the public rights-of-way and more specifically 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 the integrity, safe usage, and aesthetic qualities of the City's rights-of-way and the City as a whole; and

WHEREAS, the installation, expansion, and maintenance of small wireless facilities and associated structures on or along the rights-of-way and might have a significant impact upon (1) the aesthetic values and historic 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 areas where small wireless facilities are associated structures are placed; and

WHEREAS, in enacting this Ordinance, the City is establishing uniform standards consistent with federal and state law to address the placement of small wireless facilities and associated structures in the rights-of-way, including without limitation, to:

- (1) Prevent interference with the use of streets, sidewalks, alleys, parkways, and other public ways and places by pedestrians, vehicular traffic, and utilities;
- (2) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (3) Prevent interference with the facilities and operations of facilities lawfully located in rights-of-way, or installed on public infrastructure;
- (4) Protect against environmental damage, including damage to trees;
- (5) Preserve the character of areas with existing or proposed decorative poles, and to support City wide street beautification initiatives; and
- (6) Facilitate the deployment of small wireless facilities to provide the benefits of wireless services to City residents and businesses; and

WHEREAS, the adoption of the regulations, procedures, and requirements in this Ordinance will enhance the provision of wireless services and protect the public welfare, health, safety and interest of the City's and its citizens.

NOW, THEREFORE BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA AS FOLLOWS:

Section 1. Definitions:

For the purposes of this Ordinance, the following definitions shall apply unless the context requires otherwise:

Antenna means an apparatus designed for the purpose of emitting radiofrequency (RF) radio frequency signals, to be operated or operating from a fixed location pursuant to the Federal Communications Commission authorization, for the provision of wireless service. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, antenna designed for amateur radio use, or satellite dishes for residential or household purposes.

Antenna equipment means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

Antenna facility or *facility* means an antenna and associated antenna equipment.

Applicable codes means uniform building, fire, safety electrical, plumbing, or mechanical codes adopted by a recognized national code organization or City or state and amendments to those codes.

Applicant means any person who submits an application as or on behalf of a wireless provider.

Application means a request submitted by an applicant (i) for a permit to collocate small wireless facilities on a pre-existing structure; or (ii) to approve the installation, modification or replacement of a structure on which to install a small wireless facility.

Collocate means 1) mounting or installing an antenna facility on a preexisting structure, and/or 2) modifying a pre-existing structure for the purpose of mounting or installing an antenna facility on that structure. "Collocation" has a corresponding meaning.

Day means calendar day, except for state holidays.

Decorative pole means a pole that is specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments, lighting, specially designed informational or directional signage or temporary holiday or special events attachments, have been placed or are permitted to be placed according to City standards.

Billing Official means the Building Inspector for the City.

Fee means a one-time, nonrecurring charge.

Permit means any and all authorizations, written or otherwise, required by the City to perform an action or initiate, continue, or complete a project for the deployment of small wireless facilities, and associated pole, if necessary, at a specified location.

Person means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.

Pole means a type of structure in the rights-of-way that is or may be used in whole or in part by or for wirelines communications, electric distribution, lighting, traffic control, signage or similar functions, or for collocation of small wireless facilities; provided such term does not include a tower, base station, building, or electric transmission structures.

Rate means a recurring charge.

Rights-of-way 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 sidewalk, public boulevard, public parkway, or public drive.

Small wireless facility means an antenna facility that meets each of the following conditions:

- (1) The facilities (i) are mounted on structures 50 feet or less in height including the antennas, or (ii) are mounted on structures no more than ten percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than ten percent, whichever is greater;
- (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and
- (4) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b) or any successor rule or requirement.

Structure means a pole, tower, or other structure, whether or not a pre-existing antenna facility is installed on it, that is used or to be used for the installation of a small wireless facility.

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

Wireless infrastructure provider means any person, including a person authorized to provide communications service in the state, that builds or installs wireless communication transmission equipment or wireless facilities, but that is not a wireless services provider.

Wireless provider means a wireless infrastructure provider or a wireless services provider.

Wireless services means any services, using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public.

Wireless services provider means a person who provides wireless services.

Section 2. Grant of authority:

The City shall have the authority to grant a non-exclusive franchise or license to construct, maintain, and operate small wireless facilities within the City rights-of-way to any person who agrees to comply, and to the extent it complies, with the requirements of this Ordinance. This grant of authority will be administered through an initial permit for construction and installation and a subsequent annual licensing process from the building Official or designee that will allow annual renewals pursuant to the terms of this Ordinance.

Section 3. Permitted use; application and fees:

- (a) *Permitted use.* The following uses within the rights-of-way shall be a permitted use, subject to the terms of this Ordinance and the issuance of a permit as set forth in this Ordinance.
 - (1) Collocation of a small wireless facility; and
 - (2) Placement of a new, modified, or replacement pole to be used for collocation of a small wireless facility that does not exceed the maximum height set forth in this Ordinance.
- (b) *Permit required.* Except as otherwise provided in this Ordinance, no person shall place a small wireless facility or any support structure for such a facility, without first filing an application for the same and obtaining a right-of-way permit therefor. No

antenna facility other than a small wireless facility shall be permitted in the right-of-way.

- (c) *Application requirements.* A right-of-way permit application filed pursuant to this Ordinance shall be made by the wireless provider or its duly authorized representative and 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 proposed small wireless facility and associated pole, including geographic coordinates (GIS), if applicable. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed;
 - (4) Site plans and engineering drawings to scale that identify the proposed small wireless facility, including the number, size, type and proximity to the small wireless facilities of all communication conduit cables to be installed;
 - (5) A certification from a licensed engineer that the small wireless facility and any support structure shall comply with all applicable codes and FCC rules and regulations;
 - (6) Letters of authorization; and
 - (7) A declaration signed by an authorized representative of the applicant stating that the information in the application is true and accurate and that the small wireless facility and (if applicable) associated pole will be built in conformance with the specifications set forth in the application.
- (d) *Routine maintenance and replacement.* An application with respect to small wireless facilities shall not be required for: (i) routine maintenance; or (ii) the replacement of a small wireless facility with another small wireless facility that is the same, substantially similar or smaller in size and weight and height. Notwithstanding the foregoing, the City may require a right-of-way permit for work that requires excavation or closure of sidewalks or vehicular lanes within the rights-of-way for routine maintenance or replacement of small wireless facilities. Such a permit is subject to Section 5 and must be issued to the applicant upon substantially the same terms and conditions applied to any other person performing substantially similar activities in the rights-of-way.
- (e) *Information updates.* Any amendment to information contained in a permit application shall be submitted in writing to the City within 30 days after the change necessitating the amendment. Any such amendment shall toll the timelines set forth in this Ordinance.
- (f) *Application fees.* Application fees shall not collectively exceed the following:
- (1) Five hundred dollars (\$500.00) for an application covering up to five small wireless facilities, with an additional One hundred dollars (\$100.00) for each additional small wireless facility beyond five in the same application.
 - (2) Two hundred fifty dollars (\$250.00) for the modification or replacement of an existing pole together with the monitoring or installation of an associated small wireless facility in the right-of-way.
 - (3) One thousand dollars (\$1,000.00) for the installation or replacement of a pole together with the collocation of an associated small wireless facility in the rights-of-way that is a permitted use in accordance with this Ordinance.

Section 4. Action on administrative permit applications subject to this Ordinance:

- (a) The Building Official shall review an application for a right-of-way permit subject to this Ordinance considering its conformity with applicable provisions of this Ordinance, and shall issue a right-of-way permit on nondiscriminatory terms and conditions subject to the following requirements.
- (1) For an initial application, the Building Official shall notify the applicant in writing on or before the tenth day of submission if the application is materially incomplete. In the written notice that the application is incomplete, the Building Official shall identify the missing documents or information and, where applicable, specify the related code provision, Ordinance, application instruction or otherwise published procedures related to missing information.
 - (2) If the Building Official notifies the applicant in writing that the application is incomplete in accordance with subsection (1), the processing timelines in subsection (3) shall restart at zero on the date the applicant submits all the documents and information identified by the Building Official to render the application complete.
 - (3) The Building Official shall make the final decision to approve or deny a complete application within:
 - a. Sixty days of receiving an application for the collocation of a small wireless facility on a pre-existing structure, and
 - b. Ninety days for an application to install a new structure on which a small wireless facility will be collocated.

These timelines may be tolled by mutual agreement between the applicant and the City.

- (4) The Building Official must advise the applicant in writing of its final decision, and if the final decision is to deny the application, the final decision document shall state the basis for a denial, including specific code provisions on which the denial was based.
 - (5) The Building Official's failure to issue a final decision within the processing timelines set forth in subparagraph (3) above shall not constitute, or be construed to constitute, a grant of applicant's application. After expiration of those timelines, applicant may pursue whatever remedies are available to it under applicable law.
- (b) The City may deny an application subject to this Ordinance if the proposed small wireless facility, new pole, modified pole, or replaced pole:
- (1) Interferes with the safe operation of traffic control equipment;
 - (2) Interferes with sight lines or clear zones for transportation, vehicular traffic, or pedestrians;
 - (3) Interferes with or fails to comply with the Alabama Department Transportation Utility Manual, as it may be applicable and amended;
 - (4) Fails to comply with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
 - (5) Fails to comply with applicable codes or Ordinances; or
 - (6) Fails to comply with the provisions of this Ordinance.

Section 5. Small wireless facilities in the rights-of-way; maximum height; other requirements:

- (a) *Size, spacing, and coloring requirements.* Small wireless facilities and any new, modified, or replaced pole for the collocation of small wireless facilities in the rights-of-way shall meet the following requirements:
- (1) Maximum size of antenna: three cubic feet.
 - (2) Maximum size of equipment (including antenna): 28 cubic feet.
 - (3) Spacing between poles: 200 feet (independently on each side of roadway).
 - (4) Maximum height of poles: 50 feet.
 - (5) Minimum distance from roadway edge of pavement: ten feet.
 - (6) Pole color: black.
- (b) *Decorative poles.* A new, modified, or replacement pole shall conform to the City's design standards. Small wireless decorative poles and pole mounted equipment shall meet the following requirements for design, material, shape, diameter, and finish:
- (1) The pole shall be designed in accordance with the 2013 American Association of State Highway Transportation Officials (AASHTO) Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals;
 - (2) The pole diameter measured at the base shall not exceed ten inches;
 - (3) The pole material shall be aluminum or galvanized steel;
 - (4) Only one equipment shroud, containing all required small wireless equipment, shall be installed per pole; provided, however, that one, additional equipment shroud shall be allowed per pole if the antenna is located within the second equipment shroud. Maximum shroud dimensions shall be 38 inches high by 16 inches wide by 12 inches deep;
 - (5) If an antenna is located on top of the pole, the outer diameter shall be 14 inches maximum and be no more than five feet tall, including antenna, radio head, mounting bracket and all other necessary hardware;
 - (6) Visible attachments and hardware shall be colored to match the pole; and
 - (7) A four inches by six inches (maximum) plate with pole owner's name, location and identifying information, and emergency telephone number shall be permanently affixed to the pole or shroud.
- (c) *Underground district and Highway 31.* In areas designated solely for underground or buried cable and utility facilities of the City, a wireless provider shall comply with lawful requirements that prohibit the installation of poles in the rights-of-way, where all communications and electric utility lines are required to be placed underground by three months prior to the submission of the application. A wireless provider may install a new pole in a designated area that otherwise complies with this section only if it can show that it is not able to provide wireless service by using a building or other structure outside the rights-of-way in the area. To the fullest extent allowed by law, the City shall prohibit the installation of any small wireless facilities, antennas or equipment on the decorative light poles along U. S. Highway 31 in the City of Spanish Fort, and any other , subdivisions or districts where decorative light poles, are constructed or installed, presently or in the future.
- (d) *Wiring and cabling.* Wires and cables serving the small wireless facility shall be installed in accordance with all applicable codes.

- (e) *Guy wires restricted.* Guy wires and similar support structures may not be used as part of the installation of any small wireless facility, unless the small wireless facility is proposed to be attached to an existing pole that incorporated guy wires prior to the date of the application.

Section 6. Effect of right-of-way permit:

- (a) *No property right or other interest created.* A right-of-way permit authorizes an applicant to undertake only certain activities in accordance with this Ordinance, and does not create a property right or grant an applicant any authority or right to access any pole in the right-of-way, or to otherwise impinge upon the rights of others who may already have an interest in, or facilities located in, the rights-of-way.
- (b) *License or permit duration.*
 - (1) A license granted pursuant to this Ordinance shall be valid for a period of one year after issuance unless renewed or sooner terminated pursuant to this Ordinance.
 - (2) A permit for construction granted pursuant to this Ordinance shall be valid for a period of 60 days after issuance unless the City and applicant agree to extend this period due to delay caused by the lack of commercial power or communications facilities, or other events outside of the reasonable control of the wireless provider.
 - (3) A license or permit is subject to applicable relocation requirements, termination for material non-compliance after notice and a reasonable opportunity to cure, and an applicant's right, on notice to the City, to terminate a permit at any time.

Section 7. Removal, relocation, or modification of small wireless facility in the rights-of-way:

- (a) *Notice.* Except as provided herein, on 90 days prior written notice from the City, the wireless provider shall, 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 the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the rights-of-way.
- (b) *Emergency removal or relocation of facilities.* In the event of an emergency, as the City may determine to be necessary, appropriate or useful in response to any imminent danger to public health, safety, or property, the City retains the right and privilege, without prior notice, to cut, disconnect, remove, move, or relocate any small wireless facility or structure located within the rights-of-way of the City. If circumstances permit, the City shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider promptly after cutting or removing a small wireless facility.
- (c) *Abandonment of facilities.* A wireless provider is required to notify the City at least 30 days prior to any intentional abandonment of a small wireless facility. Absent non-usage arising from lack of commercial power or other circumstances beyond the wireless provider's control, a small wireless facility shall be deemed abandoned if it remains unused for a period of more than one year. In the event of abandonment, the City may direct the wireless provider to remove all or any portion of the small wireless facility that the City, or any of its departments, determines would be in the best interest of the public health, safety and welfare to remove. If the wireless provider fails to remove the abandoned facility within 90 days after such notice, the City may undertake to do so and recover the actual and reasonable expenses of doing so from the wireless provider, its successors or assigns.

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

Section 8. Rates for rights-of-way and collocation on City structures in the rights-of-way:

The recurring rate for use of the rights-of-way and attachment of small wireless facilities to a City structure in the rights-of-way shall be subject to the following requirements:

- (1) *Annual rate.*
- a. *Rights-of-way.* The City may charge for the occupancy and use of the rights-of-way, so long as such rate is reasonable, nondiscriminatory, and does not exceed \$100.00 per year per small wireless facility.
 - b. *Collocation on City structures.* The City may charge for collocation of a small wireless facility on City structures, but any such rate shall be reasonable, nondiscriminatory, and recover no more than a reasonable approximation of the City's actual costs associated with such collocation, not to exceed \$170.00 per City structure per year.
- (2) *Payments.* Payments of rates due shall be made to the City annually on or before January 30 for the preceding calendar year. Payment amounts shall be pro-rated for those facilities or structures that were in place for only part of the year. For purposes of calculating pro-rated rates, the rate payment obligation commences on the date work in the rights-of-way to install the small wireless facility or structure begins, and ends on the date when the facility and structure have been completely removed from the rights-of-way.
- (3) *Cease payment.* Effective 30 days after written notice to the City, a wireless provider may remove its facilities at any time from the rights-of-way and City structures in the rights-of-way and cease paying the City compensation as of the date of removal of the facilities.
- (4) *Reports and audit.*
- a. The City may require any licensed wireless provider to submit an annual report setting forth the number and location of its small wireless facilities and structures during the preceding year.
 - b. The City shall have the right to audit a licensed wireless provider's records to determine the accuracy of its rate payments, and the City shall have the right to pursue all remedies available at law or equity to recover unpaid or underpaid rates.

Section 9. Insurance and indemnification:

- (a) *Insurance.* Prior to installing any small wireless facilities or structures in the rights-of-way, the applicant shall provide the City a certificate(s) of insurance evidencing that it has obtained and will maintain the following types of insurance in connection with its operations on or use of the right-of-way:
- (1) 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 a small wireless facility or structure placed on or along the right-of-way by the applicant (or any of their contractors) with minimum limits of \$2,000,000.00 per occurrence; and
 - (2) Workers compensation insurance as required by statute.

- (3) The general liability coverage shall list the City as an additional insured, and may be provided through a combination of a primary and umbrella policies. All insurance policies shall be furnished by insurers who are reasonably acceptable to the City and authorized to transact business in the State of Alabama. On an annual basis following initial installation, the applicant also shall furnish the City a certificate indicating that the above-noted coverage remains and will remain in effect.
- (b) *Indemnification.* Each applicant or wireless provider that applies for a license or permit to place small wireless facilities or support structures on the right-of-way and installs and utilizes those facilities or structures shall defend, indemnify and hold the City, its employees, officials or agents, harmless from all demands, losses, expenses (including reasonable 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, officials, or agents) by any third person, firm or entity that arise out of or relate in any manner to any of the following:
- (1) The installation, construction, maintenance, use or operation of the permitted small wireless facilities, or any support structure on or about the right-of-way; or
 - (2) The failure of the wireless provider or applicant to perform any of their respective responsibilities, obligations and permit requirements in this Ordinance. Notwithstanding the foregoing, the wireless provider or applicant shall not be obligated to indemnify the City for City claims resulting from the sole negligence or willful acts of the City or its employees or its agents.

Section 10. Notice of transfer, sale, or assignment of assets in the rights-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 Ordinance.
- (b) Written notice of any such transfer, sale or assignment shall be provided to the City within 20 days after the effective date of the transfer, sale or assignment.

Section 11. Compliance with Applicable Laws, Rules and Regulations

All persons, entities, applicants and/or wireless providers shall comply with all applicable ordinances of the City of Spanish Fort and all applicable state, federal and local laws, rules and regulations, which shall be a condition of any permits granted or approved pursuant to this Ordinance.

Section 11. Cumulative Effect

The requirements, rules and procedures set forth herein shall be cumulative with and in addition to all other applicable laws, rules and regulations of the City of Spanish Fort and shall not be deemed to repeal any other applicable laws, rules and regulations.

Section 12. Severability

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

Section 13. Effective Date

This Ordinance shall become effective upon its adoption or as otherwise required by State law.

ADOPTED and APPROVED this 23rd day of April, 2021.

Michael M. McMillan
Mayor

ATTEST:

Rebecca A. Gaines
City Clerk