ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 126 – SMALL CELL FACILITIES - OF THE MUNICIPAL CODE OF THE CITY OF MOUNTAIN BROOK REGARDING APPLICATION PROCESS AND FEE STRUCTURE

WHEREAS, on or about January 11, 2016, the City Council of City of City of Mountain Brook (City Council) enacted Ordinance No. 1948 to facilitate the availability of personal wireless communication services in the City by permitting the placement of small cell technology facilities (“Facilities”) and associated structures along the right of way and on private properties in the City; and

WHEREAS, subsequent to the enactment of Ordinance No. 1948, the Federal Communications Commission issued its Declaratory Order in FCC Docket 18-133, as amended (the FCC Order) regarding fees and placement of small cell facilities on rights of way controlled by state and local governments and mandated guidelines entitled “Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment” as published in the Federal Register/Vol. 83, No. 199 on October 15, 2018;

WHEREAS, upon consideration of the FCC Order and other developments regarding placement of Facilities since 2016, the City Council desires to amend Chapter 126 - Small Cell Technology Facilities” of its Municipal Code as set forth herein.

NOW, THEREFORE, BE IT ORDAINED by the City Council as follows:

SECTION 1. Chapter 126 of the Mountain Brook Municipal Code is amended as follows.

(a) Sec. 126-2(c)(1), which concerns the Application Process for permitting the placement of small cell facilities in the right of way, is modified as follows:

Delete the following provision at the end of Sec. 126-2(c)(1):
Within 30 calendar days after an application for permit is submitted, the city shall notify the applicant in writing if any additional information is needed to complete that application or supplemental information is required to process the request. If the city does not notify the applicant in writing that the application is incomplete within 30 days following its receipt, the application is deemed complete.

And replace with the following:
“Within 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. If the city does not notify the applicant in writing that the application is incomplete within 10 days following its receipt, the application is deemed complete.”

(b) Sec. 126-2(c)(2), which concerns the Time for processing application for permits for placement of small cell facilities in the right of way, is modified as follows:

Delete the following provision at the end of Sec. 126-2(c)(2):
To the extent additional information is required to complete the application after it is filed, the applicable calendar day review period set forth in this subsection shall be tolled and not continue to run until the applicant has
provided any missing or requested supplemental information; provided that
tolling shall not occur if the city does not advise the applicant in writing of the
incompleteness of a submitted application within 30 days after that submission.

And replace with the following:
“"To the extent additional information is required to complete the application
after it is filed, the applicable calendar day review period set forth in this
subsection shall be tolled and not continue to run until the applicant has
provided any missing or requested supplemental information; provided that
tolling shall not occur if the city does not advise the applicant in writing of the
incompleteness of a submitted application within 10 days after that submission.""

(c) Sec. 126-2(c)(3), which concerns Reconsideration/Appeal of the city’s denial of request by an
applicant for a permit to place small cell facilities in the right of way, is modified as follows:

The following provision at the end of Sec. 126-2(c)(3) is deleted:
Additionally, the applicant, within 30 days following a decision by the city
council to deny either:
   a. A request for reconsideration; or
   b. A decision by the city council to not approve the placement of a new
      support structure on the right of way;
may appeal either of those decisions by the city council to the county court. If
no appeal of those decisions of the city council is made, those will be deemed
final.

And replaced with the following:
“Additionally, the applicant, within 30 days following a decision by the city
council to deny either a request for reconsideration or a decision by it to not
approve the placement of a new support structure on the right of way,
may appeal either of those decisions to a court in Jefferson County, Alabama
having jurisdiction concerning such dispute, or exercise whatever other remedy
may be available to the applicant pursuant to applicable law. If no appeal of a
decision of the city council that is adverse to the applicant is taken in that 30-
day period, such decision will be final.”

(d) Sec. 126-2(e), which concerns Permit and license fees concerning the placement of small cell
facilities in the right of way, is modified as follows:

The following subsections (1)-(3) in Sec. 126-2(e) are deleted:
(1) A permit application and review fee to be paid when an application is
submitted;
(2) A permit issuance fee per each support structure on the right-of-way
contemplated for attachment; and
(3) An annual license fee per each support structure on the right-of-way
pertaining to the ongoing use of public property.
And replaced with the following:
“(1) A $500 non-recurring fee for a single up-front application for collocation that includes up to five small wireless facilities, with an additional $100 for each small wireless facility beyond five in a consolidated application.
(2) A $250 non-recurring fee for the modification or replacement of an existing pole together with the mounting or installation of an associated small wireless facility in the right-of-way.
(3) A $1,000 non-recurring fee for the installation of a new pole together with the mounting or installation of an associated small wireless facility in the right-of-way.
(4) A $270 annual, recurring license fee per Small Wireless Facility; this charge includes ROW access fee or fee for attachment to municipally-owned structures in the right of way.”

(e) Sec. 126-2(b), which concerns the factors, requirements, and guidelines that the city manager may consider and apply when determining whether to issue a permit for placement of small cell technology facilities in the right-of-way is modified to include the following:

(15) A new or modified pole may not exceed the greater of either of the following:
a. Fifty feet above the ground level.
b. Ten feet in height above the tallest existing pole in place as of July 1, 2020, located within 500 feet of the new pole in the same right-of-way controlled by the authority.

SECTION 2. Repealer. All ordinances or parts of ordinances heretofore adopted by the City Council that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

SECTION 3. This ordinance is cumulative in nature and is in addition to any power and authority which the City of Mountain Brook may have under any other ordinance or law.

SECTION 4. 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 5. This ordinance shall become effective immediately upon adoption and publication as approved by law.

ADOPTED: This 8th day of March, 2021.

________________________________________
Council President

APPROVED: This 8th day of March, 2021.

________________________________________
Mayor
CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on March 8, 2021, as same appears in the minutes of record of said meeting, and published by posting copies thereof on March 9, 2021, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street
Gilchrist Pharmacy, 2850 Cahaba Road
Overton Park, 3020 Overton Road
Cahaba River Walk, 3503 Overton Road

City Clerk