

**PRE-MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL**

**CITY HALL PRE-COUNCIL ROOM (A106)
56 CHURCH STREET
MOUNTAIN BROOK, AL 35213**

APRIL 23, 2019 6:15 P.M.

1. Introduction of Rachel Weingartner, the new Executive Director of the Mountain Brook Schools Foundation
2. No Poaching agreement by Jefferson County Mayor's Association-Mayor Welch (See attached information.)
3. Summer work at Public Works and Parks/Recreation by teens-Sam Gaston (This information will be presented Tuesday night.)
4. Opposition to Senate Bill 264-Sam Gaston (See attached information. This item may be added to the formal agenda.)
5. Executive Session

Jefferson County Coalition of Mayors

Good Neighbor Pledge

April 2019

Preamble:

We, the undersigned mayors of the cities and towns of Jefferson County, Alabama, do hereby set forth the following principles of behavior and standards of conduct to guide our collective efforts in promoting the long-term economic health of the Jefferson County region. It is our intent to enter a new era of regional cooperation to promote economic development. To that end, we will also work closely with the Jefferson County Commission to make our communities and the region more attractive to business. While each community wants to encourage businesses to locate within its boundaries, we are determined not to do so at the expense of our neighbors. Inevitably, some businesses, for their own reasons, will choose to explore re-location from one community in Jefferson County to another. In such instances, we believe a balance should be struck between giving the first community the opportunity to retain the business while also allowing the second community or communities the opportunity to attract it. However, if a business has not expressed an interest in re-locating, we believe that other communities should not actively pursue or “poach” that company to encourage it to move from its current location.

With the global economic environment as dynamic and uncertain as ever, proactive regionalism can be a powerful economic development tool. As local economies have become regional in nature, economic growth among neighboring communities may be better facilitated by collaborative efforts in job attraction, retention and expansion of existing businesses. Movement of an existing business within the region, while beneficial in the short-run to the receiving municipality, does not benefit the region in the long-run; and, it wastes precious resources that could be otherwise utilized for attraction and growth. A regionally focused economic policy best ensures keeping businesses within the region. Regional cooperation among the Jefferson County cities – working together – in the economic development area will convince businesses that Jefferson County is an excellent place to do business.

We recognize that no commitment is of value without an inherent level of trust in the integrity of one another and a commitment from each of us to conduct ourselves at the highest levels of professional conduct. The Mayor’s Association of Jefferson County was founded on the respect and trust of its members. We also recognize that as a region, our individual municipalities are interconnected and that we share a common fate. It is within the spirit of this framework we set forth the following principles.

Purpose:

This pledge represents a commitment by the signatories to work together for economic development in Jefferson County. We hereby declare our intention to collaborate with our neighboring municipalities in good faith by refusing to deploy incentives and other tools to lure businesses away from their current city of residence within Jefferson County.

Principles:

- We commit to establishing trust in one another and to exhibit the highest level of professional conduct and integrity.
- We agree that Jefferson County’s economy will be stronger if its communities work together rather than against each other.

- We agree that we should focus our economic development efforts on the attraction of new businesses, the retention and expansion of existing businesses, and the promotion of our collective community as a good place to do business.
- We agree that the focus of economic development efforts should not be on encouraging companies from one community to move to another within the county, because this internecine competition results in no new job growth for the region.
- We are committed to the promotion of Jefferson County as a desirable business location for new and expanding companies.
- We are committed to sharing data and information among our membership to facilitate fair and competitive economic development efforts.

Business Attraction and Retention Protocols:

In the interest of promoting the economic well-being and growth of our communities, we, the undersigned, pledge our support for the following protocols.

- We will not actively pursue a business to move from its current location in Jefferson County to our municipality. ‘Actively pursue’ means to initiate contact with the business directly, with the intent of luring the business through cold calls, visits, mail solicitations, or marketing directed specifically at that business. This does not preclude a municipality from generally marketing itself as a good place to do business or generally advising its residents about the benefits of locating a business there.
- If a business is seeking to move from one municipality in Jefferson County to another: We will advise the business that we will not offer financial incentives (sales and property tax abatements, construction sales tax abatements, or any other revenue enhancements through tax relief), free or discounted land, or a lease below market value. This includes abatements and incentives sought through the Industrial Development Board (IDB) and Downtown Redevelopment Authority (DRA) where applicable.

Infrastructure issues related to city-owned right-of-way (ROW) will be referred to the **Advisory Consulting Committee**.

- Business expansions from one municipality to another within Jefferson County that result in no net job loss to the original municipality are not included in this pledge.
- New businesses to Jefferson County are not included in this pledge. When possible, however, municipalities will actively work with one another.
- Confidentiality: Cities should be committed to sharing with each other as much information as is necessary and prudent regarding relocation. The guiding principle shall be that “more information is better than less.” However, in instances where a prospect wishes to remain completely confidential with an individual city, that city shall honor the prospect’s confidentiality until the prospect chooses to announce.

Oversight:

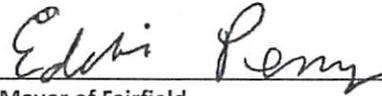
- In order to provide a forum for answering questions about what constitutes poaching activities versus non-poaching activities, we will establish a 4-member **Advisory Consulting Committee** which includes a large, medium, and smaller city representative and a member of the Jefferson County Commission.
- Noncompliance with the terms of this pledge may impact consideration for regional incentives.

SIGNED

Jefferson County Coalition of Mayors
Good Neighbor Pledge
(April 2019)



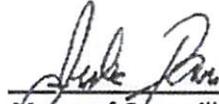
Mayor of Argo
Betty Bradley



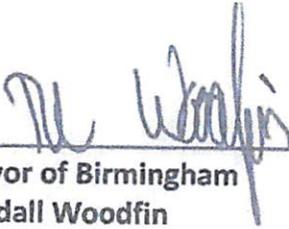
Mayor of Fairfield
Eddie Penny



Mayor of Bessemer
Kenneth Gulley



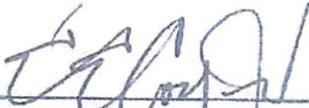
Mayor of Graysville
Julio Davis



Mayor of Birmingham
Randall Woodfin



Mayor of Homewood
Scott McBryer



Mayor of Brighton
Eddie Cooper



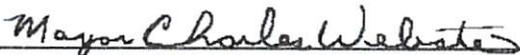
Mayor of Hoover
Frank Brocato



Mayor of Center Point
Tom Henderson



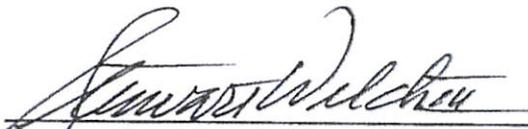
Mayor of Lipscomb



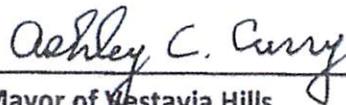
Mayor of Clay
Charles Webster



Mayor of Midfield
Gary Richardson



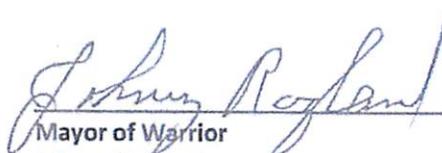
Mayor of Mountain Brook
Stewart Welch



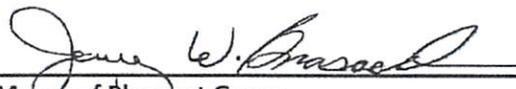
Mayor of Vestavia Hills
Ashley Curry



Mayor of Mulga
Keith Varner



Mayor of Warrior
Johnny Ragland



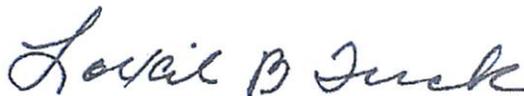
Mayor of Pleasant Grove
Jerry Brasseale



Mayor of West Jefferson
Charles Nix



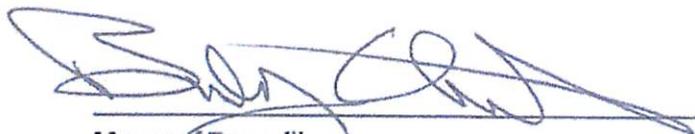
Mayor of Sylvan Springs
Stevan H. Parsons



Mayor of Tarrant
Loxcil Tuck



Mayor of Trafford
Greg Rogers



Mayor of Trussville
Buddy Choat

1 SB264
2 197833-2
3 By Senator Orr
4 RFD: Transportation and Energy
5 First Read: 09-APR-19

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7
8 SYNOPSIS: This bill would authorize the installation
9 and deployment of qualifying antennas and poles on
10 the public rights-of-way of the state to be used
11 for wireless and broadband communications networks.

12 This bill would establish a permitting
13 process for the installation of small wireless
14 facilities and poles and would establish the rates
15 and fees for their use.

16 This bill would also provide exemptions and
17 would also provide indemnification, insurance, and
18 bonding requirements.

19
20 A BILL

21 TO BE ENTITLED

22 AN ACT

23
24 Relating to telecommunications; to add Chapter 3A to
25 Title 37, Code of Alabama 1975, to authorize the installation
26 and deployment of small wireless facilities and poles on
27 public rights-of-way; to establish a permitting process; to

1 provide exemptions; and to provide indemnification, insurance,
2 and bonding requirements.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Chapter 3A is added to Title 37 of the
5 Code of Alabama 1975, to read as follows:

6 §37-3A-1. Definitions.

7 When used in this chapter, the following words have
8 the following meanings:

9 (1) ANTENNA. An apparatus designed for the purpose
10 of emitting radio frequency radiation, to be operated or
11 operating from a fixed location pursuant to Federal
12 Communications Commission authorization, for the provision of
13 personal wireless service and any commingled information
14 services. The term does not include an unintentional radiator,
15 mobile station, or device authorized under 47 C.F.R. Chapter
16 I, Subchapter A, Part 15.

17 (2) ANTENNA EQUIPMENT. Equipment, switches, wiring,
18 cabling, power sources, shelters, or cabinets associated with
19 an antenna, located at the same fixed location as the antenna,
20 and, when collocated on a structure, mounted or installed at
21 the same time as the antenna.

22 (3) ANTENNA FACILITY. An antenna and associated
23 antenna equipment.

24 (4) APPLICABLE CODES. Uniform building, fire,
25 electrical, plumbing, or mechanical codes adopted by a
26 recognized national code organization, or local amendments to

1 those codes that are of general application, that address
2 public safety and are consistent with this chapter.

3 (5) APPLICANT. A person who submits an application
4 as or on behalf of a wireless provider.

5 (6) APPLICATION. A request submitted by an applicant
6 to an authority for a permit to do any of the following:

7 a. Collocate.

8 b. Install or replace a pole on which a small
9 wireless facility will be mounted or installed.

10 c. Mount or install small wireless facilities on a
11 new or replacement pole.

12 d. Install associated antenna equipment adjacent to
13 a structure on which a small wireless facility is or will be
14 collocated, mounted, or installed.

15 (7) AUTHORITY. The state or any agency, county,
16 municipality, district, or subdivision thereof or any
17 instrumentality of the same, including, but not limited to,
18 public utility districts and irrigation districts. The term
19 does not include state courts having jurisdiction over an
20 authority.

21 (8) AUTHORITY POLE. A pole that is owned, managed,
22 or operated by or on behalf of an authority.

23 (9) COLLOCATE or COLLOCATION. Either or both of the
24 following:

25 a. Mounting or installing an antenna facility on a
26 pre-existing structure.

1 b. Modifying a structure for the purpose of mounting
2 or installing an antenna facility on that structure.

3 (10) COMMUNICATIONS FACILITY. The set of equipment
4 and network components, including wires, cables, and
5 associated facilities, used by a communications service
6 provider.

7 (11) COMMUNICATIONS SERVICE PROVIDER. Any of the
8 following:

9 a. A cable operator, as defined in 47 U.S.C. § 522.

10 b. A provider of information service, as defined in
11 47 U.S.C. § 153.

12 c. A telecommunications carrier, as defined in 47
13 U.S.C. § 153.

14 d. A wireless provider.

15 (12) DECORATIVE POLE. An authority pole that is
16 specially designed and placed for aesthetic purposes and on
17 which no appurtenances or attachments, other than a small
18 wireless facility, lighting, specially designed informational
19 or directional signage, or temporary holiday or special event
20 attachments, have been placed or are permitted to be placed
21 according to nondiscriminatory authority rules or codes.

22 (13) FACILITY. An antenna facility or a structure
23 that is used for the provision of personal wireless service,
24 whether such service is provided on a stand-alone basis or
25 commingled with other wireless communications services.

26 (14) FCC. The Federal Communications Commission of
27 the United States.

- 1 (15) FEE. A one-time, nonrecurring charge.
- 2 (16) HISTORIC DISTRICT. A group of buildings,
3 properties, or sites that are either of the following:
4 a. Listed in the National Register of Historic
5 Places or formally determined eligible for listing by the
6 Keeper of the National Register in accordance with 47 C.F.R.
7 Chapter I, Subchapter A, Part 1, Appendix C.
8 b. A historic district designated pursuant to
9 Section 11-68-6, as of July 1, 2019.
- 10 (17) MICRO WIRELESS FACILITY. An antenna facility
11 that meets both of the following qualifications:
12 a. It is not larger in dimension than 24 inches in
13 length, 15 inches in width, and 12 inches in height.
14 b. Any exterior antenna is no longer than 11 inches.
- 15 (18) PERMIT. Any and all authorizations, written or
16 otherwise, required by an authority to perform an action or
17 initiate, continue, or complete a project for the deployment
18 of wireless service at a specified location in the
19 rights-of-way.
- 20 (19) PERSON. An individual, corporation, limited
21 liability company, partnership, association, trust, or other
22 entity or organization, including an authority.
- 23 (20) PERSONAL WIRELESS SERVICE. The term includes
24 all of the following: Commercial mobile service, unlicensed
25 wireless services, and common carrier wireless exchange access
26 services, as those terms are defined in 47 U.S.C. § 332, and

1 commercial mobile data service, as defined in 47 U.S.C. §
2 1401.

3 (21) POLE. A pole in the right-of-way that is or may
4 be used in whole or in part by or for wireline communications,
5 electric distribution, lighting, traffic control, signage, or
6 a similar function, or for the collocation of small wireless
7 facilities. The term does not include a building or electric
8 transmission structure.

9 (22) RATE. A recurring charge.

10 (23) RIGHT-OF-WAY. The area on, below, or above a
11 public utility easement, roadway, highway, street, sidewalk,
12 alley, or similar property, but not including a federal
13 interstate highway. The term does not include an area in which
14 an authority does not have the right to permit access.

15 (24) SMALL WIRELESS FACILITY. A facility that meets
16 all of the following conditions:

17 a. The facility meets any of the following
18 requirements:

19 1. Is mounted on structures 50 feet or less in
20 height, including the antennas.

21 2. Is mounted on structures no more than 10 percent
22 taller than other adjacent structures.

23 3. Does not extend existing structures on which they
24 are located to a height of more than 50 feet or by more than
25 10 percent, whichever is greater.

1 b. Each antenna associated with the deployment,
2 excluding associated antenna equipment, is no more than three
3 cubic feet in volume.

4 c. All other wireless equipment associated with the
5 structure, including wireless equipment associated with the
6 antenna and any pre-existing associated equipment on the
7 structure, is no more than 28 cubic feet in volume.

8 d. The facilities do not require antenna structure
9 registration under 47 C.F.R. Chapter I, Subchapter A, Part 17.

10 e. The facilities are not located on tribal lands,
11 as defined under 36 C.F.R. § 800.16.

12 f. The facilities do not result in human exposure to
13 radio frequency in excess of the applicable safety standards
14 specified in 47 C.F.R. § 1.1307(b).

15 (25) STRUCTURE. A pole; tower, as defined in 47
16 C.F.R. § 1.40001; base station, as defined in 47 C.F.R. §
17 1.40001; or other building, whether or not it has an existing
18 antenna facility, that is used or to be used for the provision
19 of personal wireless service, whether on its own or commingled
20 with other types of services.

21 (26) TECHNICALLY FEASIBLE. By virtue of engineering
22 or spectrum usage, the proposed placement for a small wireless
23 facility, or its design, concealment measures, or site
24 location can be implemented without a material reduction in
25 the functionality of the small wireless facility.

26 (27) WIRELESS INFRASTRUCTURE PROVIDER. A person,
27 including a person authorized to provide telecommunications

1 service in the state, who builds or installs facilities for
2 the provision of wireless service, but who is not a wireless
3 services provider.

4 (28) WIRELESS PROVIDER. A wireless infrastructure
5 provider or a wireless services provider.

6 (29) WIRELESS SERVICES. Any services using licensed
7 or unlicensed spectrum, including the use of Wi-Fi, whether at
8 a fixed location or mobile, that is provided to the public.

9 (30) WIRELESS SERVICES PROVIDER. A person who
10 provides wireless services.

11 §37-3A-2. Use of right-of-way for small wireless
12 facilities and poles.

13 (a) This section applies to activities of a wireless
14 provider within the right-of-way to deploy small wireless
15 facilities and associated antenna equipment and poles.

16 (b) An authority may not enter into an exclusive
17 arrangement with any person for any of the following:

18 1. For the use of the right-of-way for collocation.

19 2. For the mounting or installation of small
20 wireless facilities on new or replacement poles.

21 3. For the installation of associated antenna
22 equipment adjacent to a structure on which a small wireless
23 facility is or will be collocated, mounted, or installed.

24 4. For the installation, operation, marketing,
25 modification, maintenance, or replacement of associated poles.

1 (c) (1) Subject to this section, as a permitted use
2 that is not subject to zoning review or approval, a wireless
3 provider may do any of the following:

4 a. Collocate.

5 b. Mount or install small wireless facilities on new
6 or replacement poles.

7 c. Install associated antenna equipment adjacent to
8 a structure on which a small wireless facility is or will be
9 collocated, mounted or installed.

10 d. Install or replace its own poles, or, with the
11 permission of the owner, a third party's poles, associated
12 with a small wireless facility, along, across, upon, or under
13 the right-of-way.

14 (2) Small wireless facilities, antenna equipment,
15 and poles mounted, installed, or replaced under subdivision
16 (1) shall be installed and maintained as not to obstruct or
17 hinder the usual travel or public safety on a right-of-way or
18 obstruct the legal use of the right-of-way by utilities.

19 (d) Each new, replaced, or modified pole installed
20 in the right-of-way for the purpose of collocating, mounting,
21 or installing small wireless facilities may not exceed the
22 greater of 50 feet in height above ground level or 10 percent
23 taller than the tallest existing pole in place as of January
24 1, 2019, in the same right-of-way within 500 feet of the new,
25 replaced, or modified pole. New small wireless facilities in
26 the right-of-way may not extend more than 10 percent above the
27 existing structure on which they are located or 50 feet above

1 ground level, whichever is greater. Notwithstanding the
2 foregoing, each new, replaced, or modified pole installed in
3 the right-of-way for the purpose of collocating, mounting, or
4 installing small wireless facilities, and each collocation,
5 may not exceed 50 feet in height above ground level within a
6 historic district or an area zoned primarily for residential
7 use. A wireless provider shall have the right to collocate,
8 mount, or install a small wireless facility and install,
9 maintain, modify, and replace a pole that exceeds these height
10 limits along, across, upon, or under the right-of-way, subject
11 to this section and any applicable zoning or other generally
12 applicable regulations.

13 (e) An authority may adopt aesthetics requirements
14 governing the deployment of small wireless facilities and
15 associated antenna equipment and poles in the right-of-way,
16 subject to all of the following conditions:

17 (1) The aesthetic requirements must be all of the
18 following:

19 a. Reasonable, in that they are technically feasible
20 and reasonably directed to avoiding or remedying unsightly or
21 out-of-character deployments.

22 b. No more burdensome than those applied to other
23 types of infrastructure deployments.

24 c. Objective and published in advance.

25 (2) Any design or concealment measures are not
26 considered a part of the small wireless facility for purposes

1 of the size parameters in the definition of small wireless
2 facility.

3 (3) An authority may deny an application for not
4 complying with aesthetic requirements only if the denial does
5 not prohibit or have the effect of prohibiting the provision
6 of wireless service.

7 (4) Aesthetic requirements applicable to deployment
8 on decorative poles and deployment in historic districts shall
9 also comply with both of the following requirements:

10 a. A wireless provider shall be permitted to
11 collocate on or replace decorative poles when necessary to
12 deploy a small wireless facility. An authority may require the
13 collocation or decorative pole replacement to reasonably
14 conform to the design aesthetics of the original decorative
15 pole or poles, provided the requirements are technically
16 feasible.

17 b. An authority may adopt aesthetic requirements
18 applicable in historic districts that comply with this
19 subsection.

20 (f) A wireless provider shall comply with
21 undergrounding requirements that are consistent with
22 subdivisions (1) through (3) of subsection (e) under the
23 following conditions:

24 (1) The authority has required all electric and
25 communications lines to be placed underground by a date
26 certain that is not less than three months prior to the
27 submission of the application.

1 (2) Poles which the authority allows to remain shall
2 be made available to wireless providers for the collocation of
3 small wireless facilities and may be replaced by a wireless
4 provider to accommodate the mounting or installation of small
5 wireless facilities in compliance with this chapter.

6 (3) A wireless provider may install a new pole in
7 the designated area that otherwise complies with this section
8 when it is not able to provide wireless service by collocating
9 on a remaining structure. For small wireless facilities
10 installed before an authority adopts requirements that
11 communications and electric lines be placed underground, an
12 authority adopting the requirements shall do either of the
13 following:

14 a. Permit a wireless provider to maintain the small
15 wireless facilities in place on any pole not required to be
16 removed, subject to any applicable pole attachment agreement
17 with the pole owner.

18 b. Permit the wireless provider to replace an
19 existing pole within 50 feet of the prior location.

20 (g) The applicant, or the person that owns or
21 operates the small wireless facility collocated in the
22 right-of-way, may remove its small wireless facilities at any
23 time from the right-of-way upon not less than 30 days' prior
24 written notice to the authority and may cease paying to the
25 authority any applicable fees and rates for such use, as of
26 the date of the actual removal of the small wireless
27 facilities. In the event of such removal, the right-of-way

1 shall be, to the extent practicable in the reasonable judgment
2 of the authority, restored to its condition prior to the
3 removal. If the applicant fails to return the right-of-way, to
4 the extent practicable in the reasonable judgment of the
5 authority, to its condition prior to the removal within 90
6 days of the removal, the authority may restore the
7 right-of-way to such condition and charge the applicant the
8 authority's reasonable, documented cost of removal and
9 restoration, plus a penalty not to exceed five hundred dollars
10 (\$500). The authority may suspend the ability of the applicant
11 to receive any new permits from the authority until the
12 applicant has paid the amount assessed for such removal and
13 restoration and the penalty assessed, if any; provided,
14 however, that the authority shall not suspend the ability of
15 any applicant that has deposited the amount in controversy in
16 escrow pending an adjudication of the merits of the dispute by
17 a court of competent jurisdiction.

18 (h) A wireless provider shall not be required to
19 replace or upgrade an existing pole except for reasons of
20 structural necessity or compliance with applicable codes. A
21 wireless provider, with the permission of the pole owner, may
22 replace or modify existing poles, but the replacement or
23 modification shall be consistent with the design aesthetics of
24 the pole or poles being modified or replaced.

25 (i) If, in the reasonable exercise of police powers,
26 an authority requires widening, repair, reconstruction, or
27 relocation of a public road or highway, or relocation of poles

1 or small wireless facilities is required as a result of a
2 public project, a wireless provider shall relocate poles that
3 the wireless provider has installed in the right-of-way for
4 the collocation of small wireless facilities pursuant to this
5 chapter at no cost to the authority in the event that such
6 poles are found by the authority to unreasonably interfere
7 with the widening, repair, reconstruction, or relocation
8 project of the public project. If widening, repair,
9 reconstruction, or relocation is required as a condition or
10 result of a project by a person other than an authority, the
11 person shall bear the cost of relocating the poles and any
12 communications facilities on the poles.

13 (1) The wireless provider shall relocate the poles
14 within the sooner of either of the following:

15 a. By the date designated in a written notice from
16 the authority that contains a good faith estimate by the
17 authority of the date by which the authority intends to
18 commence work, whenever the authority has determined that the
19 removal, relocation, change, or alteration is reasonably
20 necessary for the construction, repair, maintenance, or
21 installation of any authority improvement or operations in or
22 upon the right-of-way, so long as the same time frames are
23 applied to all utilities in the right-of-way; provided,
24 however, that the date designated for relocation shall be at
25 least 45 days after the authority provides the written notice
26 to the wireless provider.

1 b. Within the time frame that the wireless provider
2 estimates in good faith is reasonably needed to complete the
3 relocation, so long as the wireless provider provides the
4 authority written notice of its good faith estimate within 30
5 days following receipt of the written notice provided by the
6 authority pursuant to paragraph a. and explains in detail why
7 the wireless provider cannot reasonably complete the
8 relocation by the date designated in the authority's written
9 notice.

10 (2) If the wireless provider fails to relocate a
11 pole or fails to provide a written good faith estimate of the
12 time needed to relocate a pole within the time period
13 prescribed in subdivision (1), the authority, ten days or more
14 after the wireless provided receives written notice from the
15 authority, may cut power to or move any pole located within
16 the right-of-way in order to commence work on the public
17 project.

18 (j) (1) If a wireless provider decides to abandon any
19 small wireless facility or structure, the wireless provider
20 shall notify the authority in writing as soon as practicable,
21 but no later than 30 days prior to the abandonment. Following
22 receipt of the notice, the authority shall instruct the
23 wireless provider in writing to remove all or any portion of
24 the small wireless facility or structure if the authority
25 determines that the removal is in the best interest of public
26 safety and welfare. If the wireless provider fails to remove
27 the abandoned small wireless facility or structure within 90

1 days after such notice, the authority may remove the abandoned
2 facility or structure and recover the actual and reasonable
3 expenses of the removal from the wireless provider, its
4 successors, or its assigns, plus a penalty not to exceed five
5 hundred dollars (\$500). The authority may suspend the ability
6 of the wireless provider, its successors, or its assigns, as
7 applicable, to receive any new permits from the authority
8 until the wireless providers, its successors, or its assigns,
9 as applicable, have paid the amount assessed for the removal
10 costs and the penalty assessed, if any; provided, however,
11 that the authority shall not suspend such ability of any
12 applicant that has deposited the amount in controversy in
13 escrow pending an adjudication of the merits of the dispute by
14 a court of competent jurisdiction. Nothing in this chapter
15 precludes an authority from adopting reasonable and
16 nondiscriminatory requirements that are not inconsistent with
17 this subsection with respect to the removal of abandoned small
18 wireless facilities or structures.

19 (2) A small wireless facility that is not operated
20 or a structure that is not utilized for a continuous period of
21 12 months shall be considered abandoned, and the owner of the
22 small wireless facility or structure shall remove such within
23 90 days after receipt of written notice from the authority
24 notifying the owner of the small wireless facility or
25 structure of the abandonment. The authority shall send the
26 notice by certified or registered mail, return receipt
27 requested, to the last known address of the owner. If the

1 owner does not provide written notice that the small wireless
2 facility has not been out of operation or the structure has in
3 fact been utilized for a continuous period of 12 months or
4 does not remove the small wireless facility or structure
5 within the 90 day period, the authority may remove or cause
6 the removal of the small wireless facility or structure
7 pursuant to the terms of any applicable agreement or through
8 an abatement of nuisance action or by other law providing for
9 removal and cost recovery.

10 (k) If an authority determines that a wireless
11 provider's activity in the right-of-way pursuant to this
12 chapter creates an imminent risk to public safety, the
13 authority may provide written notice to the wireless provider
14 and demand that the wireless provider address the risk. If the
15 wireless provider fails to reasonably address the risk within
16 24 hours of the written notice, the authority may take or
17 cause to be taken action to reasonably address the risk and
18 charge the wireless provider the reasonable documented cost of
19 the actions.

20 (l) A wireless provider shall comply with any
21 nondiscriminatory breakaway pole requirements.

22 §37-3A-3. Permitting process.

23 (a) This section applies to all permits required for
24 collocation; for the mounting and installation of small
25 wireless facilities on new or replacement poles; for the
26 installation of associated antenna equipment adjacent to a
27 structure on which a small wireless facility is or will be

1 collocated, mounted, or installed; and for the installation
2 and replacement of associated poles by a wireless provider.

3 (b) Except as provided in this chapter, an authority
4 may not prohibit, regulate, or charge for collocation, the
5 mounting and installation of small wireless facilities on new
6 or replacement poles, or the installation or replacement of
7 associated poles or antenna equipment that may be permitted in
8 this section.

9 (c) An authority may require an applicant to obtain
10 a permit for a collocation for the mounting or installation of
11 a small wireless facility on a new or replacement pole or for
12 the installation or replacement of associated poles or antenna
13 equipment as provided in Section 37-3A-3. Permits required
14 under this subsection must be of general applicability and may
15 not apply exclusively to small wireless facilities. Only one
16 application shall be required for all activities associated
17 with a permit. An authority shall receive and process
18 applications subject to all of the following requirements:

19 (1) Small wireless facilities and associated antenna
20 equipment and poles shall be classified as permitted uses and
21 not subject to zoning review or approval if they are located
22 in the right-of-way in any zone.

23 (2) An authority may not directly or indirectly
24 require an applicant to perform services or provide goods
25 unrelated to the permit, such as in-kind contributions to the
26 authority, including, but not limited to, reserving fiber,
27 conduit, or pole space for the authority.

1 (3) An applicant shall not be required to provide
2 more information to obtain a permit than communications
3 service providers that are not wireless providers, provided
4 that an applicant may be required to include construction and
5 engineering drawings and information demonstrating compliance
6 with the criteria in subdivision (9).

7 (4) An authority may not require any of the
8 following:

9 a. The collocation of small wireless facilities on a
10 specific pole or category of poles or require multiple antenna
11 facilities on a single pole.

12 b. Except as provided in Section 37-3A-2, the use of
13 specific pole types or configurations when installing new or
14 replacement poles.

15 c. The underground placements of small wireless
16 facilities or antenna equipment that are or are designated in
17 an application to be pole-mounted or ground-mounted.

18 (5) An authority may not limit the collocation of
19 small wireless facilities or the mounting or installation of
20 small wireless facilities on new or replacement poles by
21 minimum horizontal separation distance requirements from
22 existing small wireless facilities or structures.

23 (6) The authority may require an applicant to
24 include an attestation that the small wireless facilities will
25 be operational for use by a wireless service provider within
26 one year after the permit issuance date, unless the authority
27 and the applicant agree to extend this period or delay is

1 caused by lack of commercial power, communications transport
2 facilities to the site, or any other factors outside of the
3 applicant's control.

4 (7) Within 10 days of receiving an application, an
5 authority must determine and notify the applicant in writing
6 whether the application is complete. If an application is
7 incomplete, an authority must specifically identify the
8 missing information in writing. The processing deadline in
9 subdivision (8) shall restart at zero on the date the
10 applicant provides the missing information to complete the
11 application.

12 (8)a. Applications shall be processed on a
13 nondiscriminatory basis and shall be approved or denied within
14 the following days:

15 1. Sixty days of receipt of an application for a
16 permit involving collocation of a small wireless facilities
17 using an existing structure.

18 2. Ninety days of receipt of an application for a
19 permit involving deployment of a small wireless facility using
20 a new or replacement pole.

21 b. The processing deadline under paragraph a. may be
22 tolled by agreement of the applicant and the authority. If an
23 authority fails to act on an application within the review
24 period provided for in this subsection, the applicant may
25 provide the authority written notice that the time period for
26 acting has lapsed, and the authority shall then have 20 days
27 after receipt of the notice to render its written decision.

1 The application shall be deemed approved by passage of time
2 and operation of law if the authority does not render its
3 written decision within the 20 day period.

4 (9) An authority may deny a proposed collocation,
5 mounting, and installation of small wireless facilities on new
6 or replacement poles, or installation or replacement of
7 associated poles or antenna equipment that meets the height
8 requirements of subsection (d) of Section 37-3A-2 only if the
9 proposed application does any of the following:

10 a. Materially interferes with the safe operation of
11 traffic control equipment.

12 b. Materially interferes with sight lines or clear
13 zones for transportation or pedestrians.

14 c. Materially interferes with compliance with the
15 Americans with Disabilities Act or similar federal or state
16 standards regarding pedestrian access or movement.

17 d. Fails to comply with written, reasonable and
18 nondiscriminatory horizontal spacing requirements of general
19 application that are made publicly available before an
20 application is filed and concern the location of
21 ground-mounted antenna equipment and new poles. The spacing
22 requirements shall not prevent a wireless provider from
23 serving any location.

24 e. Materially obstructs the legal use of the
25 right-of-way by utilities, or materially interferes with the
26 widening, repair, reconstruction, or relocation of a public
27 road or highway by an authority that has been advertised for

1 bid and scheduled for completion within six months after the
2 application is filed.

3 f. Fails to comply with applicable codes.

4 g. Fails to comply with subsection (c), (d), (e), or
5 (f) of Section 37-3A-2.

6 (10) The authority shall document the basis for a
7 denial, including the specific rule or statutory provisions on
8 which the denial was based, and send the documentation to the
9 applicant on or before the day the authority denies an
10 application. The applicant may cure the deficiencies
11 identified by the authority and resubmit the application
12 within 30 days of the denial without paying an additional
13 application fee. The authority shall approve or deny the
14 revised application within 30 days of resubmission and limit
15 its review to the deficiencies cited in the denial. If an
16 applicant proposes a location more than five feet from the
17 original location to cure a deficiency identified in the
18 initial application, the authority may require a new
19 application triggering a new processing deadline under
20 subdivision (8) of subsection (a) of Section 37-3A-3.

21 (11) An applicant seeking to collocate, mount, or
22 install small wireless facilities within the jurisdiction of a
23 single authority may file a consolidated application for small
24 wireless facilities and associated poles and antenna equipment
25 and receive a single permit for the collocation, mounting, or
26 installation of multiple small wireless facilities and the
27 placement of associated poles and antenna equipment; provided,

1 the denial of one or more small wireless facilities in a
2 consolidated application shall not delay processing of any
3 other small wireless facilities, poles, or antenna equipment
4 in the same consolidated application. Batch applications shall
5 be collectively processed in accordance with the procedures in
6 this section. A batch application that includes new or
7 replacement pole deployments shall be subject to a 90-day
8 timeframe for approval.

9 (12) Installations, modifications, replacements, and
10 collocations for which a permit is granted pursuant to this
11 section shall be completed within one year after the permit
12 issuance date unless the authority and the applicant agree to
13 extend this period, or a delay is caused by the lack of
14 commercial power or communications facilities at the site.
15 Approval of an application authorizes the applicant to do both
16 of the following:

17 a. Undertake the installation, modification,
18 replacement, or collocation.

19 b. Subject to applicable relocation requirements and
20 the applicant's right to terminate at any time, operate and
21 maintain the small wireless facilities and any associated
22 poles and antenna equipment covered by the permit for a period
23 of not less than 10 years, which must be renewed for
24 equivalent durations so long as the facilities comply with the
25 criteria set forth in subdivision (9).

26 (13) An authority may not institute, either
27 expressly or de facto, a moratorium on the collocation,

1 mounting, or installation of small wireless facilities or the
2 installation, modification, or replacement of associated
3 antenna equipment or poles for either of the following:

4 a. The filing, receiving, or processing of
5 applications.

6 b. The issuing of permits or other required
7 approvals.

8 (d) (1) An authority may not require an application
9 for any of the following that are in compliance with any
10 applicable codes:

11 a. Routine maintenance.

12 b. The replacement of small wireless facilities or
13 antenna equipment with small wireless facilities or antenna
14 equipment that are substantially similar or the same size or
15 smaller.

16 c. The installation, placement, maintenance,
17 operation, or replacement of micro wireless facilities that
18 are suspended on cables that are strung between existing
19 poles.

20 (2) An authority may require a permit for work that
21 requires excavation or closure of sidewalks or vehicular lanes
22 within the right-of-way for those activities. The permit must
23 be issued to the applicant on a non-discriminatory basis upon
24 terms and conditions applied to any other person's activities
25 in the right-of-way that require excavation or the closure of
26 sidewalks or vehicular lanes.

1 §37-3A-4. Access to authority poles within the
2 right-of-way.

3 (a) This section applies to activities of a wireless
4 provider accessing authority poles to collocate, mount, or
5 install small wireless facilities or antenna equipment.

6 (b) A person owning, managing, or controlling
7 authority poles in the right-of-way may not enter into an
8 exclusive arrangement with any person for the right to attach
9 to such poles. A person who purchases or otherwise acquires an
10 authority pole is subject to the requirements of this section.

11 (c) An authority shall allow the collocation of
12 small wireless facilities on existing authority poles, the
13 mounting or installation of small wireless facilities on
14 replacement authority poles, and the installation of
15 associated antenna equipment on nondiscriminatory terms and
16 conditions using the standards set forth in subsection (e) of
17 Section 37-3A-2 and Section 37-3A-3.

18 (d) The rate to collocate, mount, or install small
19 wireless facilities on authority poles is provided in Section
20 37-3A-6.

21 (e) (1) The rates, fees, and terms and conditions for
22 any make-ready work to collocate, mount, or install small
23 wireless facilities on authority poles and install associated
24 antenna equipment must be nondiscriminatory, competitively
25 neutral, commercially reasonable, and in compliance with this
26 chapter.

1 (2) The authority shall provide a good faith
2 estimate for any make-ready work necessary to enable the pole
3 to support the requested collocation, mounting, or
4 installation by a wireless provider, including pole
5 replacement if necessary, within 60 days after receipt of a
6 complete application. An authority may require replacement of
7 the authority pole only if it demonstrates that the
8 collocation would make the authority pole structurally
9 unsound, and it shall not require more make-ready work than
10 required to meet applicable codes or industry standards. Fees
11 for make-ready work, including any authority pole replacement,
12 shall not exceed either actual costs or the amount charged to
13 other communications service providers for similar work and
14 shall not include any revenue or contingency-based
15 consultant's fees.

16 (3) The authority may require a wireless provider to
17 perform the make-ready work and notify the wireless provider
18 of such within the same 60-day period specified in subdivision
19 (2). If the wireless provider or its contractor performs the
20 make-ready work, the wireless provider shall indemnify the
21 authority for any negligence by the wireless provider or its
22 contractor in the performance of such make-ready work, and the
23 work shall comply with applicable codes. If the authority opts
24 to perform the make-ready work itself, the authority shall
25 complete the work, including any pole replacement, within 90
26 days of receipt of written acceptance of the good faith
27 estimate by the wireless provider. The acceptance shall be

1 signified by payment via check or other commercially
2 reasonable and customary means specified by the authority. The
3 authority may require that a replacement authority pole have
4 the same functionality as the authority pole being replaced.
5 If the authority pole is replaced, the authority shall operate
6 authority fixtures on the pole, and, absent an agreement to
7 the contrary between the authority and the wireless provider
8 that is confirmed in writing, the authority shall take
9 ownership of the new pole.

10 §37-3A-5. Rates and fees.

11 (a) This section governs an authority's rates and
12 fees for a wireless provider's use and occupation of the
13 right-of-way under this chapter and for collocation on
14 existing authority poles and mounting and installation of
15 small wireless facilities on replacement authority poles.

16 (b) All rates and fees under this section must be a
17 reasonable approximation of the authority's objectionably
18 reasonable costs and must be applied by the authority in a
19 nondiscriminatory manner. An authority may not require a
20 wireless provider to pay any rates, fees, or compensation to
21 the authority or other person other than what is expressly
22 authorized by this chapter for the right to use or occupy a
23 right-of-way; for the collocation, mounting, and installation
24 of small wireless facilities on poles in the right-of-way; or
25 for the installation, maintenance, modification, and
26 replacement of associated antenna equipment or poles in the
27 right-of-way.

1 (c) Application fees for any and all permits shall
2 not exceed the following:

3 (1) Five hundred dollars (\$500) for a single
4 up-front application for collocation that includes up to five
5 small wireless facilities, with an additional one hundred
6 dollars (\$100) for each small wireless facility beyond five in
7 the same application.

8 (2) Two hundred fifty dollars (\$250) for the
9 modification or replacement of an existing pole, together with
10 the mounting or installation of an associated small wireless
11 facility in the right-of-way.

12 (3) One thousand dollars (\$1,000) for the
13 installation of a new pole, together with the mounting or
14 installation of an associated small wireless facility in the
15 right-of-way.

16 (d) Subject to subsection (b), if an authority
17 elects to charge for the use of the right-of-way or
18 collocation on authority poles in the right-of-way, the rate
19 shall not exceed one hundred dollars (\$100) per small wireless
20 facility per year for right-of-way access and forty dollars
21 (\$40) per year for small wireless facilities that are
22 collocated, mounted, or installed on authority poles. These
23 rates, together with the one-time application fee, shall be
24 the total compensation that the wireless provider is required
25 to pay the authority for the deployment of each small wireless
26 facility in the right-of-way and any associated antenna
27 equipment or pole.

1 §37-3A-6. Cable services.

2 This chapter applies to activities in the
3 right-of-way only. Nothing in this chapter shall be
4 interpreted to allow any entity to provide services regulated
5 under 47 U.S.C. §§ 521 to 573, without compliance with all
6 laws applicable to such providers. Nor shall this chapter be
7 interpreted to impose any new requirements on cable providers
8 for the provision of cable service in this state.

9 §37-3A-7. Local authority.

10 An authority may not have or exercise any
11 jurisdiction or authority over the design, engineering,
12 construction, installation, or operation of a small wireless
13 facility located in an interior structure or upon the site of
14 a campus, stadium, or athletic facility not owned or
15 controlled by the authority, other than to require compliance
16 with applicable codes. Nothing in this chapter authorizes the
17 state or any political subdivision thereof, including an
18 authority, to require wireless facility deployment or to
19 regulate small wireless services.

20 §37-3A-8. Electric distribution poles.

21 (a) Except as provided in subsection (b), this
22 chapter does not apply to electric power distribution poles
23 owned by any of the following:

24 (1) An authority.

25 (2) An investor-owned utility.

26 (3) Any board or public corporation incorporated or
27 organized for the acquisition or operation of a system under

1 Chapter 50, Title 11, Code of Alabama 1975, including
2 specifically, but not without limitation, Sections 11-50-490
3 through 11-50-506.

4 (4) An electric cooperative under Chapter 6 of Title
5 37, Code of Alabama 1975.

6 (5) An electric membership corporation under Chapter
7 7 of Title 37, Code of Alabama 1975.

8 (b) Notwithstanding subsection (a), this chapter
9 applies to electric power distribution poles that affect a
10 wireless provider's access to the right-of-way or permits for
11 the collocation, mounting, or installation of small wireless
12 facilities on such poles pursuant to a pole attachment
13 agreement between the wireless provider and the investor-owned
14 utility.

15 §37-3A-9. Implementation.

16 (a) An authority may adopt an ordinance or
17 resolution that makes available to wireless providers the
18 rates, fees, and other terms that comply with this chapter.
19 Subject to this section, in the absence of an ordinance,
20 resolution, or agreement that fully complies with this chapter
21 and until such a compliant ordinance or resolution is adopted,
22 a wireless provider may install and operate small wireless
23 facilities and associated poles and antenna equipment under
24 the requirements of this chapter. An authority may not require
25 a wireless provider to enter into an agreement to implement
26 this chapter, but such agreements are permissible if voluntary
27 and nondiscriminatory.

1 (b) Ordinances, resolutions, and agreements
2 implementing this chapter are public-private arrangements and
3 are matters of legitimate and significant statewide concern.

4 (c) An agreement, resolution, or ordinance that does
5 not fully comply with this chapter shall apply only to small
6 wireless facilities and associated poles and antenna equipment
7 that were operational before the effective date of this
8 chapter and shall be deemed invalid and unenforceable
9 beginning six months after the effective date of this chapter
10 unless amended to fully comply with this chapter. If an
11 agreement, resolution, or ordinance is invalid in accordance
12 with this subsection, small wireless facilities and associated
13 poles and antenna equipment that became operational before the
14 effective date of this chapter, pursuant to such agreement,
15 resolution, or ordinance, may remain installed and be operated
16 under the requirements of this chapter.

17 (d) An agreement, resolution, or ordinance that
18 applies to small wireless facilities and associated poles and
19 antenna equipment that become operational on or after the
20 effective date of this chapter is invalid and unenforceable
21 unless it fully complies with this chapter. In the absence of
22 an ordinance, resolution, or agreement that fully complies
23 with this chapter, a wireless provider may install and operate
24 small wireless facilities and associated poles and antenna
25 equipment in the right-of-way under the requirements of this
26 chapter.

27 §37-3A-10. Dispute Resolution.

Sam Gaston

From: Sam Gaston
Sent: Thursday, April 11, 2019 10:12 AM
To: 'VIRGINIA C SMITH'; 'Alice Womack'
Subject: FW: FW: Small cell bill

Sam S.Gaston
City Manager
City of Mountain Brook, AL.
56 Church Street
P.O. Box 130009
Mountain Brook AL. 35213
(205) 802-3803 Phone
(205) 870-3577 Fax

From: Dana Hazen [mailto:hazend@mtnbrook.org]

Sent: Wednesday, April 10, 2019 12:45 PM

To: Steve Boone

Cc: Sam Gaston; Dana Hazen; Hunter Simmons; Glen Merchant; Whit Colvin; Steve Stine

Subject: Re: FW: Small cell bill

Boone,
Thanks for the outline of major components...

On Wed, Apr 10, 2019 at 10:46 AM Steve Boone <boones@mtnbrook.org> wrote:

If passed, it appears we will have to either repeal our ordinance or amend to comply with this chapter. Other items of note:

New poles are permitted uses not subject to zoning review or approval (pg 18, ln 19)

In-kind contributions (e.g., reserving fiber) not permitted (pg 18, ln 26)

City's authority to control installations is diminished (pg 19)

10-day window from receipt of application for City to determine whether or not the application is complete (pg 20, ln 4)

60-day window to approve an application (pg 20)

One permit for all small cell installations (pg 22)

Permits not allowed for maintenance or upgrades that are substantially consistent with existing equipment (pg 24)

Application fees limited to \$500 for a single application that includes up to five small cell facilities with \$100 allowed for each small cell facility beyond 5 (pg 28, ln 3)

Application fees limited to \$250 for installations on existing poles (pg 28)

Application fees limited to \$1,000 for installations on new poles (pg 28)

Local ordinance not required but if enacted must comply with Sec. 37-3A-9 (pg 30)

Regulations in effect prior to the passage of this bill will become invalid and unenforceable six months after the effective date of the legislation (pg 31)

I am sure our legal team will observe more issues that must be dealt with.