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PREFACE

Residential districts.

1. *R-1* districts: One-family residential districts. These districts are composed of both developed and largely undeveloped areas. The developed areas contain mainly one-family dwellings and small open areas, usually subdivided, where residential development seems likely to occur; few two-family and multiple-family dwellings are found in these developed areas. It is anticipated that most of the large undeveloped areas will ultimately be developed for residential use. The district regulations are designed to protect the residential character of the developed areas by prohibiting all commercial activities; to encourage a suitable neighborhood environment for family life by including among the permitted uses such facilities as schools and churches; and to preserve the openness of the areas by requiring certain minimum yard and area standards to be met. Reclassification of the land or other appropriate residential, commercial or industrial categories shall be in accordance with the amendment procedure set forth herein.

a. Permitted uses. See chart at end of chapter.

b. Building site area. Except as provided in [section 64-4](#), the minimum building site area shall be:

	Square feet
For a one-family dwelling	7,200
For any other permitted use	10,000

c. Building site coverage. The maximum building site coverage by all buildings shall be thirty-five (35) percent.

d. Building height limit. Except as provided in [section 64-4](#), no structure shall be designed, erected or altered to exceed thirty-five (35) feet.

e. Yards required. Except as provided in [section 64-4](#), the minimum dimensions of yards shall be:

	Feet
Front yard	25
Side yard	8
(The sum of the widths of two (2) side yards shall be at least twenty (20) feet)	
Rear yard	8

Sec. 64-4. - Supplementary regulations.

A. *Supplementary use regulations.*

1. *Areas subject to inundation.* No structure shall be erected or altered where the land to be covered by such structure has been designated by the director of urban development, or his/her designee, upon advice of the city engineer, as subject to inundation, until the conditions making the land subject to inundation have been corrected. If such land is permitted to be used it shall be only upon the condition that the owners thereof and their successors in interest have by obtaining such permission, waived any claim against the city for damage caused by floodwater.
2. *Illumination of uses.* Lighting facilities used to illuminate signs, parking areas, or for other purposes shall be so arranged that the source of light does not shine directly into adjacent residence properties or into traffic.
3. *Livestock/poultry.* Livestock/poultry kept in the city are subject to the requirements of chapter 7 of the Mobile City Code and all other provisions in the zoning ordinance (zoning district, setbacks, site coverage, etc).

B. *Supplementary area regulations.*

1. *Dwelling on small building site.* Where a lot located in a residence district and on the effective date of this ordinance was lawfully existing and of record and held in separate and different ownership from any lot immediately adjoining and having continuous frontage, such lot may be used as the building site for a one-family dwelling.
2. *Business or industry on small building site.* Where a lot located in an R-B district, a B-1 district, an H-B district, a I-1 district or an I-2 district contains an area less than the required building site area for the district and on the effective date of this ordinance was existing and of record and held in separate and different ownership from any lot immediately adjoining, such lot may be used as the building site for any use permitted in the district.

C. *Supplementary height regulations.*

1. *Height exceptions.* The height limits for the various districts shall not apply to church spires, belfries, cupolas, penthouses, or domes not used for human habitation, nor to chimneys, ventilators, skylights, water tanks, parapet wells, cornices, radio and television receiving antennas, or necessary mechanical appurtenances usually carried above the roof level, provided that such features are limited to that height necessary for their proper functioning.
2. *Excess height.*
  - a. In any R-1 or R-2 district, two (2) feet, in any R-3 district, two and one-half (2.5) feet, in

building height may be added above general height limits for the district for each one (1) foot of side yard provided in excess of ten (10) feet.

- b. In any B-1 district, five (5) feet in building height may be added above general height limits for the district for each one (1) foot of side yard provided in excess of five (5) feet.

Such additions in building height as related to side yards shall be construed to relate portions of buildings nearest to such side yards to the adjacent side yards only, except where a portion of the building is so located and of such a height as to require an increase in the other side yard to remain within a light plane established between the interior side yard line on the adjacent building site and the highest point on a building which could be erected under general height regulations for the district on the building site involved at the interior side yard line. Side yards adjacent to streets shall require such increases only where height of the affected portion of the building exceeds seventy-five (75) feet in R-1, R-2 or an I-1, or one hundred (100) feet in R-3 or B-1, and shall not require such increases in an I-2.

3. *Compensating bulk and open space.* In any R-B, B-2, B-3, B-4, H-B, I-1 or I-2 district, for the purpose of permitting variety in the shape and bulk of structures, part of a main structure may be erected or altered to a height exceeding that specified for the district in which the structure is located upon condition that a volume of space at least equal to the volume of space occupied by the part of the structure exceeding the height limit is provided and kept open below the height limit. It is intended that such open space below the height limit shall compensate for the excess bulk and the compensating open space shall be provided on the same building site.

Such provisions shall apply within such districts except where lots in the district adjoin R-1, R-2, R-3 or B-1 districts without intervening streets or other permanent open space fifty (50) feet or more in width. In such cases, a yard equal in width to the minimum side yard in the adjoining district shall be provided, and height exceeding that permitted in the adjoining district shall be governed by regulations relating height to yard width in the adjoining district.

D. *Supplementary yard regulations.*

1. *Protection buffer.* Except as provided hereinafter, wherever the boundary of a building site in a T-B, H-B, B-1, LB-2, B-2, B-3, B-4, B-5, I-1, or I-2 district, or a commercially utilized building site adjoins an R-A, R-B, R-1, R-2, or R-3 district, or a residentially utilized building site, there shall be provided on such building site a protection buffer strip not less than ten (10) feet in width. Any required yard shall be counted as part of such protection buffer

strip. The protection buffer may be a wall, fence, or a screen planting strip that complies with the following regulations:

- a. *Wall or fence.* If a wall or fence is provided as a protection buffer, it shall be six (6) feet high, except within any required front yard where such wall or fence shall not exceed three (3) feet in height, and of a construction and a design approved by the planning section of the urban development department.
- b. *Screen planting strip.* If a screen planting strip is provided as a protection buffer, it shall be at least ten (10) feet in width, shall be planted with materials in sufficient density to afford protection to the residence district or residentially utilized building site from the glare of lights, from blowing papers, dust and debris, from visual encroachment, and to effectively reduce the transmission of noise; be at least six (6) feet high at the time of planting, except within any required front yard where the height shall not exceed three (3) feet at the time of planting; and must be composed of evergreen plants. Screen planting shall be maintained in a clean and neat condition and in such manner as to accomplish its purpose continuously.
- c. *Use of land in protection buffer strip.* That part of the protection buffer strip not utilized in compliance with (a) of this section may be used only for parking or other open space uses not in conflict with the purpose of protection of the adjacent residence district or residentially utilized building site nor in violation of any other provision of this chapter.

This requirement for a protection buffer strip may be waived by the city council in amending this chapter to create or expand a business or industry district upon a report from the Planning Commission stating that future extension of the business or industry district is anticipated and that the proposed building wall will present an acceptable appearance to the adjacent residence district. Waiver of this requirement for a protection buffer strip shall not constitute a waiver of any side yard requirement.

- d. Responsibility for maintenance and good repair of the above requirements shall be borne by the owners of the property.
2. *Minimum side yard width.* In any district where side yards are not required by the district regulations, if a side yard is provided it shall have a width of at least five (5) feet.
3. *Side yard for corner building site.* In any district a corner building site having to its rear a building site facing toward the intersecting or side street shall have provided on the intersecting or side street side of the corner building site a yard having a width equal at least to the depth of the front yard required for a structure on the building site to the rear of the corner building site; provided, however, that this regulation shall not be applied to

reduce the buildable width of the corner building site to less than thirty (30) feet nor require a side yard of more than twenty (20) feet.

4. *Visibility at intersections.* On a corner building site in any district in which a front yard is required, no fence, wall, hedge, structure, dumpster or planting creating a material impediment to visibility between the heights of three (3) feet and eight (8) feet above the street grade at the intersection shall be erected, placed, or maintained within the triangular area formed by the intersecting street lines and a straight line connecting such street lines at points equidistant from such point of intersection and passing through a point which point is the intersection of lines defining the front and side yards.
5. *Major street lines.* Front yard depth and, in the case of a corner building site, side yard width shall be measured from the future street right-of-way line of a major street established on the major street plan.
6. *Fences and walls.*
  - a. No fence or wall that obstructs sight shall be erected or altered in any required front yard to exceed a height of three (3) feet, and no fence or wall shall be erected or altered in any required side or rear yard to exceed a height of eight (8) feet. On a corner building site not having to its rear a building site facing toward the intersecting or side street, no fence or wall that obstructs sight shall be erected in the required side yard to exceed a height of three (3) feet.
  - b. Fences composed of barbed wire, or other dangerous materials, may be permitted in R-A, B-3, B-5, I-1, or I-2 districts upon approval of the Director of the Urban Development Department, or his/her designee. Applications for fences composed of barbed wire, or other dangerous materials, will not be approved in any other district, nor within the Henry Aaron Loop. Provided, however, that if a determination is made by the chief of police per section 21-1 of the Mobile City Code, the fence will be allowed, subject to permits.
  - c. Electrified fences must be approved by the director of the urban development department, or his/her designee.
7. *Side yard exception for small lots.* Where side yards are required and a lot of record is less than sixty (60) feet in width, the sum of the widths of the two (2) side yards shall be not less than one-third the width of the lot, and neither side yard shall have a width of less than one-seventh the width of the lot; provided, however, that in no case shall either yard have a width of less than five (5) feet.
8. *Approved innovative subdivision.* In a subdivision of innovative or unconventional design, such as a cluster subdivision or one designed for town house or patio house development

or the like, the yard requirements set out herein for the district are waived in favor of the minimum yard dimensions shown on the approved subdivision final plat.

9. *Dumpsters.*

- a. The placement of a dumpster in the front yard or required protection buffer of the building site or in the street right-of-way shall be prohibited.
  - b. Waste removal of a dumpster by a sanitation truck shall take place entirely within the paved surface of the building site. The street right-of-way may not be used by the truck for maneuverability.
  - c. All dumpsters shall be enclosed within a wooden or brick enclosure of at least the height of the dumpster which is being enclosed, but in no case to exceed eight (8) feet in height. The dumpster enclosure may also be equipped with a door or gate constructed of wood or other opaque material that opens outward and which remains closed unless the dumpster is being filled or emptied. The dumpster enclosure must be of sufficient size to allow for placement and removal of dumpster without causing damage to the enclosure.
  - d. If required/provided, dumpster enclosures must be kept in good repair and condition by the property owners for the life of the dumpster/enclosure requirement.
  - e. The floor or pad of the dumpster enclosure must be equipped with a connection to the sanitary sewer, and any discharge or runoff from the enclosure shall not be allowed to drain into any storm water drain, as required by the city engineering department, or an alternative, approved by the city engineer, that does not allow leakage of contaminants.
  - f. Construction dumpsters, used for construction projects, are exempt from this paragraph.
10. *Building site area for multiple-family dwellings.* Any district allowing multiple-family dwellings, except H-B, R-B, and B-4 districts, must comply with the minimum building site area for multiple-family dwellings as would be required in an R-3 district.
11. *Mechanical equipment setbacks.* In any district, the minimum yard setback for any mechanical equipment (HVAC units, generators, pumps, etc.) with a height of three (3) feet or more above grade shall be a distance equal to the underlying setbacks of that district.
12. *Swimming pools.* Swimming pools shall be considered an accessory structure or use to the primary use unless the primary use of a building site is a commercial pool, swim club, health club, or other similar use.
- a. A swimming pool must be located from any side or rear property line or structure a distance equal to at least one foot greater than maximum depth of the swimming pool.

- b. A swimming pool shall not be located in any required front yard or corner lot side yard facing an intersecting street.
- c. A swimming pool, and the area around the swimming pool, shall be enclosed by a fence of at least four (4) feet in height, and said fence shall be equipped with a self closing and latching gate.

E. *Minimum landscape requirements.*

1. *Purposes and objectives.*

- a. *Purposes.* The purpose of this section is to prevent, protect, and enhance the ecological and aesthetic environments of the City of Mobile. Inasmuch as landscaped areas serve to protect soil erosion; reduce the hazards of flooding; absorb carbon dioxide and supply oxygen; reduce the effects of noise, glare, dust, and other objectionable activities generated by some land uses; safeguard and enhance property values; buffer and screen adjacent properties; promote the pleasant appearance and character of neighborhoods and cities; provide shade; to preserve the economic base attracted to the city by such factors; and facilitate the safe movement of traffic in vehicular use areas, it is further the purpose of this section to improve the appearance, quality, and quantity of landscaped areas throughout the City of Mobile, with emphasis on vehicular use areas.
- b. *Objectives.* In pursuit of these purposes, the objectives to be met in enforcing the minimum landscaping requirements of this section are as follows:
  - (1) *Conservation.* To conserve and protect, insofar as possible, healthy, existing plant material.
  - (2) *Reforestation.* To replenish the local stock of plant material suitable for growing in the City of Mobile.
  - (3) *Protection.* To protect and preserve the unique identity of neighborhoods as well as the City of Mobile.
  - (4) *Flexibility.* To allow flexibility in landscape development in order to encourage innovative and diversified design.
  - (5) *Environment.* To off-set the effects of large impervious surfaces.
  - (6) *Attractiveness.* To provide an attractive appearance to streets.
  - (7) *Tree preservation.* To encourage the preservation of existing heritage trees.

2. *Application of section.*

- a. Such landscaping requirements shall become applicable as to each building site at the time that an application for a building permit for a new structure on such building site



is made, except that the said requirements shall not apply to property zoned R-1 and R-2 under this article.

- b. In order to encourage the renovation, upgrading and maintenance of existing structures, these landscaping requirements shall apply to sites with an existing structure(s) in the event that the total gross floor area of the presently existing structure(s) is increased or decreased by fifty (50) percent. Increases or decreases can occur by either additions or deletions to existing structure(s), or the placement or removal of structures on the site.
- c. In those areas within the central business district where landscaping is required by the architectural review board and/or the community development block grant program/Mobile housing board, landscaping will be required to fulfill said requirements.
- d. Existing landscaping on sites with existing structures or areas suitable for landscaping shall not be reduced below the landscape requirements established herein.

These requirements shall remain with any subsequent owner.

### 3. *Landscaping requirements.*

#### a. *Building site.*

- (1) *Landscaping percentage requirements.* On any building site for which an application for a building permit is made, at least five (5) percent in 1987; six (6) percent in 1988, ten (10) percent in 1992; and twelve (12) percent in 1993 of the total building site shall be landscaped as applications are made for building permits. At least sixty (60) percent of this landscaping percentage requirement shall be located on the building site between the street line(s) and the building wall(s) facing the street, as illustrated in figure 1.
- (2) *Frontage tree planting requirements.* The front setback must contain at least one (1) heritage tree for every thirty (30) feet of road frontage.
- (3) *Perimeter tree planting requirements.* The building site must contain one (1) heritage tree or one (1) understory tree for every thirty (30) feet of the outside lot perimeter, less those heritage trees required in the front setback. As to the trees required by the preceding sentence, in no case shall more than half of such trees be understory trees. Building sites located within I-1 or I-2 zoning districts shall be exempt from the requirements of this subsection.
- (4) *Tree specifications.* If new trees must be planted to meet the requirements of this section, they must be a minimum of an initial diameter of three (3) inches DBH, have a warranty of at least two (2) years, and meet the species specification for a

heritage tree or understory tree under this article. All such trees shall immediately become heritage trees upon planting. Notwithstanding the foregoing, should the urban forester determine that the number of trees required hereby, after the application of credits, is inappropriate for the site involved, he may, at his discretion, waive any number of trees required, and in such case the applicant shall instead donate the trees waived to the Mobile Tree Commission to be planted as public trees.

**b. Parking lots.**

- (1) *Parking lot requirements.* Parking lot landscaping shall be provided in parking lot use areas having uncovered parking at street level. Such landscaping shall be provided in such a manner as to break up the expanse of paving, facilitate the safe circulation of pedestrian and vehicular traffic, and provide shade valuable for pedestrians and/or vehicles. If a parking lot provides more than three hundred (300) uncovered parking spaces at street level and the public is required to park its own vehicles (self-parking), landscaping shall be provided in accordance with the circulation and parking layout requirements for off-street parking in section 64-6 of the zoning ordinance. In addition to the foregoing, parking lots must be landscaped in the interior of the lot to break up the expanse of paving. A ratio of one (1) understory tree for every twenty (20) parking spaces shall be required. Parking lots located within I-1 or I-2 zoning districts shall be exempt from the requirements of this subsection.
- (2) *Landscaping design criteria.* The landscape material shall be as per section 64-2, "Definitions; Landscape material" except where other landscape material or protection buffer is allowed or required in accordance with the requirements for buffer protection in section 64-4.D(1)(a) and (b) of the zoning ordinance.
- (3) *Sight visibility.* Landscape material shall not obstruct visibility between the heights of three (3) and eight (8) feet above grade in vehicular use areas. There shall be an exception for existing trees as provided for in section 64-4.E.4(a).

c. *Installation.* All landscape material shall be installed in a sound workmanlike manner and in accordance with the landscape plan, as finally approved.

d. *Maintenance.* All landscaped areas shall be maintained by the owner of the property at all times. Maintenance shall include the prompt replacement of all dead or damaged landscaped material so as to ensure continued compliance with the landscaping requirements of this section. This applies to right-of-way and median maintenance for developers who elect to take credits toward landscaping requirements. Any subsequent owner of property whose predecessor in interest took credits for right-of-

way and median maintenance must continue to maintain said right-of-way or median in compliance with these landscape provisions.

- e. *Irrigation.* All landscaped areas shall be provided with an adequate water supply through the use of one (1) or more appropriate methods of irrigation, including hose bibbs and/or automatic or manual irrigation systems and/or any other appropriate methods.
  - f. *Sight visibility.* Landscape material shall not create an obstruction to visibility at intersections as required in section 64-4.D(4) of the zoning ordinance.
  - g. *Protection of landscaped areas.* All landscaped areas shall be protected by the use of protective tree grates, concrete curbs, wheel stops, continuous border plants of hedgerows, railroad ties, or other suitable barriers to allow sufficient percolation of water and air to the root system of living landscape material and to protect from damage due to heavy foot traffic or vehicular encroachment.
4. *Credits toward landscaping requirements.* Allocations of credits, if any, referred to in paragraphs 1 and 2 above, and approval of plans shall be made by the inspection services department, zoning and subdivision staff. Any disagreement with the determination made by the inspection services department, zoning and subdivision staff shall be resolved by the board of zoning adjustment.
- a. Where natural features and amenities such as trees, water courses, historic sites, and similarly irreplaceable assets exist on a building site prior to development and provision is made to preserve the aforementioned permanently, up to one hundred (100) percent may be credited toward the landscaping percentage requirement for the total building site set out in section 64-4.E.3.a., provided it is determined that such credit satisfies all purposes, objectives and requirements of this section.
  - b. Credit will be allowed toward the landscaping percentage requirements for the total building site for landscape material in adjacent rights-of-way and medians not to exceed three (3) percent of the total landscape requirements. At no time will the landscaping requirements be less than five (5) percent on the main site. Credit for right-of-way and median landscaping must be replanted as to meet all criteria in section 64-4.E. of the zoning ordinance entitled "Minimum landscaping requirements". Allocations of credits, if any, referred to in paragraphs 1 and 2 above, and approval of plans shall be made by the zoning and subdivision staff. Any disagreement with the determination made by the planning commission staff shall be resolved by the City of Mobile planning commission. Total on-site landscaping requirements will not be reduced below five (5) percent except in cases of hardship, developments in historic districts or professional buildings with specific site criteria. Added credits may be

issued upon documentation of the need.

- c. *Tree credit.* Preservation of existing heritage trees or existing pine trees with a minimum DBH of twelve (12) inches can be credited toward the tree planting requirements of this article according to the following ratio: the number of credited trees shall be determined by measuring at a height of four and one-half (4½) feet above grade level, the diameter (in inches) of each preserved heritage tree or pine tree and dividing the sum by six (6). To be included in the computation for credit for preserved trees, each preserved tree must be at least twelve (12) inches in diameter; however, any existing heritage tree less than twelve (12) inches in diameter by meeting the minimum tree planting size requirements of this article, may be credited for one (1) required tree. Credited trees shall be uniformly encircled by a protected ground area of sufficient size to ensure the health of the tree. During any construction on the site, the protected ground area shall be clearly marked in the field.

No credit will be allowed for any tree proposed to be retained if there is any encroachment within the "protected ground area" defined by a circle which has as its center the trunk of the tree or the tree is unhealthy or dead. If any preserved tree being used for credit dies or fails to thrive, the owner shall plant new trees equal to the number of credited trees and the replacement trees will be of the same species or variety as the credited tree(s) lost.

In no case shall credits for preserved trees eliminate the requirement that the front setback shall contain a ratio of at least one (1) heritage tree for every thirty (30) feet of frontage.

5. *Landscape plan approval.* A landscape plan shall be submitted for approval at the time that an application for a building permit is made on any land where the landscaping requirements of this section are applicable. Such landscape plan shall be drawn at the same scale and be provided in the same number of copies as the site plan, and shall contain the following information:
  - a. The date, scale north arrow, title, and name of owner.
  - b. The approximate location of existing boundary lines and dimensions of the building site.
  - c. The location, species, and size of existing trees and other vegetation that the applicant proposes to remain on the site and have made a part of the landscape development.
  - d. The approximate center line of existing watercourses; the approximate location of significant drainage features; and the location and size of existing and proposed

streets and alleys, existing and proposed utility easements on or adjacent to the building site, and existing and proposed sidewalks adjacent to streets.

- e. The location and size of proposed landscaped areas, in square feet.
- f. The location, number, size, and name of proposed landscape material.
- g. Statistics verifying the minimum percentage of landscaping required under this section will be met.
- h. The locations, species and DBH of existing heritage trees and heritage live oak trees indicating those to be retained, and those heritage live oak trees to be removed, and whether they are to be counted as part of the landscaping requirements. An indication of how healthy existing trees proposed to be retained will be protected during construction. The location and dimensions of the proposed landscape areas within the parking area(s) including a description and location of new trees and plant materials to be placed within the landscape area.
- i. An indication, using written or graphic information, of how the applicant plans to protect existing trees and other vegetation, which are proposed to be retained, from damage during construction.
- j. The proposed irrigation type and design.
- k. Certification that the landscape plan has been prepared by one of the following: a registered landscape architect, professional engineer, architect, landscape designer, full time building designer, and that it satisfies all purposes, objectives and requirements of this section.

F. *Design standards for drive-thru businesses.*

1. *Purpose.* Because of the unique character of these types of businesses, site development and traffic control standards are necessary to insure the protection of the public and community from potentially hazardous and adverse conditions.
2. *Vehicle stacking area.*
  - a. A queuing space is defined as a minimum of nine (9) feet wide by twenty (20) feet long.
  - b. All drive-thru lanes shall conform to AASHTO standards, but shall in no case be less than nine (9) feet in width.
  - c. Each drive-thru lane shall provide a minimum of three (3) queuing spaces from the street right-of-way to the order station if both an order station and service window are provided in separate locations. (See diagram #5a at the end of this section).
  - d. Each drive-thru lane shall provide a minimum of three (3) queuing spaces between the order station and the service window. (See diagram #5a at the end of this section).

- e. Each drive-thru lane shall provide a minimum of three (3) queuing spaces from the street right-of-way to the service window if a separate order station is not provided. (See diagram #5b at the end of this section).
  - f. Upon leaving the service window, there shall be a minimum of one (1) queuing space provided between the service window and the street right-of-way. (See diagram #5c at the end of this section).
  - g. Each drive-thru lane shall be striped, marked, or otherwise distinctly delineated in accordance with the Alabama Manual on Uniform Traffic Control Devices or as approved by the city traffic engineering director.
  - h. Circulation design alternatives, such as multiple queuing lanes, shall be approved by the city traffic engineering director.
3. *Screening.* Where a drive-thru business adjoins residentially zoned property or a residential used building site, a six-foot high masonry wall or wooden privacy fence shall be constructed and maintained on interior property lines.
  4. *In shopping centers.* Drive-thru businesses integrated in a shopping center or cluster of commercial facilities shall use the common access with other business establishments in that center and common circulation routes within the center, unless an alternative circulation plan is approved by the city traffic engineering director.

G. *Reserved.*

H. *Reserved.*

I. *Adult entertainment enterprises.*

1. *Purpose.* In the development and adoption of this ordinance, it is recognized that there are some adult entertainment enterprises which due to their very nature have objectionable operational characteristics when located in close proximity to churches, schools, parks, and residential neighborhoods, thereby having a deleterious impact upon property values and the quality of life in such surrounding areas. It has been acknowledged by communities across the nation that state and local governmental entities have a special concern in regulating the operation of such businesses under their jurisdiction to ensure that these adverse secondary effects will not contribute to the blighting or downgrading of adjacent neighborhoods nor endanger the well-being of the youth in their communities. The special regulations deemed necessary to control the undesirable externalities arising from these enterprises are set forth below. The primary purpose of these controls and regulations is to preserve the integrity and character of residential neighborhoods, to deter the spread of urban blight and to protect minors from the objectionable operational characteristics of these adult uses by restricting their close proximity to churches, parks,

schools and residential areas. Nothing in this ordinance shall be construed to authorize, permit, or legalize any activities otherwise prohibited by law or ordinance.

2. *Prohibitions.*

- a. The establishment, enlargement, expansion, increase, reconstruction, resumption or structural alteration of any adult entertainment enterprise shall be prohibited if such business is within one thousand (1,000) feet of any existing church, school, park or residentially zoned (R-1, R-2, R-3) area within the City of Mobile, Mobile County, Alabama.
- b. It shall also be prohibited to establish, enlarge, reconstruct, resume or structurally alter any adult entertainment enterprise located within two thousand (2,000) feet of any existing adult entertainment enterprise.

3. *Measurement of distances.* The distance between an adult entertainment business and any church, school, park or residentially zoned (R-1, R-2, R-3) area, shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior structural wall of the adult entertainment business to the nearest property line of the church, school, park or residential area. If any adult entertainment business is part of or included within an integrated center, only the portion of said center or leased space occupied by such adult entertainment business shall be included in determining the closest exterior structural wall of said establishment.

4. *Exterior display.* No adult entertainment enterprise shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decorations, sign, show window or other opening from any public way.

5. *Nonconforming uses.* The lawful use of land or buildings existing at the time of the adoption and effective date of this ordinance that is in violation hereof shall be deemed a nonconforming use. In addition, said nonconforming uses shall comply with all requirements of Section VII of the City of Mobile Zoning Ordinance (Ord. 80-057) as amended.

6. *Penalty.* Notwithstanding any other provision of the zoning ordinance, any person, firm, or corporation violating or failing to comply with the provisions of this ordinance, shall be subject to a civil fine, to be assessed by the city's environmental judge, not to exceed five hundred dollars (\$500.00) per violation.

7. *Enforcement.* The enforcement of [this] ordinance shall be enforced by the Land Use/Code Administration Department in coordination with the City of Mobile Police Department.

8. *Appeals.* Appeals of municipal court judgments and planning commission rulings issued

pursuant to this ordinance shall be to the Circuit Court of Mobile County, as mandated by state law.

J. *Telecommunications towers and facilities.*

1. *Findings.*

- a. The Federal Communications Act of 1934 as amended by the Telecommunications Act of 1996 ("the Act") grants the Federal Communications Commission (FCC) exclusive jurisdiction over:
  - (1) The regulation of the environmental effects of radio frequency emissions from telecommunications facilities.
  - (2) The regulation of radio signal interference among users of the radio frequency spectrum.
- b. The city's regulation of towers and telecommunications facilities cannot have the effect of prohibiting any person from providing wireless telecommunications services in violation of the Act.

2. *Purposes.* The general purpose of this subsection is to regulate the placement, construction and modification of towers and telecommunications facilities in order to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the city. Specifically, the purposes of this subsection are:

- a. To regulate the location of towers and telecommunications facilities in the city;
- b. To protect residential areas and land uses from potential adverse impact of towers and telecommunications facilities;
- c. To minimize adverse visual impact of towers and telecommunications facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
- d. To promote and encourage shared use/collocation of towers and antenna support structures as a primary option rather than construction of additional single-use towers;
- e. To avoid potential damage to property caused by towers and telecommunications facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained and removed when no longer used or determined to be structurally unsound;
- f. To ensure that towers and telecommunications facilities are compatible with surrounding land uses; and
- g. To facilitate the provision of wireless telecommunications services to the residents and



businesses of the city in an orderly fashion.

3. *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
- a. *AASHTO* means American Association of State Highway and Transportation Officials.
  - b. *Antenna* means a wireless antenna, including a macrocell antenna and a microcell antenna.
  - c. *Antenna support structure* means any building or other structure forty-five (45) feet in height or taller and which complies with the maximum height allowed in the district in which it is located, other than a tower which can be used for location of telecommunications facilities.
  - d. *Applicant* means any person that applies for a permit for telecommunications facilities.
  - e. *Application* means the process by which an owner submits a request to develop, construct, build, modify or erect telecommunications facilities. "Application" includes all written documentation, verbal statements and representations, in whatever form or forum, made by an applicant to the city after the initial written application is submitted concerning such a request.
  - f. *Base station* means structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. This term does not include a tower or any equipment associated with a tower. This term includes, without limitation:
    - (1) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
    - (2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems ("DAS") and small-cell networks).
    - (3) Any structure other than a tower that, at the time the relevant application is filed with the city under this section, supports or houses equipment described in paragraphs (1) and (2) above and has been previously reviewed and approved by the city.
  - g. *Camouflage* means any tower or telecommunications facility which is designed to minimize a visual impact and to blend into the surrounding environment. The term "camouflage" does not necessarily exclude the use of uncamouflaged lattice, guyed or

monopole tower designs.

- h. *City* means the City of Mobile, Alabama.
- i. *Collocation* means the mounting or installation of transmission equipment on any existing tower or base station that exists at the time the application is filed with the city for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- j. *Eligible facilities request* means any request for modification of an existing tower or base station that, within the meaning of the Spectrum Act, does not substantially change the physical dimensions of the tower or base station and involves (1) the collocation of new transmission equipment, (2) the removal of transmission equipment, or (3) the replacement of transmission equipment.
- k. *Engineer* means any structural engineer licensed by the state.
- l. *Existing* means, for a constructed tower or base station, that the tower or base station has been previously reviewed and approved under the applicable city zoning or siting process, or under another applicable state or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is "existing."
- m. *FAA* means the Federal Aviation Administration.
- n. *FCC* means the Federal Communications Commission.
- o. *MUTCD*: Manual on Uniform Traffic Control Devices, for Streets and Highways, as published by the US Department of Transportation Federal Highway Administration
- p. *Owner* means any person with fee title, or with written permission from a person with fee title, to any plot of land within the city who desires to develop, construct, build, operate, modify or erect telecommunications facilities upon such land.
- q. *Person* is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.
- r. *Spectrum Act* means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a).
- s. *Substantially changes* means a modification of an existing tower or base station where any of the following criteria is met:
  - (1) For a tower not located in the public rights-of-way:
    - a. The height of the tower is increased by more than ten percent *or* by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; or

- b. There is added an appurtenance to the body of the tower that would protrude from the tower by more than twenty (20) feet *or* more than the width of the tower at the level of the appurtenance, whichever is greater.
- (2) For a tower located in the public rights-of-way and for all base stations, refer to City Code chapter 57:
- a. The height of the tower or base station is increased by more than ten percent or ten (10) feet, whichever is greater; or
  - b. There is added an appurtenance to the body of that structure that would protrude from the edge of that structure by more than six (6) feet; or
  - c. It involves the installation of ground cabinets that are more than ten (10) percent larger in height or overall volume than any other ground cabinets associated with the structure; or
  - d. It involves the installation of any new equipment cabinets on the ground if there is no pre-existing ground cabinet associated with that structure.
- (3) For any tower or base station:
- a. It involves the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or
  - b. There is entailed in the proposed modification any excavation or deployment outside of the current site of the tower or base station; or
  - c. The proposed modification would cause the concealment or camouflage elements of the tower or base station to be defeated; or
  - d. The proposed modification would not comply with the conditions associated with the prior siting approval of construction or modification of the tower or base station, unless this non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding thresholds in this section.
- (4) To measure changes in height for the purposes of this definition, the baseline is:
- a. For deployments that are or will be separated horizontally, measured from the original support structure;
  - b. For all others, measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved by the city prior to February 22, 2012.
- (5) To measure changes for the purposes of this definition, the baseline is the

dimensions that were approved by the city prior to February 22, 2012.

- t. *Telecommunications facilities* means antennas, transmission equipment, towers, base stations, or antenna support structures. However, the term "telecommunication facilities" shall not include:
    - (1) Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial;
    - (2) Any satellite earth station antenna one meter or less in diameter, regardless of zoning category.
  - u. *Tower* means a structure built for the sole or primary purpose of supporting any FCC-licensed or FCC-authorized antenna, including any structure that is constructed for wireless communications services. "Tower" does not include a base station.
  - v. *Transmission equipment* means equipment that facilitates transmission of any FCC-licensed or authorized wireless communications services. "Transmission equipment" includes an antenna and its associated equipment, which includes any and all on-site equipment, such as back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, shelters, radio transceivers, regular power supply units, and wiring, to which a wireless antenna is attached in order to facilitate mobile broadband service and personal wireless service delivered on mobile broadband devices.
  - w. *Wireless communications services* means without limitation, commercial mobile radio services, personal wireless services, all FCC-licensed or authorized back-haul and other fixed wireless services, broadcast, private, and public safety communication services, and unlicensed wireless services.
4. *Permit required.* Except as otherwise allowed, no person shall erect, modify, install, or construct any telecommunications facilities without a permit. To obtain a permit, a person must submit an application to the zoning department for applications on private property and to the engineering department for applications on the right-of-way or city property with any applicable fees as may be established by the city, using the engineer's certification form from the zoning department for applications on private property and from the engineering department for applications on the right-of-way or city property. All permits shall comply with all structural and safety standards adopted by the city, including, but not limited to: AASHTO, MUTCD, International Building Code and International Electrical Code, as adopted by the city, City Code chapter 57, and City Code chapter 17, Storm water management and flood control ordinance. The following categories of permits are established:

- a. *Class 1.* A class 1 permit shall be required for an eligible facilities request, as defined in this section.
  - b. *Class 2.* A class 2 permit shall be required for: (i) any modification of an existing tower or base station, including the collocation of new equipment, that substantially changes the physical dimensions of the existing tower or base station on which it is mounted; and (ii) any collocation not eligible for a class 1 permit.
  - c. *Class 3.* A class 3 permit shall be required for the siting of any telecommunications facilities that is not a collocation subject to a class 1 or class 2 permit.
5. *Application review process.*
- a. Applications shall be reviewed within a reasonable period of time.
    - (1) Applications for class 1 permits shall be acted on as provided in paragraph c.
    - (2) Applications for class 2 permits shall be acted on within ninety (90) days, adjusted for any tolling as described in paragraph b.
    - (3) Applications for class 3 permits shall be acted on within one hundred fifty (150) days, adjusted for any tolling as described in paragraph b.
  - b. The timeframe for review shall begin to run when the application is submitted, but shall be tolled if the city finds the application incomplete and requests that the applicant submit additional information to complete the application. Such requests shall be made within thirty (30) days of submission of the application. After submission of additional information, the city will notify the applicant within ten (10) days of this submission if the additional information failed to render the application complete. Applications may also be tolled by mutual agreement of the city and the applicant.
  - c. The city shall grant applications for class 1 permits within sixty (60) days, adjusted for any tolling as described in paragraph b, provided that the city finds that the applicant proposes an eligible facilities request.
    - (1) The city shall impose the following conditions on the grant of a class 1 permit: (i) the proposed modification or collocation shall not defeat any existing camouflage elements of the existing tower or base station;
    - (2) To the extent federal law provides a "deemed granted" remedy for class 1 permit applications not timely acted on by the city, no such application shall be deemed granted until the applicant provides notice to the city, in writing, after the time provided in paragraph c has expired. Any class 1 permit that is deemed granted by operation of federal law shall be subject to the conditions listed in paragraph c.(1).
    - (3) If the city determines that the application does not qualify as an eligible facilities request, the city will notify the applicant in writing of that determination and will

process the application as a class 2 or class 3 permit application, as applicable.

- d. The city may approve, approve with conditions, or deny an application for a class 2 or class 3 permit. The city's decision shall be in writing and supported by substantial evidence contained in a written record.
- e. In addition to application fee, applicants shall also reimburse the city for any actual, out of pocket costs incurred in reviewing the applications, including, but not limited to, engineers and other technical consultants.

6. *Development of towers.*

- a. A tower shall be a permitted use "by right" in zoning districts I-1 and I-2. A tower shall be a prohibited use in zoning districts R-A, R-1, R-2, R-3, R-B, and H-B. No person shall build, erect or construct a tower upon any plot of land within a zoning district designated B-1, B-2, B-3, B-4, or B-5 unless planning approval has been granted by the city planning commission. Application shall be made to the city planning commission in the manner provided in the chapter.
- b. No person shall build, erect or construct a tower upon any plot of land within any zoning district unless required building permits and permits and approvals have been obtained from the urban development department of the city.
- c. Towers shall be permitted to height of one hundred eighty (180) feet in I-1 and I-2 zoning districts. Towers may be permitted in excess of the maximum height allowed for the zoning district in which it is located in accordance with subsection J.18.b, "Criteria for site plan development modifications," and, if granted a variance by the board of zoning adjustment.
- d. The city may authorize the use of city property in appropriately zoned districts in accordance with applicable law; however, the city shall have no obligation whatsoever to use city property for such purposes.
- e. No new tower shall be built, constructed or erected in the city unless such tower is capable of supporting another person's operating telecommunications facilities comparable in weight, size and surface area to applicant's final design. For the purposes of this paragraph, applicant's final design shall mean the telecommunications facilities on the applicant's tower within six (6) months of the completion of tower construction.
- f. An application to develop a tower shall include:
  - (1) The name, address and telephone number of the owner and lessee of the parcel of land upon which the tower is situated. If the applicant is not the owner of the parcel of land upon which the tower is situated, the written consent of the owner

shall be evidenced in the application.

- (2) The legal description, parcel identification number, key number and address of the parcel of land upon which the tower is situated.
- (3) The names, addresses and telephone numbers of all owners of other towers or usable antenna support structures within a one-half-mile radius of the proposed new tower site, including city-owned property.
- (4) Written documentation that the applicant: (1) Made diligent, but unsuccessful efforts for a minimum of forty-five (45) days prior to the submission of the application to install or collocate the applicant's telecommunications facilities on towers or usable antenna support structures owned by the city and other persons located within a one-half mile radius of the proposed tower site; or (2) Written, technical evidence from an engineer that the proposed tower or telecommunications facilities cannot be installed or collocated on another person's tower or usable antenna support structure located at the proposed site in order to meet the coverage requirements of the applicant's wireless communications system.
- (5) Written, technical evidence from an engineer that the proposed structure meets the standards set forth in subsection J.6, "Structural requirements" of this section.
- (6) Written, technical evidence from an engineer that the proposed site of the tower or telecommunications facilities does not pose a risk of explosion, fire or other danger due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, corrosive or other dangerous chemicals within the site.
- (7) A map of the city and the first half-mile of all bordering communities showing the design and location of the applicant's entire existing wireless telecommunications network. Such map shall also show the location of the proposed tower and antenna sites which are the subject of the application, their dimensions, and specifications of the site.
- (8) Certificate from an engineer documenting collocation capability of the applicant's telecommunications tower.
- (9) An accurate photo simulation depicting how (i) the tower would appear as proposed, and (ii) the proposed tower would appear if a collocation that did not substantially change the physical dimensions for the tower was later added.
- (10) If the applicant alleges that failure to approve the application will result in unreasonable discrimination among providers of functionally equivalent services

pursuant to 47 U.S.C. § 332(c)(7)(B)(i)(I) and/or that failure to approve the application will prohibit or have the effect of prohibiting personal wireless services pursuant to 47 U.S.C. § 332(c)(7)(B)(i)(II), the applicant must so state on the application and provide documentation in support of this claim.

7. *Setbacks.*

a. All towers shall be set back as follows:

(1) For I-1 and I-2, setback shall be on all sides a distance equal to the underlying setback requirement for the particular zoning district.

(2) For B-1, B-2, B-3, B-4 or B-5, setback on all sides shall be a distance equal to the height of the tower, unless the applicant submits an engineer's certification and otherwise demonstrates to the planning commission the safety of the proposed design.

b. Setback requirements for towers shall be measured from the base of the tower to the line of the lease parcel on which it is located.

8. *Structural requirements.* All towers must be designed and certified by an engineer to be structurally sound and, at minimum, in conformance with the current building code as adopted by the city, as may be amended from time to time, and any other standards outlined in this article.

a. Towers must be located and equipped with step bolts and ladders so as to provide ready access for inspection purposes;

b. Guidewires or other tower accessories must not cross or encroach upon any street or other public place or over any electric power lines or encroach upon any other privately owned property without written consent of the owner;

c. All towers must be constructed of approved corrosion resistant non-combustible material. The minimum type of construction for isolated radio towers, not more than one hundred (100) feet in height, must be of type 4;

d. Towers must be designed to resist wind loads in accordance with EIA/TIA-222-F series. Consideration must be given to conditions involving wind loads on ice-covered sections and localities subject to sustained freezing temperatures;

e. All towers must be permanently and effectively grounded.

9. *Separation or buffer requirements.*

a. Towers shall be separated from all residentially zoned lands, including R-B and H-B, by a minimum of two hundred (200) feet or one hundred fifty (150) percent of the height of the proposed tower, whichever is greater.



- b. Tower separation distances for the purposes of compliance with this subsection shall be measured from the base of a tower to the closest point of residentially zoned land.
10. *Method of determining tower height.* Except as otherwise provided for eligible facilities requests, measurement of tower height for the purpose of determining compliance with all requirements of this subsection shall include the tower structure itself, the base pad, and any other telecommunications facilities attached thereto. Tower height shall be measured from grade.
11. *Illumination.* Towers shall not be artificially lighted except as required by FAA. Upon commencement of construction of a tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the tower from the tower, and when required by federal law, dual mode lighting shall be requested from the FAA.
12. *Fencing.* Any fences constructed around or upon parcels containing towers, antenna support structures, or telecommunications facilities shall be constructed in accordance with the fencing requirements as defined by the zoning district and the chart of permitted uses where the tower or antenna support structure is located, unless more stringent fencing requirements are required by FCC regulations.
13. *Landscaping.* All landscaping on parcels containing towers, antenna support structures or telecommunications facilities shall be in accordance with the applicable landscaping requirements in the zoning district where the tower, antenna support structure or telecommunications facilities are located.
14. *Noise.* No equipment shall be operated at towers and telecommunication facilities so as to produce noise in excess of the applicable noise standards under WAC 173-60, except during emergencies, or periodic routine maintenance which requires the use of a backup generator, where the noise standards may be exceed temporarily.
15. *Electromagnetic radiofrequency emissions.*
  - a. The Federal Telecommunications Act of 1996 (FTA) gives the FCC sole jurisdiction to regulate radiofrequency (RF) emissions, and telecommunications towers which meet the FCC standards shall not be conditioned or denied on the basis of RF impacts.
  - b. In order to provide information to its citizens, copies of ongoing FCC information concerning telecommunication towers and facilities and radiofrequency emission standards shall be made available. Applicants for tower sites shall be required to provide information on the projected power density of the facility and how this meets the FCC standards.
16. *Access.* All parcels upon which towers are located must provide paved access to at least

one paved vehicular parking space on site, except I-2 districts.

17. *Maintenance.*

- a. Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- b. Tower owners shall install and maintain towers, telecommunications facilities, wires, cables, fixtures and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state and local regulations, and in such manner that will not interfere with the use of other property.
- c. All towers, telecommunications facilities and antenna support structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any person.
- d. In the event the use of a tower is discontinued by the tower owner, or if the tower owner ceases to operate the tower, the tower owner shall provide written notice to the city of its intent to discontinue use or cease operations, and the date when the use shall be discontinued.

18. *Camouflage and aesthetics.* Wireless facilities, support structures, antennas and related facilities shall meet the following requirements:

- a. They shall be designed and placed in such a manner so as to be screened to minimize their distraction from surrounding properties and public rights-of-way. This shall include the color of the tower, antenna or related facility, the materials and textures of such tower, antenna or related facilities, and the materials or devices used to screen, conceal or blend the tower, antenna or related facility into or with the surrounding properties and development.
- b. Along the right-of-way, the design of the related facilities shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
- c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must make the antenna and related equipment as visually unobtrusive as possible.
- d. Wireless facilities and support structures shall be designed and constructed to be stealth/camouflaged. The terms stealth or camouflage shall mean the following:
  - (1) The nature of design and construction do not draw undue attention to the structure;

- (2) Design and construction cannot clearly be distinguished from the general character of the area in which they are located; and
  - (3) Design and construction do not cause a conflict with the appearance, character and aesthetics of the site upon which the facility is located, the surrounding properties or the general neighborhood in which they are located.
- e. Methods of achieving stealth/camouflage may include:
- (1) Ensure that physical design and construction are concealed within an architecturally designed feature/structure newly constructed on site, which matches or compliments the existing main structures on-site and in the surrounding area.
  - (2) Locating the facility/tower and associated antenna/supporting equipment on or within an existing structure or building already on a site with no obviously distinguishable changes to that structure.
- f. Wireless facilities and support structures in historic districts shall be consistent with the design standards for historic districts, see City Code, chapter 44, article IV.
19. *Telecommunications facilities on antenna support structures.*
- a. Any telecommunications facilities which are not attached to a tower may be permitted as an accessory use to any antenna support structure at least forty-five (45) feet tall, regardless of the zoning restrictions applicable to the zoning district where the structure is located. Except as provided in paragraph e, telecommunications facilities are prohibited on all other structures. The owner of the structure on which the proposed telecommunications facilities would be installed shall, by written certification to the urban development department, establish the following at the time plans are submitted for a building permit that:
    - b. The telecommunications facilities shall not extend more than twenty (20) feet above the maximum height of the antenna support structure;
    - c. The antenna support structure and telecommunications facilities comply with the current building code as adopted by the city, as may be amended from time to time; and
    - d. Any telecommunications facilities and their appurtenances located upon the roof of an antenna support structure, are set back at least one (1) foot from the edge of the roof of the antenna support structure. However, this setback requirement shall not apply to:
      - (1) Telecommunications facilities and their appurtenances, located above the roof of an antenna support structure if such facilities are appropriately screened from

view through the use of panels, walls, fences or other screening techniques approved by the city.

- (2) Camouflage antennas which are mounted to the exterior of antenna support structures below the roof, but which do not protrude more than twenty-four (24) inches from the side of such an antenna support structure.
- e. Telecommunications facilities shall not be prohibited as described in paragraph a where the application is for a Class 1 eligible facilities request, or where the applicant can demonstrate that denial of the application would violate 47 U.S.C. § 332(c)(7)(B)(i)(I) or (II)

20. *Existing towers.*

- a. An existing tower may be modified or demolished and rebuilt to accommodate collocation of additional telecommunications facilities as follows:
  - (1) Tower shall be a permitted use "by right" in zoning districts I-1 and I-2. A tower shall be a prohibited use in zoning districts R-A, R-1, R-2, R-3, R-B, and H-B. No person shall build, erect or construct a tower upon any plot of land within a zoning district designated B-1, B-2, B-3, B-4, or B-5 unless planning approval has been granted by the Mobile city planning commission. Application shall be made to the Mobile city planning commission in the manner provided in this chapter.
  - (2) No person shall build, erect, or construct a tower upon any plot of land within any zoning district set forth above unless required building permits and approvals have been obtained from the urban development department of the city.
  - (3) The total height of the modified tower and telecommunications facilities attached hereto shall not exceed the current height of the tower or the maximum height allowed under this article. Certification by a structural engineer shall be required to meet collocation standards.
  - (4) A tower which is being rebuilt to accommodate the collocation of additional telecommunications facilities may be relocated on the same parcel subject to the setback requirements of this article. However, if it is impossible for the tower to be rebuilt in compliance with the setback requirements of this article, such setback requirement may be waived to allow the tower to be rebuilt in its exact previous location, or within a twenty-five-foot radius of the previous location.
- b. Criteria for site development modifications.
  - (1) The city planning commission may grant approval of a site plan development modification pursuant to subsection 20.c if a person, upon application to the city, demonstrates with written evidence that:

- (a) The location, shape, appearance or nature of use of the proposed tower will not substantially detract from the aesthetics of the area nor change the character of the neighborhood in which the tower is proposed to be located; and,
  - (b) The site plan development modification will not create any threat to the public health, safety or welfare.
- (2) In addition to the requirements of subparagraph (a) of this section, in the following cases, the applicant must also demonstrate with written evidence, the following:
  - (a) In the case of a requested modification to the setback requirement, that the area of the parcel of land upon which the tower is proposed to be located makes compliance with subsection J.7. impossible, and the only alternative for the person is to locate the tower at another site which poses a greater threat to the public health, safety or welfare or is closer in proximity to a residentially zoned land;
  - (b) In the case of a request for modification of the height limit in a zoning district for towers and telecommunications facilities, that the modification is necessary to (i) facilitate collocation of telecommunications facilities in order to avoid construction of a new tower; or (ii) meet the coverage requirements of the applicant's wireless communications system, which requirements must be documented with written, technical evidence from an electrical engineer(s).
- c. The board of zoning adjustment may waive or modify the requirements of subsections J.6 (Development of towers), J.6.c (Maximum height of towers), J.7. (Setbacks), J. 9 (Separation or buffer requirements), J.12 (Fencing), J.13 (Landscaping), J.16 (Access), and J.19 (Telecommunications facilities on antenna support structures).

Diagram #5a.

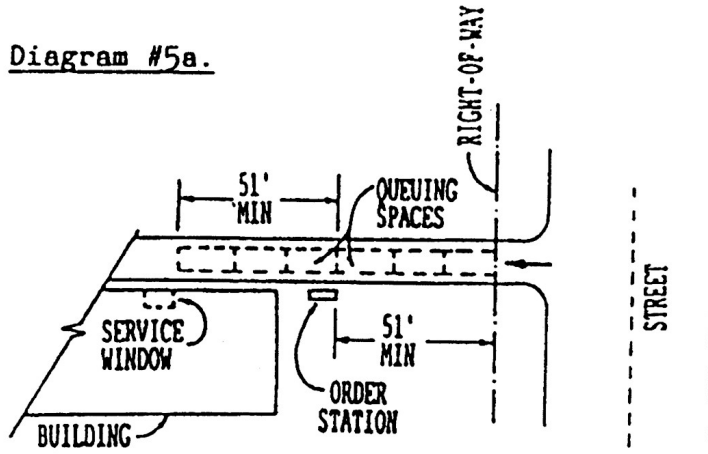


Diagram #5b.

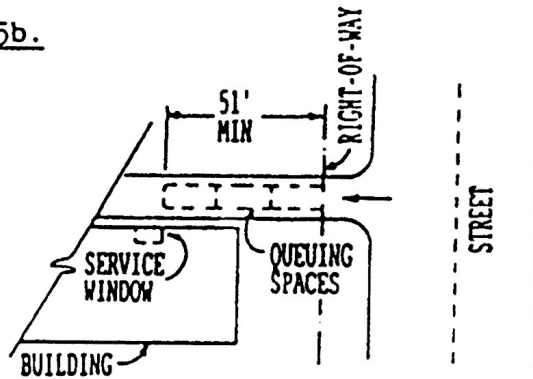
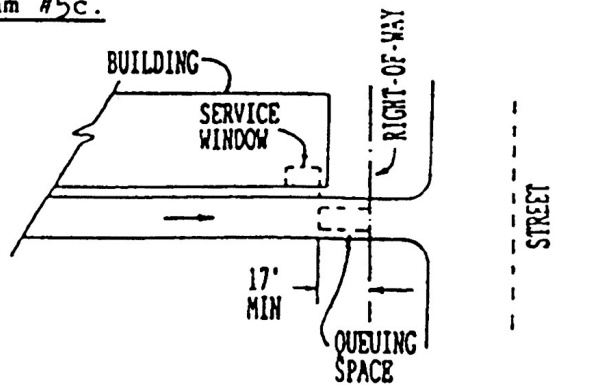


Diagram #5c.



Diagrams 5A—5C

K. *Regulations applicable to the location and construction of above ground oil storage tanks.*

1. *Purpose.* These regulations shall provide procedures applicable to the location and construction of new above ground oil storage tanks on and after the effective date of the amendment adopting these regulations, in addition to the requirements otherwise applicable under other provisions of the Mobile City Code to such tanks. In the event of

any conflict or inconsistency between the requirements of this subsection K. and the other requirements of the provisions of the Mobile City Code, the requirements of this subsection K. shall be controlling and shall govern.

2. *Definitions.* As used in this subsection, the following terms shall have the following meanings:

a. *Enhanced scrutiny area (ESA):*

(A) All properties located within an I-2 district and lying north of Bay Bridge Road and New Bay Bridge Road; and

(B) All properties located within an I-2 district and lying south of Bay Bridge Road and New Bay Bridge Road, west of the Mobile River and Mobile Bay, east of a line extending southerly along St. Stephens Road to Broad Street to Interstate 10 to Michigan Avenue, and north of Avenue C as extended to Mobile Bay.

b. *Oil:* Petroleum or petroleum product whose storage is regulated under National Fire Protection Association ("NFPA") 30.

c. *Tank:* An above-ground oil storage tank having a capacity of ten thousand (10,000) gallons or more to be located in an I-2 district.

d. *Site:* Land under common ownership or control located in an I-2 district being utilized in whole or in part on the effective date of the amendment adding this subsection for the purpose of the operation of one or more above ground oil storage tanks.

e. *Classification:* The system used in section 4.3 of NFPA 30 for classifying liquids.

3. *Notice procedures for planning approval applications.* Each application for planning approval with respect to a tank shall be subject to the following notice procedure requirements:

a. Each application for planning approval of a tank, including all attachments to the application, shall be posted on the city's website at least thirty (30) days prior to the initial hearing on the application scheduled by the planning commission.

b. Notice of the filing of an application for planning approval of a tank advising of the time and date of the initial hearing on the application scheduled by the planning commission shall be deposited by the city planning department in the U.S. mail, first class postage prepaid, not less than thirty (30) days prior to the date of the initial hearing addressed to all owners of assessed property located within three thousand (3000) feet of the property line of the proposed site as shown on the current ad valorem tax assessment records of the county. The documented costs of such notice shall be paid by the applicant upon submission of the invoice of the city planning department.

c. Notice of the filing of an application for planning approval of a tank advising of the time and date of the initial hearing on the application scheduled by the planning commission shall be published by the city planning department in a newspaper of general circulation in the city once a week for two consecutive weeks prior the scheduled date of the initial hearing. The first such publication shall be not less than thirty (30) days prior to the scheduled date of the initial hearing and the second such publication shall be not less than eight (8) days prior to the scheduled date of the initial hearing. The notice shall contain both a diagram of the proposed tank site location and directions to the entire application posted on the city's website. The documented costs of such notice shall be paid by the applicant upon submission of the invoice of the city planning department.

4. *Required content of application for planning approval and application fee.*

a. *Applications for tanks to be located in ESA.* Each application for planning approval for a tank to be located in the ESA shall include:

(I) A list of all permits and approvals required to complete the installation of the tank and the status of each such permit and approval at the time the application is filed;

(II) A description of the type, maximum amount, and NFPA classification of the oil to be stored;

(III) A description of the method or methods by which the oil will be transported to the tank site and the anticipated frequency of such transportation;

(IV) A description of all other materials being stored in bulk on the same site as the proposed tank.

(V) A detailed site plan, drawn to a standard engineering scale, illustrating the location of any and all improvements on the site, including but not limited to: existing and proposed tanks, existing and proposed structures, existing and proposed access drives and circulation drives; existing and proposed piers, docks, or other mooring facilities; existing and proposed berms, dams, or any other containment devices or methods; and dimensions of the site, dimensions and capacity of each tank, dimensions from property line to tank(s), from containment to tank, from tank to tank, and dimensions of access and circulation drives.

b. *Description of any applicable vapor, emissions, or odor regulations.* If the proposed tank is subject to federal or state best management practices regulations with respect to vapor, emissions, and/or odor control, the application for planning approval shall include a statement as to the relevant regulatory authority or authorities and a summary of any equipment and technology being implemented to comply with such



regulatory requirements.

- c. *Tank planning approval application fee.* The application fee for planning approval of a tank shall be one thousand five hundred dollars (\$1,500.00) per tank.
5. *Siting and design requirements.*
  - a. *Setback in ESA.* The minimum setback for a tank to be constructed in the ESA shall be one thousand five hundred (1,500) feet measured from the tank to the property line of the nearest residentially zoned or occupied property, church, or school, with the planning commission having the authority to increase the said setback on a case by case basis should specific circumstances or factors warrant.
  - b. *Plan review.* Prior to the issuance of a building permit for any tank, all construction plans for the tank shall be reviewed by an independent professional engineer experienced in the design and construction of above ground oil storage tanks engaged by the city who must certify in writing to the building department that the plans comply with all applicable construction standards and Code requirements. The cost of such review as invoiced to the city shall be paid by the applicant as a condition to the issuance of the building permit. The review must be completed within sixty (60) days of the submission of the permit application and plans, otherwise the plans will be deemed compliant and the applicant will not be charged for the costs of such review. As a further condition to the issuance of a tank building permit, at the time construction drawings are submitted, the applicant shall also submit its facility response plan (FRP) to the city and fire department prior to the issuance of the building permit. Any portions of the FRP that contain information that the Department of Homeland Security restricts the disclosure of, or which the applicant otherwise considers potentially sensitive, shall be redacted.
6. *Change in oil product classification.* Applicant may only store an oil product with a different NFPA 30 classification than the NFPA classification listed in the application for planning approval for the tank after providing written notice to the city's planning department of the change and engineering verification that the tank complies with the NFPA 30 requirements for the new product classification.
7. *Limited application of subsection K.*
  - a. *Applicable only to tanks as defined.* This subsection shall have application only to above ground tanks for the storage of petroleum and petroleum products regulated under NFPA 30. Above ground tanks for the storage of other substances shall be regulated by the otherwise applicable provisions of the Mobile City Code and state and federal law. No tank subject to this subsection K may be converted to use for the storage of a substance other than petroleum and petroleum products regulated under

NFPA 30 without first obtaining the approvals otherwise required under the Mobile City Code for the storage of such other substance.

- b. *Inapplicable to existing tanks and sites.* Sites are confirmed in their entireties for purposes of the zoning ordinance as conforming permitted uses with respect to all existing above-ground oil storage tanks on such sites. The above-ground oil storage tanks existing on such sites on the effective date of this subsection are confirmed for purposes of the zoning ordinance as conforming structures. An above-ground oil storage tank existing on a site on the effective date of this subsection may be repaired, replaced, or reconstructed on the same site without compliance with this subsection and without the need for any further planning commission approval. The replacement for a tank existing on the effective date of this subsection need not have the identical footprint or configuration as the tank it replaces provided the capacity of the replacement is not greater than the tank it replaces. New tanks that are additional tanks and are not replacement for existing tanks may be constructed on sites that already have planning approval or that did not require planning approval at the time constructed provided that a building permit is received, the tank complies with all then existing regulatory requirements, and the planning department is provided the information required by 64.4.K.4(a)(II), (III), (IV) and (V).

(Ord. No. 80-030, 4-2-68; Ord. No. 80-014, 3-2-71; Ord. No. 80-079, 9-20-77; Ord. No. 80-071, 7-15-80; Ord. No. 80-014, 4-14-87; Ord. No. 80-055, § IV, 7-23-91; Ord. No. 64-026, §§ I—III, 3-17-92; Ord. No. 64-083, §§ 1, 3—6, 8—10, 12-21-93; Ord. No. 64-033, § 1, 5-27-97; Ord. No. 64-002, § II, 2-4-03; Ord. No. 64-019-2012, § II—IX, 8-7-12; Ord. No. 64-040-2012, § I, 12-11-12; Ord. No. 64-013-2016, § 1, 3-29-16; Ord. No. 64-050-2017, § 1, 12-12-17; Ord. No. 64-012-2021, § 1, 3-2-21)

**Editor's note**— Sections 1, 3—6, 8—10 of Ord. No. 64-083, adopted December 21, 1993, did not specifically amend this Code; hence, inclusion as § 64-4.I was at the discretion of the editor.

**Cross reference**— Drainage and flood control, Ch. 17; fences, barricades, and similar structures, Ch. 21; lighting requirements for commercial parking lots, § 40-1; signs, Ch. 54.