

MEMORANDUM

To: Mayor and City Council
From: Lenny Felgin, Assistant City Attorney
Date: September 15, 2015
Subject: TA 15-091: Amendments to Chapter 27, Zoning

ITEM DESCRIPTION

The attached provisions propose amendments to Chapter 27, Zoning, to provide for regulation of the installation and maintenance of small cell technology in the public right of way, as no such ordinances currently exist.

DISCUSSION

There has been interest in erecting small cell wireless antennas and associated free-standing structures in the public right of way. Such facilities are necessary for the provision of broadband and other such advanced wireless communication services that are heavily demanded throughout the City.

It is in the City's interest to regulate the installation of such facilities in the public right of way so as to maintain acceptable levels of public safety, to preserve the desired aesthetic character of the city, and to provide for the integration of new structures with existing utility infrastructure. As such, the proposed text amendment encourages colocations on existing utility structures and requires an administrative variance for the erection of any new facility.

The Federal Telecommunications Act allows local governments to adopt regulations over the location, expansion, height and maintenance of telecommunications facilities, provided that service is not prohibited.

Review and Approval Criteria

Pursuant to Section 27-335, the City Council shall use the following criteria when reviewing an amendment to the Zoning Ordinance:

- (1) Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan; and
- (2) Whether the proposed zoning ordinance text amendment corrects an error or inconsistency in the zoning ordinance, meets the challenge of a changing condition or is necessary to implement established policy.

RECOMMENDATION

At the September 8 meeting, the Planning Commission voted (3-2) to recommend approval of the text amendment. The Commission asked City Council to consider aesthetics, size of structures (new and collocated), and the number of colocations and new structures that can exist in the City. The legal team will be prepared to address questions related to the City's ability to regulate these components.

Staff recommends adopting the provisions as proposed.

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**AN ORDINANCE OF THE CITY OF DUNWOODY TO ADOPT REGULATIONS OF
SMALL CELL TECHNOLOGY IN THE PUBLIC RIGHT-OF-WAY**

WHEREAS, the Mayor and City Council of the City of Dunwoody are charged with the protection of the public health, safety and welfare of the citizens of Dunwoody, Georgia; and

WHEREAS, the installation, expansion, maintenance, and aesthetics of wireless support structures for Small Cell Technologies (as hereinafter defined) in City Rights-of-way can have significant impacts upon: (1) other uses within the right-of-way; (2) safety of the travelling public; (3) property values of adjacent parcels; (4) the historic and aesthetic character of the City; and (5) the public health, safety and welfare of citizens utilizing the roads and nearby properties; and

WHEREAS, the City seeks to ensure the safe and efficient integration of facilities necessary for the provision of broadband and other advanced wireless communication services throughout the City; and

WHEREAS, the City seeks to ensure the ready availability of reliable wireless communication services to the public to support personal communications, economic development and the general welfare; and

WHEREAS, the City seeks to encourage where feasible the modification or collocation of Small Cell Technologies on existing support structures over the construction of new wireless support structures; and

WHEREAS, the Federal Telecommunications Act allows local governments to provide for reasonable regulations over the location, expansion, height and maintenance of telecommunications facilities so long as service is not prohibited; and

WHEREAS, the City has created certain requirements for applicants to obtain a wireless support structure use permit for wireless support structures within the City rights-of-way in support of Small Cell Technologies, which ensure adequate wireless coverage while preserving the health, safety, and welfare of the citizens of the City, as well as preserving the aesthetic and historic nature of certain areas in the City; and

WHEREAS, the Mayor and City Council have conducted a properly-advertised Public Hearing prior to adoption of this Ordinance.

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THEREFORE, THE MAYOR AND COUNCIL FOR THE CITY OF DUNWOODY HEREBY ORDAIN AS FOLLOWS:

Section 1: Chapter 27 (Zoning) of the City of Dunwoody Code is hereby revised by amending Article III (Uses and Specific Regulations), Division 2 (Supplemental Regulations), Section 27-150 (Telecommunications Towers and Antennas), revising subsection (1) and by adding subsections (5), (6), (7), and (8) to read as follows:

Sec. 27-150. Telecommunications Towers and Antennas.

(1) *Co-located antennas.*

~~(i) Antennas that are attached or affixed to existing telecommunications towers or other existing structures are permitted as of right in all zoning districts, provided that the antenna does not substantially change the physical dimensions of such structure.~~

Deleted: project higher than ten feet above the height of the structure to which it is attached

~~(ii) Co-location antennas that substantially change the physical dimensions of such structure, require administrative permit approval in accordance with article V, division 7 (private property) or an administrative variance in accordance with subsection (6) below (right-of-way). For the purpose of this Section, "Substantial change" shall mean:~~

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Deleted: project more than ten feet above the height of the structure to which they are attached

~~a. Increases height by more than 10% or 10/20 feet (right-of-way/private property), whichever is greater, as measured from facility as it existed as of October 1, 2012.~~

~~b. Appurtenance added protrudes from body of structure more than 6 feet in width (right-of-way) or 20 feet in width (private property).~~

~~c. If it involves installing more than the standard number of cabinets for the technology involved, not to exceed four cabinets (private property); or if it involves installation of any cabinets if there are no pre-existing cabinets, or involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other associated ground cabinets (right-of-way).~~

~~d. Involves excavation or deployment outside the current "site." "Site" shall be defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements (private property) or the area in proximity to the structure and other transmission equipment already deployed on the ground (right-of-way).~~

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e. For concealed or stealth-designed facilities, if a modification would defeat the concealment elements of the wireless tower or base station.

f. The modification would not comply with other conditions imposed on the applicable wireless tower or base station, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the above thresholds.

Building-mounted antennas in residential zoning districts must be visually screened from view of all abutting lots. Building-mounted antennas in other zoning districts must be screened or designed and installed so as to make the antenna and related equipment as visually unobtrusive as possible.

. . . .

(5) *Small Cell Technologies – Definitions*

As used in this Subsection, the term:

“Accessory Equipment” means any equipment serving or being used in conjunction with Small Cell Technology or Small Cell Technology Wireless Support Structures and includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

“Antenna” means communications equipment that transmits or receives electromagnetic radio signals used in the provision of all types of wireless communications services.

“Application” means a formal request submitted to the City to construct a Small Cell Technology Wireless Support Structure or co-located antenna. An application shall be deemed complete when all documents, information, and fees specifically enumerated in the City’s regulations, ordinances and forms pertaining to the location, construction or operation of wireless facilities are submitted by the applicant to the City.

“Collocation” means the placement or installation of new Small Cell Wireless Technology on the property of a utility, or other franchisee, legally existing in the public right of way. Such term includes the placement of accessory equipment within an existing equipment compound.

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“Equipment Compound” means an area surrounding or adjacent to the base of a wireless support structure within which accessory equipment is located.

“Small Cell Technology” means (1) individual small cell wireless antennas; or (2) networks of spatially separated small cell wireless antenna nodes connected to a common source via transport medium that provides wireless service within a geographic area or structure commonly referred to as “Distributed Antenna Systems (DAS).”

“Small Cell Technology Wireless Support Structure” means a free-standing structure, designed to support or capable of supporting Small Cell Technology wireless facilities.

“Stealth Technology” means a method of concealing or reducing the visual impact of Small Cell Technology and/or Small Cell Technology Wireless Support Structures by use of incorporating features or design elements of the installation which either totally or partially conceals the structure; achieves the result of having the structure blend into the surrounding environment; or otherwise minimizes the visual impact of the structure.

- (6) *Placement of Small Cell Technologies in the Right-of-Way:* the following standards shall apply for the placement of Small Cell Technology in the public right-of-way or public road:
- (i) Any Small Cell Technology in a City right-of-way shall be co-located on the property of a utility, or other franchisee, legally existing in the public right-of-way, unless the applicant can demonstrate that no co-location opportunities exist, utilizing the same factors as in subsection (3)(l) of this Section. The applicant may apply for an administrative variance for a co-location where a Substantial Change will take place or placement of a new Small Cell Wireless Support Structure within the area of the public right-of-way, to be determined by the City Manager or his/her designee.
 - (ii) In applying for an administrative variance for a co-located Small Cell Technology, the review process, including timelines, shall be in accordance with any applicable State and Federal law. In reviewing the Application, the City Manager or his/her designee shall have the authority to assess the location(s) applied for and condition the approval on reasonably alleviating certain aesthetic and safety concerns of the request.
 - (iii) In applying for an administrative variance for a Small Cell Wireless Support Structure, the review process, including

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timelines, shall be in accordance with 47 U.S.C. § 332(c)(7) of the Federal Telecommunications Act, and the FCC rules interpreting same, as well as the consideration of the following factors by the City Manager or his/her designee to determine if the administrative variance is appropriate:

- a. Demonstrated need for the Small Cell Technologies within the geographic area requested in order to deliver adequate service;
 - b. Proof that all co-location sites in the area of need are/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 Technology 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 Small Cell Technology Wireless Support Structure is the minimal physical installation which will achieve the applicant's goals.
 - f. The safety and aesthetic impact of: any proposed Small Cell Technology Wireless Support Structure; related accessory equipment; and/or Equipment Compound.
- (iv) Within 90 calendar days, if for a Substantial Change co-location, or 150 calendar days, if for a new Small Cell Wireless Support Structure, of the date an application for an administrative variance is filed with the City, unless another date is specified in a written agreement between the City and the Applicant, the City Manager or designee shall:
- a. Make his final decision to approve or disapprove the application; and
 - b. Advise the applicant in writing of the final decision, including the specific reason(s) for said decision based on the applicable factors in this Subsection.

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- (v) Any appeal of a decision rendered pursuant to this Subsection shall be made by Petition for Writ of Certiorari to the Superior Court of DeKalb County, Georgia.
- (7) Within 30 calendar days of the date an application is filed with the City, the City shall notify the Applicant in writing of any information required to complete the application. To the extent additional information is required, to complete the application, the time required for the applicant to provide such information shall not be counted toward the 60 calendar day review period (for Section 6409 co-location), 90 calendar day review period (for Substantial Change co-location) or 150 calendar day period (for new Support Structures) set forth herein.
- (8) In submitting an application for telecommunications equipment, the applicant shall make an affirmative election at the time of application as to whether to apply for a co-location (under Section 6409), including co-location of Small Cell Technology on private property and right-of-way, or for a new Telecommunications Tower (private property) via Administrative Use Permit or Special Use Permit or Small Cell Technology Wireless Support Structures (right-of-way) via Administrative Variance. If a co-location application is denied, and applicant elects to apply for a new Tower or Support Structure, the timeline/shot clock requirements shall reset and follow anew the appropriate provisions of the Telecommunications Act and applicable Georgia law.

Section 2: This Amendment shall become effective upon approval by the Mayor and City Council, and incorporated into the Code of the City of Dunwoody, Georgia. This Amendment hereby repeals any and all conflicting ordinances and amendments.

SO ORDAINED, this ____ day of _____, 2015.

Approved:

Michael G. Davis, Mayor

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk

Office of City Attorney