

**An Ordinance to Amend
the Oconee County Utility Accommodation Ordinance**

For the purpose of promoting the health, safety and general welfare of the present and future inhabitants of Oconee County, Georgia, and to provide an orderly, safe and effective use of public rights of ways. The Oconee County Board of Commissioners does hereby ordain and enact into law the following:

Article 1. Amendment of Ordinance. The Oconee County Utility Accommodation Ordinance is hereby amended by the addition of Section 8 as set out below.

Article 2. Section 8 of the Utility Accommodation Ordinance shall be as follows:

Section 8 Regulation of Wireless Infrastructure in a County Right of Way.

Sec. 8.1 Purpose and scope.

- (a) *Purpose.* The purpose of this section is to establish policies and procedures for the placement of small cell wireless infrastructure in rights-of-way within the County's jurisdiction.
- (b) *Intent.* This section establishes uniform standards to address issues presented by small cell wireless infrastructure within the County rights of way, including, without limitation, to:
 - (1) Implement an application process to construct, place, alter, modify, and/or operate wireless facilities and wireless support structures within the rights-of-way;
 - (2) Prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
 - (3) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
 - (4) Prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;
 - (5) Promote and encourage, wherever possible, the placement, height and quantity of wireless infrastructure in the rights-of-way in such a manner as to minimize adverse aesthetic and other impacts to the health, safety and welfare of the County, its residents, and their property; and
 - (6) Facilitate rapid deployment of small cell wireless infrastructure to provide the benefits of advanced wireless services for County residents and businesses.
- (c) *Conflicts with other ordinances.* This section supersedes all ordinances adopted prior hereto that are in conflict herewith, to the extent of such conflict.

Sec. 8.2 Definitions.

For purposes of this section, and where not inconsistent with the context, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When

not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

Antenna means communications equipment at a fixed location that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable standards means all applicable engineering and safety standards governing the installation, maintenance, and operation of wireless infrastructure and the performance of all work in the rights-of-way, including the most current versions of National Electric Safety Code ("NESC"), the National Electrical Code ("NEC"), the regulations of the Federal Communications Commission ("FCC") and the Occupational Safety and Health Administration ("OSHA"), the Georgia Department of Transportation Utilities Accommodation Policy and Standards Manual, and applicable provisions of the County's building, construction, zoning, and safety codes, and other reasonable safety, engineering, architectural or aesthetic requirements of the County, state, or federal authority having jurisdiction over such wireless infrastructure.

Applicant means any person who applies for a permit and is a wireless infrastructure provider.

Application means a request submitted by an applicant (i) for a permit to locate wireless facilities; or (ii) to approve the installation of a wireless support structure or modification of a utility pole for the purpose of supporting permitted wireless facilities, that meets all application requirements set forth in this section. An application shall be made upon a form approved by County Public Works Director, and shall include all necessary and appropriate documentation.

BOC or Board of Commissioners means the Board of Commissioners of Oconee County, Georgia.

County owned pole means (i) a utility pole owned or operated by the County in the rights-of-way, including a utility pole that provides lighting or traffic control functions, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the County in the ROW that supports only wireless facilities.

Day means calendar day.

Emergency means a situation exists that, in the reasonable discretion of the County or permit holder, if not remedied immediately, poses an imminent threat to public health, life, or safety, or damage to property.

Height means the distance measured from the pre-existing grade level to the highest point on the wireless infrastructure, even if said highest point is an antenna.

Permit means a grant of right by the County to a wireless infrastructure provider to use and occupy the rights-of-way for the installation, use and maintenance of a wireless facility or wireless support structure at a particular location consistent with the terms of this section and such other terms and conditions as the County may reasonably require.

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

Rights-of-way or ROW means the area on, below, or above a public roadway, highway, street, sidewalk, alley, or similar public property, held by the County or over which the County exercises any rights of management or control.

Stealth technology means state-of-the-art design techniques used to blend objects into the surrounding environment and to minimize visual impact. These design techniques may be applied to

wireless communications towers, antennas, and other facilities, which blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it less visible to the casual observer. Such methods include, but are not limited to facilities constructed to resemble light poles, flag poles or other streetscape amenities. The use of additional features such as flags, decorative street lamps and banners or signs may be utilized to blend the proposed facility into the visual backdrop. This terminology is intended to be consistent with 'Alternative tower and antenna structure' as defined in §333.02 of the Unified Development Code of Oconee County and to accomplish the same purpose of improving the aesthetic appearance of the County.

Utility pole means a pole or similar structure at a fixed location that is used in whole or in part for the purpose of carrying electric distribution lines or cables, or lines, cables, or wires for telecommunications, cable or electric service, or for lighting, traffic control, signage, or a similar function regardless of ownership, including County-owned poles. Such term shall not include structures supporting only wireless facilities.

Wireless facility means equipment of the type commonly known as a "small cell" wireless facility, at a fixed location within the rights-of-way, that enables wireless communications between user equipment and a communications network, regardless of technology, that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than eight cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services. A Wi-Fi access point that meets both of the above qualifications is a wireless facility. A wireless facility includes, without limitation: equipment associated with wireless communications; radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and ground-mounted and underground pedestals and vaults. The term does not include a wireless support structure or utility pole.

Wireless infrastructure includes one or more, or a combination of, wireless facilities or wireless support structures primarily intended to support the provision of wireless services.

Wireless infrastructure provider means any person, including a person authorized to provide telecommunications service in the state, that builds or installs or proposes to build or install wireless facilities, one or more wireless support structures, or communications transmissions facilities in support of wireless facilities.

Wireless services means any services, whether at a fixed location or mobile, provided using wireless infrastructure.

Wireless support structure means a freestanding structure located in the ROW, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting small cell wireless facilities, but which is not a utility pole.

Sec. 8.3 Application and fees.

- (a) *Permit required.* No person shall place any wireless infrastructure of any size in the rights-of-way, without first filing a small cell wireless infrastructure permit application and obtaining a permit therefore, except as otherwise provided in this section.
- (b) *Permit application.* All applications for permits filed pursuant to this section shall be on a form, paper or electronic, approved by the County Public Works Director. The applicant may designate documents and materials which it reasonably believes to contain trade secrets, as the same are defined in the Georgia Open Records Act, by clearly marking each page of such materials accordingly and by providing the affidavit required in O.C.G.A. §50-18-72(a)(34). The applicant may also designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly. The County will take reasonable measures to ensure proprietary or confidential information is kept confidential; however, applicant agrees and understands that such information may not be protected under the Georgia Open Records Act.
- (c) *Application requirements.* The application shall be made by the wireless infrastructure provider or its duly authorized representative and shall contain the following:
- (1) The applicant's name, address, telephone number, and e-mail address.
 - (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
 - (3) The legal owner of all property constituting the facility, if different from the applicant.
 - (4) A description of the proposed work and the purposes and intent of the small cell wireless infrastructure. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.
 - (5) A specific description of the proposed installation, including the wireless facility, the proposed location, and any structure upon or within which the wireless facility is to be installed. Applicant shall provide construction plans certified by a properly licensed professional engineer, which shall state that the installation is safe and consistent with sound engineering practices.
 - (6) In the case of any installation involving attachment of a wireless facility to a structure owned by a third party, a certification that the applicant has obtained, or will obtain prior to any construction or installation activity, the legal right to attach facilities to such structure. The County may require the applicant to provide additional information to demonstrate such legal right to the satisfaction of the County. Any permit issued under this section shall be effective and conditioned upon the applicant's demonstration of compliance with this subsection.
 - (7) A statement that the small cell wireless infrastructure will be maintained in a safe manner, and in compliance with all applicable standards;
- (d) *Maintenance and replacement.* An application shall not be required for: (i) routine or emergency maintenance; or (ii) the replacement of a small cell wireless facility with another small cell wireless facility that is the same or smaller in size, weight, and height.

- (e) *Information updates.* Any amendment to information contained in a permit application shall be submitted in writing to the County within 30 days after the change necessitating the amendment.
- (f) *Application fees.* Unless otherwise provided by law, all applications for permits pursuant to this section shall be accompanied by a nonrefundable fee for actual, direct, and reasonable costs incurred by the County related to processing the application, which at the adoption of this Ordinance are \$250.00 for each proposed wireless infrastructure site.

Sec. 8.4 Penalties.

- (a) In the event of a violation of this section, the penalties unless otherwise specified in this section shall be as set forth State Law for the violation of a County ordinance.
- (b) In addition to those penalties set forth in state law, and distinct and separate from such penalties, a failure to comply with the requirements of this section with regard to one or more particular permits shall be grounds for suspension or revocation of such permit. The County shall first notify the permit holder in writing of the violation, which shall specify the nature of the violation and that the violation must be corrected within 14 days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this section, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the County may, at its sole discretion, order the violation remedied within 24 hours. If the permit holder fails to either remedy the violation within the prescribed timeframe, or provide assurance, to the satisfaction of the County, that the permit holder will diligently remedy the violation within a reasonable time, the County may immediately revoke the permit, and shall promptly notify the permit holder of such revocation.
- (c) In the event that the County finds a pattern of repeated and pervasive violations by a permit holder, the County may, following a hearing at which the permit holder shall be given an opportunity to be heard, suspend or revoke all permits held by a permit holder.

Sec. 8.5 Action on permit applications.

- (a) The County shall review the application for a small cell wireless infrastructure permit in light of its conformity with applicable regulations of this section and applicable standards, and shall process the application on nondiscriminatory terms and conditions subject to the following requirements:
 - (1) Within ten days of receiving an application, the County must determine and notify the applicant whether the application is complete; or if an application is incomplete, the County must specifically identify the missing information.
 - (2) Under normal circumstances, the County will make its final decision to approve or deny the application within 60 days of the County's determination that the application is complete.
 - (3) The County shall advise the applicant in writing of its final decision, and in the final decision document the basis for a denial, supported by substantial written evidence.
- (b) Consolidated application. An applicant seeking to construct, modify or replace a network of small cell wireless facilities may, at the applicant's discretion, file a consolidated application and receive a

single permit for multiple small cell wireless facilities, provided however, the County's denial of any site or sites within a single application shall not affect other sites submitted in the same application. The County shall grant a permit for any and all sites in a single application that it does not deny subject to the requirements of this section.

Sec. 8.6 Small cell wireless facilities in the ROW; maximum height; other requirements.

- (a) *Maximum size.* Unless a waiver is granted for good cause shown, the height of new or modified small cell wireless facilities, or related utility poles or wireless support structures, installed in the rights-of-way shall not exceed fifty feet above preexisting grade.
- (b) *Appearance.* All small cell wireless facilities shall utilize stealth technology unless the applicant can satisfactorily demonstrate to the County that the proposed installation, or set of installations, within the rights-of-way will not materially detract from the streetscape, landscape, skyline, beauty, or aesthetic interests of Oconee County. In making such a determination, the County may consider such factors as:
 - (1) The nature of the proposed installation, including the size and appearance of individual facilities, the number and density of proposed facilities, and existing facilities in the area;
 - (2) The character of the surrounding area, including whether it possesses particular historic or scenic interest, or is a residential neighborhood;
 - (3) Whether the installation would have an unreasonable adverse effect on surrounding property values;
 - (4) The applicant's plans for future development;
 - (5) Public comments; and
 - (6) All other utilities have been required to be placed underground.
- (c) *First-in-time access.* Access to a particular space within the ROW shall be authorized on a first-come-first-served basis, corresponding to the date upon which an application is deemed complete by the County.
- (d) *Commencement of work.* The permit shall be voidable by the County unless in the County's determination the work is commenced within 180 days from the date of issuance of the permit, unless extended by the County. If the facility is not used for its intended use within 12 months from the date of permit issuance, the County may revoke the permit.
- (e) *Collocation on traffic control facility mast arms.* No small cell wireless facility may be located on the mast arm or foundation of a structure used to support traffic control facilities and equipment.
- (f) *Co-location.* A small cell wireless facility shall be located on an existing structure in the rights-of-way, unless the applicant can demonstrate that no such location opportunities exist, considering the factors set forth in subparagraph (1) below. The applicant may apply for an administrative variance from this requirement and seek placement of a new small cell wireless support structure within the rights-of-way, pursuant to subparagraph (2) below. Nothing in this subsection shall be construed as requiring any owner of existing facilities to share an antenna or any other wireless facility or wireless support structure with an applicant.
 - (1) *Factors demonstrating no co-location.*

- a. No existing poles or structures are located within the geographic area that can potentially meet applicant's bona fide engineering and service requirements;
- b. Existing poles or structures are not of sufficient height to meet applicant's requirements;
- c. Existing poles or structures do not have sufficient structural strength to support applicant's proposed wireless facility, and no alternate wireless facility requiring less structural strength and that would meet applicant's requirements are reasonably available;
- d. The applicant's proposed wireless facility would cause electromagnetic interference with the existing wireless facilities on the existing tower or structure, or existing wireless facilities on the existing pole or structure would cause interference with the applicant's proposed wireless facility;
- e. The fees, costs, or contractual provisions required by the owner in order to share an existing pole or structure, or to adapt an existing pole or structure for sharing, are unreasonable; or
- f. Other limiting factors exist that render existing poles and structures unsuitable.

(2) *Administrative variance.* In applying for an administrative variance to allow a new wireless support structure, the review process, including timelines, shall be in accordance with 47 U.S.C. § 332(c)(7) of the Federal Communications Act, as amended, and the FCC rules interpreting same, as well as the consideration of the following additional factors by the County to determine if the administrative variance is appropriate:

- a. Demonstrated need for the applicant's proposed small cell technologies within the geographic area requested in order to deliver adequate wireless service.
 - b. Proof that all co-location sites in the area of need were pursued and have been denied; or that there does not exist the ability to co-locate using existing structures. The applicant must demonstrate all actions taken to achieve co-location.
 - c. The character of the area in which the small cell wireless support structure is requested, including evidence of surrounding properties and uses.
 - d. Stealth technology, if any, proposed to be utilized by the applicant, or proof that stealth technology is either unnecessary or cannot be used.
 - e. Proof that the proposed wireless support structure is the minimal physical installation which will achieve the applicant's goals.
- (g) *No interference.* Wireless infrastructure shall not interfere in any manner with the existence and operation of any and all public and private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial, and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or County property.
- (h) *Concealed wiring.* All electrical wiring shall be concealed within the structure. If this is unattainable, then a covering of the same color as the structure shall be used to conceal the wiring.
- (i) *Electrical power.* The acquisition of electrical power shall be the sole responsibility of the permit holder. All electrical power shall be provided by underground utilities where feasible.
- (j) *Undergrounding.* Applicant shall comply with nondiscriminatory undergrounding requirements that prohibit electric utilities, telecommunications and cable providers from installing utility poles

or wireless support structures in the ROW without prior zoning approval in areas zoned for single family residential use, provided that such requirements shall not prohibit the replacement of existing structures.

- (k) *Facilities.* When needed to supplement the information in its files, the County may request additional information about a specific facility of an applicant. Each applicant shall respond to such request in a reasonable and timely manner and based on information it maintains in the ordinary course of business. Additionally, when a state of emergency has been declared by the appropriate state or federal officials, each applicant shall work in good faith to provide facility information.
- (l) *Radiofrequency and electromagnetic frequency emissions.* The permit holder shall at all times and in the manner specified by the County certify that it complies with all FCC rules and requirements relating to radiofrequency propagation and avoidance of interference.
 - (1) The permit holder is solely responsible for the emissions of its wireless facilities, and for ensuring that any exposure from its emissions is within the limits permitted under all applicable rules of the FCC. To the extent required by FCC rules a permit holder shall install appropriate signage to notify workers and third parties of the potential for exposure to RF emissions.
 - (2) Mitigation. To avoid exposure to radio frequency electromagnetic fields by persons working on or in close proximity to wireless facilities, and for emergency situations affecting public safety, an applicant shall implement a process, subject to the County's prior review and approval, through which the applicant's wireless facility may be turned off manually by the County, its employees or contractors, and first responders, through means of a disconnect switch reasonably accessible to such persons.
- (m) *Maintenance of facilities.* A permit holder shall make and maintain all wireless infrastructure installed in the ROW in safe condition and good repair. Cabinets, facilities, wires and other equipment shall not appear to be unkempt. Maintenance and replacement of wireless facilities shall be performed by the permit holder or by an approved contractor at no cost to the County.
- (n) *Minimizing impacts on adjacent property owners.*
 - (1) A Permit holder shall design and install wireless infrastructure so as to minimize any impact on the immediately adjacent property owners, and shall be required to mitigate any unreasonable adverse impacts relating to visibility from the adjacent property; access to and from the adjacent property; and intrusion of light, sound, or smell.
- (p) *Appeal.* A denial of an application for permit, or revocation of existing permit, shall entitle the applicant or permit holder to a hearing before the Board of Commissioners within 21 days after receipt by the County of written notice of appeal, which must be delivered to the clerk of the Oconee County Commission within 30 days of such denial or revocation. The County must issue its written decision within 15 days of the hearing. Any person aggrieved by such decision shall have the right to appeal in accordance with law.

Sec. 8.7 Effect of permit.

- (a) *Authority granted.* A permit from the County authorizes an applicant to undertake only certain activities in accordance with this section, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-

way. The right to install wireless infrastructure at a particular location shall include the right to reasonably access such facility, including but not limited to on foot and by vehicle, to connect such facility to electrical power and telecommunications service, to maintain such facility, and to upgrade and modify such facility, in accordance with requirements of the County and applicable standards. Permitted facilities must at all times serve a lawful purpose, and the use of such facilities must comply with all applicable federal, state and local laws and applicable standards.

- (b) *Duration.* No permit issued under this section shall be valid for a period longer than ten years. Nothing in this subsection prevents any permit from being renewed.
- (c) *Reservation of County authority.* The County at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve any site within the rights-of-way where wireless infrastructure is installed, as may be necessary and in keeping with the health, welfare and safety of the public. Such actions may temporarily interfere with the operation of a wireless facility. The County will give the permit holder 30 days written notification of such planned, non-emergency actions that are reasonably likely to interfere with the operation of a wireless facility. In the event of an emergency the County shall endeavor to give the owner notice within 24 hours of such action.
- (d) *No franchise or approval to provide cable service, or other services.* A permit issued under this section does not constitute a license or franchise to provide cable service as defined in Section 602 of the Communications Act of 1934, as amended, 47 U.S.C. § 522(6), nor any other service for which a franchise or other approval is required.
- (e) *Failure to exercise access rights.* If a permit holder does not diligently exercise any access right granted pursuant to an applicable permit(s) within 120 days of the effective date of such permit (unless such time period is extended in writing), the County may, but shall have no obligation to, use the permitted space in the public right-of-way for its own needs, make the space available to other entities, or for other purposes. If a wireless facility is not used for its intended use within 12 months from the date of permit issuance, the County may revoke the permit 30 days after providing notice to the permit holder of the County's intent to revoke, provided the permit holder submits no sufficient proof of use, to the County's satisfaction, within such 30-day period.

Sec. 8.8 Removal, relocation or modification of wireless infrastructure.

- (a) *Removal for County improvement.* Within 90 days following written notice from the County, a permit holder shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its permitted wireless infrastructure within the rights-of-way if the County has determined that such removal, relocation, change or alteration is reasonably necessary for the construction, repair, maintenance, or installation of any County improvement in or upon, or the operations of the County in or upon, the rights-of-way. The County will work in good faith with the permit holder to identify and promptly approve one or more acceptable alternate locations for any permitted facilities that are removed, relocated, changed, or altered pursuant to this subparagraph.
- (b) *Removal for noncompliance.* The County may remove permitted wireless infrastructure after 45 days following a permit revocation described in Section 4 (B) of this section.

- (c) *Emergency removal or relocation of facilities.* The County retains the right and privilege to cut or move any wireless infrastructure located within the ROW, as the County may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances allow, the County shall notify the permit holder and provide the permit holder a reasonable opportunity to move its own wireless infrastructure prior to cutting or removing a facility and shall notify the permit holder after cutting or removing wireless infrastructure.
- (d) *Abandonment of facilities.* The permit holder shall notify the County within 90 days of any abandonment of a wireless infrastructure for which a permit has been issued under this section. The County may also determine that wireless infrastructure is abandoned in fact, following a reasonable investigation and failure of the permit holder to respond to written communication within 30 days. In the event of abandonment, the County may direct the permit holder to remove all or any portion of the wireless infrastructure if the County, or any of its departments, determines that such removal will be in the best interest of the public health, safety and welfare. If permit holder does not remove facilities as directed within a reasonable period of time, the County may remove such facilities, and shall be entitled to obtain reimbursement from the permit holder for the County's actual cost in effecting such removal. Facilities removed by the County will be held, maintained, and disposed in accordance with applicable law.
- (e) *Removal.* The County shall notify the permit holder in writing within ten days of any removal of wireless infrastructure by the County under this section.

Sec. 8.9 ROW rates.

Annual rate. An applicant authorized to place small cell wireless infrastructure in the ROW shall pay to the County compensation for use of the ROW in the amount of \$250.00 annually per permitted small cell wireless facility.

Sec. 8.10 Attachment to County-owned utility poles in the ROW.

- (a) *No grant of attachment rights.* A permit issued under this section does not confer any right to attach wireless facilities to County-owned or privately-owned utility poles or wireless support structures, which applicant acknowledges must be obtained through attachment agreements or similar documents with the County or such private pole or structure owner. The County may cause a permit under this section to be made temporary or conditional upon the applicant's demonstration of its attachment rights for the particular pole or structure in question.
- (b) *Make-ready.* For County-owned utility poles in the rights-of-way, the County shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested small cell wireless facility, including pole replacement if necessary, within 30 days after receipt of a completed request.

Sec. 8.11 Relief.

Any applicant desiring relief or exemption from any aspect or requirement of this section may request such from the Board of Commissioners at a pre-application meeting, provided that the relief or exemption is contained in the original application, or in the case of an existing or previously approved

application a request for alteration of its proposed facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Board of Commissioners. However, the burden of proving the need for the requested relief or exemption is solely on the applicant to prove. The applicant shall bear all costs in considering the request and the relief shall not be transferable to a new or different holder of the permit or owner of the facilities without the specific written permission of the Board of Commissioners. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief or exemption will have no significant detrimental effect on the health, safety and welfare of the County, its residents and other service providers.

Sec. 8.12 Other Provisions

(a) *Indemnification.* Any application for a permit pursuant to this section shall contain a provision with respect to indemnification. Such provision shall require the applicant, to at all times defend, indemnify, protect, save, hold harmless, and exempt the County, and its officers, employees, committee members, attorneys, agents, and consultants from any and all liabilities, judgments, penalties, damages, costs, charges and cost of defense arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which arise or might arise directly or indirectly out of, or are caused by, the placement, construction, erection, alteration, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said wireless infrastructure. With respect to the liabilities, judgments, penalties, damages costs, charges and cost of defense referenced herein, these include, but are not limited to, reasonable attorneys' fees, consultants' fees, and expert witness fees.

(b) *Insurance.*

- (1) A Permit holder shall secure and at all times maintain the following insurance coverages covering wireless infrastructure permitted under this section:
 - a. Commercial general liability insurance covering personal injuries, death and property damage: \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate.
 - b. Automobile liability coverage of \$1,000,000.00 per occurrence/ \$2,000,000.00 aggregate.
 - c. Workers' compensation and disability: insurance in the amounts required by the laws of the state.
- (2) The commercial general liability insurance policy shall specifically include the County and its officers, employees, committee members, attorneys, agents and consultants as additional named insureds.
- (3) The insurance policies shall be issued by an agent or representative of an insurance company licensed and in good standing to do business in the state and with a best's rating of at least A. The insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least 30 days prior written notice in advance of the cancellation of the insurance.
- (4) Renewal or replacement policies or certificates shall be delivered to the County at least 15 days before the expiration of the insurance which such policies are to renew or replace.
- (5) The applicant shall provide a copy of each of the policies or certificates of insurance representing the insurance in the required amounts.

- (6) Notwithstanding the foregoing, an applicant shall have the right to self-insure the coverages required by this subsection (B) as long as it or its parent company maintains a net worth of at least \$300,000,000.00.
- (c) *Assignment.* A permit holder shall not assign its rights or obligations under any permit, nor any part of such rights or obligations, without the prior written consent of the County, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, a permit holder may, without the consent of the County and following 30 days' prior written notice to the County, assign its rights and obligations under any permit to any person or entity controlling, controlled by, or under common control with the permit holder. In both instances, the assignee must demonstrate to the County compliance with all provisions of this Ordinance, specifically including, without limitation, Sections 8.12(a) and 8.12(b).
- (d) *Receivership, foreclosure or act of bankruptcy.*
- (1) The right to use the rights-of way granted hereunder to a permit holder shall, at the option of the County, cease and terminate 120 days after the filing of bankruptcy or the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the permit holder whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless such receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this section.
 - (2) In the case of foreclosure or other judicial sale of the plant, property and equipment of a permit holder, or any part thereof, the County may serve notice of termination upon the permit holder and the successful bidder at such sale, in which event any permit granted under this section shall cease and terminate 30 days after service of such notice, unless: a) the County shall have approved the transfer of a permit to the successful bidder, and b) such successful bidder shall have covenanted and agreed with the County to assume and be bound by all the terms and conditions of the permit.
- (e) *Performance security.* The applicant shall at its cost and expense be required to execute and file with the County a bond or other form of security acceptable to the County as to type of security and the form and manner of execution, in an amount of at least \$200,000.00 and with such sureties as are deemed sufficient by the board of commissioners to assure the faithful performance of the terms and conditions of this section and all permits held by the applicant. The full amount of the bond or security shall remain in full force and effect until the removal of all permitted facilities, and any necessary site restoration is completed. The failure to pay any annual premium for the renewal of any such security shall be a violation of the provisions of this section and shall entitle the board of commissioners to revoke approved applications after prior written notice to the applicant and after a hearing upon due prior notice to the applicant. Notwithstanding the foregoing, an applicant shall not be required to execute or file any bond or security as long as it or its parent company maintains a net worth of at least \$300,000,000.00.

Sec. 8.13 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this section, or any application thereof to any person or circumstance, is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed

application thereof, shall be severable, and the remaining provisions of this section, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

Sec. 8.14 Government entities.

Wireless infrastructure owned by the County, the County school district, the state or the United States government, and used or held for use for governmental purposes, is not subject to the provisions of this section.

Article 3 Effective date. This Ordinance shall be in effect upon its adoption, the public good and welfare demanding it.

After the first reading on the 28th day of August, 2018, this ordinance is hereby Adopted and Approved by the **Board of Commissioners of Oconee County**, Georgia on this 4th day of September, 2018.



Attest: Kathy Hayes
Kathy Hayes, County Clerk

John Daniell
John Daniell, Chairman

Mark Thomas
Commissioner Mark Thomas, Post 1

Chuck Horton
Commissioner Chuck Horton, Post 2

William E. Wilkes
Commissioner William E. Wilkes, Post 3

Mark Saxon
Commissioner Mark Saxon, Post 4