

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 4 B

Council Meeting Date: March 26, 2019

ITEM TITLE: **ORDINANCE (1st Reading)**

INTRODUCED BY: **Mayor Andrew "FoFo" Gilich**

CONTACT PERSON: **E. Michael Leonard, CAO** *[Signature]*
Peter Abide, City Attorney

SUMMARY EXPLANATION:

An Ordinance Amending Chapter 17: Streets and Sidewalks by Adding Article III (Sec. 17-3-1 To Sec. 17-3-11) and adopting regulations for small cell technology facilities in the City of Biloxi, Mississippi

Resolution _____ Ordinance Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract _____ Minutes _____ Plans/Maps _____ Deed _____ Lease _____

Other (Specify):

Submittal Authorization: Council President _____ Mayor

STAFF RECOMMENDATION: **Staff recommends approval**

COUNCIL ACTION: Motion By: _____ Second By: _____

Vote:	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>Other</u>	<u>Councilmember</u>	<u>Yes</u>	<u>No</u>	<u>Other</u>
	Lawrence	___	___	___	Tisdale	___	___	___
	Gines	___	___	___	Glavan	___	___	___
	Newman	___	___	___	Barrett	___	___	___
	Deming	___	___	___				

ACTION TAKEN:

Ordinance No.

AN ORDINANCE AMENDING CHAPTER 17: STREETS AND SIDEWALKS BY
ADDING ARTICLE III (SEC. 17-3-1 TO SEC. 17-3-11) AND ADOPTING
REGULATIONS FOR SMALL CELL TECHNOLOGY FACILITIES IN THE CITY OF
BILOXI, MISSISSIPPI

WHEREAS, the City of Biloxi, 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 Right of Way and on private properties in the City; and

WHEREAS, the installation, expansion, and maintenance of Small Cell Technology Facilities and associated structures on or along the Right of Way and on private properties might have significant impact 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, Mississippi Code Ann. Section 21-37-3 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, 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 protect the public welfare, health, safety, and interests of the City's citizens.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI, AS FOLLOWS:

Section 1: That the matters, facts and things recited in the above and foregoing Preamble to this Ordinance be, and they are hereby adopted as the official findings of the Governing Authority of the City of Biloxi.

Section 2: That the Code of Ordinances of the City of Biloxi, Mississippi be and the same is hereby amended to add the following Ordinance, to read as follows:

CHAPTER 17 - STREETS AND SIDEWALKS

ARTICLE III – Small Cell Technology Facilities

Sec. 17-3-1. Definitions.

The terms below have the following meanings for purposes of this Ordinance.

- (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 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 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. 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 to apply for or receive a permit to install, construct, manage, 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.

- (e) "Application" means a formal request submitted to 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) "Planning Commission" means the body created by the City of Biloxi Zoning Ordinance to, among other functions, consider applications for conditional use permits and variances.
- (g) "City" means the City of Biloxi, Mississippi.
- (h) "City Council" means the Council of the City of Biloxi, Mississippi.
- (i) "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.
- (j) "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.
- (k) "Distributed Antenna System Facilities and/or Small Cell Technology Facility(ies)" or "Facilities," whether singular or plural, means and includes the following types of structures: (a) antenna; and (b) associated Accessory Equipment.
- (l) "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.

- (m) "Private Property" means real property located in the City that does not lie within the Right of Way.
- (n) "Director of Community Development" means the person appointed by the Mayor and the City Council as the Director of Community Development who is responsible for the administration of this Ordinance.
- (o) "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 county, state or federal rights of way, unless such right-of-way is maintained by the City, or any property owned by any person or entity other than the City, or City property that is not right-of-way.
- (p) "Support Structure" 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 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.

(q) "Stealth Technology" means a method(s) 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.

(r) "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 wireless support structures, but that is not a wireless services provider.

Sec. 17-3-2. Permit Required to Place DAS and/or Small Cell Technology Facilities.

(a) A Provider or Applicant must obtain an infrastructure permit from the City before placing, installing, constructing, or operating any DAS

and/or Small Cell Technology Facility (and associated Accessory Equipment) on any Support Structure that is located on the Right of Way, or Private Property, including substantially modifying the position or characteristics of any such existing Facility thereon.

- (b) The Director of Community Development (the "Director"), or his 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 provision 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. The factors, requirements and guidelines that the Director may consider and will apply when determining whether to issue a permit for placement of DAS and/or Small Cell Technology Facilities and associated structures include, but are not limited to, the following:

- (1) A Conditional Use Permit has been approved by the Planning Commission, 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:
 - (i) Spacing between support structures,
 - (ii) Collocation availability,
 - (iii) Appearance of the proposed Support Structure and Facilities as a whole, taking into consideration the design guidelines depicted in Exhibit "A," and
 - (iv) Impact to the surrounding environment;
- (2) the visual impact of placing the Support Structures or Facilities in the subject area;
- (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;
- (5) whether the appearance and placement of the requested Facilities is aesthetically consistent with the immediate area and/or needs landscaping or other screening features.

Aesthetic considerations shall take into account the proposed location and the design guidelines depicted in Exhibit "A;"

- (6) whether the Facilities are consistent with the historic nature and/or unique characteristics of the requested location;
- (7) whether the Facilities meet the height limitations established for the zoned district in which a structure is located;
- (8) Collocation. To the extent reasonable, in the discretion of the Director, 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:
 - (i) the Applicant must have provided the City written evidence that no reasonable collocation opportunity exists. This documentation may 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 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

- (ii) the Director must recommend 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,
- (iii) 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 Biloxi for good cause shown. Such waiver will not be unreasonably withheld.
- (iv) a conditional use permit is approved by the Planning Commission for the new Support Structure.

- (9) 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 beyond the maximum height established by zoning ordinances; if the Facility includes an antenna array, the array shall be flush mounted within eighteen (18) 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 colored to match the support structure;
- (10) the location of any new Facilities shall be subject to review by the Director for its visual impact and to avoid an appearance of "clutter" among other Right of Way uses in the vicinity;
- (11) the Accessory Equipment shall, if reasonably possible, be buried, placed within the pole, in a cabinet under the pole, or at least twelve (12) feet above the ground and limited to twenty-eight (28) cubic feet cumulatively;
- (12) the color of Antenna 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;

- (13) the Facility (including the Accessory Equipment) shall not be illuminated unless required by applicable laws and regulations;
- (14) display of logos, branding, or the like on the Facilities in any way that may reasonably be construed as advertising shall be prohibited;
- (15) whether Applicant has provided documentation that the proposed installation will not cause harm to the public or pose any undue risk to public safety;
- (16) whether the proposed installation may interfere with vehicular traffic, passage of pedestrians, or other use of the Right of Way by the public;
- (17) 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 preexisting condition following installation;
- (18) 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; and
- (19) that the applicant covenants and agrees to indemnify, defend, save, and hold harmless the City of Biloxi, Mississippi, 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 of Biloxi, its agents, or employees), which may occur on the property of the City of Biloxi or elsewhere, on account of or by reason of any matters which arise during, or from, 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 negligence or misconduct of the City of Biloxi, its employees, contractors or agents.

Sec. 17-3-3. Application Process.

The application process for locations within the City is as follows: Applications for locations on Right-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 Community Development, or his designee, subject additionally to the City's Zoning Ordinance/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.

- (a) At a minimum, each application for a permit shall contain the following:

- (1) Drawings 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;
- (2) Map(s) designating with specificity the location(s) of the requested Facilities and all other existing or proposed locations of the Applicant within 1,000 feet;
- (3) The geographic coordinates of all antenna and other proposed Facilities of the Applicant within 1,000 feet;
- (4) If the Facilities will be located on the Right of Way on a Support Structure that is owned by any entity other than the City or the Applicant, 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 to use that part of the Right of Way may be rescinded.

- (5) 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 a conditional use permit from the Planning Commission.
 - (6) Photo-simulated post-construction renderings depicting the proposed facilities and equipment, including any/all equipment cabinets, ancillary structures, coloration, and landscaping.
- (b) 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, the Director shall make the final decision to approve or deny a complete application within 60 days. Applications for a new Support Structure requiring a conditional use permit from the Planning Commission

shall be approved or denied within ninety (90) days of the submission of the completed application.

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

(i) 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 Right of Way by the Applicant with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate; and

(ii) 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. 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 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.

- (iii) 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.
- (2) 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 are not completed in that amount of time, the permit will terminate, and the applicant must remove any partially installed equipment.

- (3) 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/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. Permit fees shall be non-refundable.
- (4) 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.
- (5) 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 licensed professional engineer in the State of Mississippi 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 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 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 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 non-compliance, or cease all personal wireless service operations related to those 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 structures from the Right-of-Way in accordance with Section 5(1), (2) and (3).

- (6) The Facilities and associated Support Structures must be maintained in good and safe condition.
- (7) 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 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:

- (i) the installation, construction, maintenance, location, use or operation of the permitted Facilities, Accessory Equipment or any Support Structure on or about the Right of Way; and/or
 - (ii) 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 City claims resulting from the negligence or willful acts of the City (or its representatives).
- (8) Franchise Agreements for Other Uses of Right 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 Right 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 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 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 Right of Way.

Sec. 17-3-4. Compensation.

(a) Permit and License Fees. The Applicant for a permit to place Facilities or associated Support Structures on the 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 4.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 are 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 4A(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 Biloxi.
- (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.

Sec. 17-3-5. Abandonment of Facilities on Right 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 on the Right 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 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 are located to that existing before they were installed. If the Provider or Applicant fails to remove and reclaim its abandoned Facilities within such six (6) month period and the Facilities are located on the Right 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 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 or Provider that used those Facilities before the abandonment, and

- (3) charge any expense incurred by the City to restore the Right of Way to the account of the Provider or Applicant.

Sec. 17-3-6. 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 Biloxi ordinances that may be applicable to the placement or use of macro Telecommunications Towers.

Sec. 17-3-7. 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 any public safety or code officer.

Sec. 17-3-8. 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 Biloxi, 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.

Sec. 17-3-9. 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, right-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 or property damage arising 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, 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.

Sec. 17-3-10. 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 is committed. 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.

Sec. 17-3-11. Other Ordinances; Severability.

- (a) All provisions of the ordinances of the City of Biloxi 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

Biloxi 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
- (c) 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.
- (d) Permits issued pursuant to this Ordinance, and the Permittees thereof, are subject to the provisions of the City's right-of-way management ordinances, including but not limited to the May 4, 1999 ordinance regulating the excavation of streets, alleys, or public highways. Permittees must restore Rights-of-way to their former condition at the completion of all maintenance and construction activity.

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 Biloxi 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.