



4800 Ashford Dunwoody Road
 Dunwoody, Georgia 30338
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MEMORANDUM

To: Mayor and City Council

From: Richard Hathcock, Senior Planner

Date: November 18, 2019

Subject: Consideration of revisions to the City of Dunwoody Telecommunication Ordinance

ITEM DESCRIPTION

Update to Telecommunication Ordinance because of new legislation.

BACKGROUND

Several years ago, the City adopted a new Telecommunication ordinance to modernize regulation of cellular telecommunication and taking into account new Small Cell technology. In the years since, the Small Cell technology has been increasingly utilized and with the advent of 5G technology, telecommunication providers are eager to utilize not only the technology itself but utilize available space on the right of way to do so. The Federal Communication Commission (FCC) has taken it upon itself, with support from telecommunication providers, to revise its Order to make it more convenient and cost-effective to utilize new Small Cell Technology. The 2018 Order has streamlined the requirements for regulatory review. Most glaringly, the "shot clock" has been reduced for Small Cell technology. While the ordinance provided for a 60-day co-location for non-substantial increase in size and a 90 day co-location shot clock for substantial increase in size collocations, the FCC Order has reduced that timeline to 60 days for all Small Cell technology co-locations. Where the current ordinance provides for 150 day shot-clock to review and rule on applications for installation of new support structure, the FCC has reduced that timeline for Small Cell Facilities to 90 days. The FCC has also required application costs to be reduced to \$500 for the first five locations and \$100 for each additional location for installation of Small Cell infrastructure, and has forbidden the local governments from charging anything more.

Additionally, the Georgia Legislature has enacted SB 66, which comes into effect October 1, 2019. SB 66 changes the regulatory methodology for right of way installations and removes the ability of local governments to force right of way access agreements with higher, more realistic fees for the use. The regime instituted in SB 66 takes over and supersedes any contrary provisions of a City Code regarding Small Cell installations in the right of way. The ordinance presented here, therefore, is a revision of the currently existing telecommunication regulations in the City of Dunwoody zoning ordinance in order to comply with the most recent FCC Order and SB 66. Most of the right of way related changes are word for word directly from SB 66, as are the new definitions culled from the FCC Order and SB 66 affecting regulation of small cell technology.



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RECOMMENDED ACTION

The City Attorneys and Staff recommend that the City Council approve the telecommunication ordinance revisions as presented.

Sec. 27-150. - Telecommunications towers and antennas.

The regulations of this section apply to all telecommunications towers and antennas.

(1) *Co-located antennas.*

- a. 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.
- b. 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:
 1. Increases height by more than ten percent or 10/20 feet (right-of-way/private property), whichever is greater, as measured from facility as it existed as of October 1, 2012.
 2. Appurtenance added protrudes from body of structure more than six feet in width (right-of-way) or 20 feet in width (private property).
 3. 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 ten percent larger in height or overall volume than any other associated ground cabinets (right-of-way).
 4. 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).
 5. For concealed or stealth-designed facilities, if a modification would defeat the concealment elements of the wireless tower or base station.
 6. 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.

- (2) *Federal law.* The regulations of this section must be applied within the constraints of the Telecommunications Act of 1996 and Section 6409 of the Middle Class Tax Relief and Job Creation Action of 2012.

(3) *Regulations.*

- a. Telecommunication towers that require administrative permit approval are subject to the following setbacks:
 1. If located on a lot abutting a residential zoning district or a lot occupied by a residential use, the tower must be set back from the zoning district or lot boundary by a minimum distance of one-half the overall height of the tower or 200 feet, whichever is greater; or
 2. If located on a lot abutting a nonresidential or mixed-use district that is not occupied by a residential dwelling, the tower must be set back from the abutting lot by a

minimum distance of 33 percent of the overall height of the tower or 200 feet, whichever is greater.

- b. Telecommunications towers that require special land use permit approval must be set back at least 200 feet from any property line, unless a greater setback is expressly required as part of the special land use permit approval.
- c. Telecommunications towers must either maintain a galvanized steel finish or, subject to any applicable standards of the Federal Aviation Administration or Federal Communications Commission, be painted a neutral color, so as to reduce visual obtrusiveness. These color and design requirements do not apply to alternative tower structures.
- d. At a tower site, the design of the buildings and related structures must, to the maximum extent possible, use materials, colors, textures, screening and landscaping that will blend the tower facilities to the natural setting and built environment.
- e. Towers may not be artificially lighted, unless required by the Federal Aviation Administration, Federal Communications Commission or other applicable authority. If lighting is required, it must be done in a way that minimizes the disturbance to surrounding views.
- f. Telecommunications towers must be entirely enclosed by a security fence of at least six feet in height. Towers must be equipped with an anti-climbing device. This requirement does not apply to alternative tower structures, provided equivalent alternative security measures are installed.
- g. In addition to any other landscaping or buffer requirements that may apply, telecommunications towers must be landscaped with plant material that effectively screens the tower site from adjacent uses. Existing tree growth and natural land forms on-site must be preserved to the maximum extent possible. At a minimum, a landscaped strip ten feet in width must be provided around the perimeter of the tower site.
- h. Telecommunications towers must be constructed to the minimum height necessary to accomplish their required telecommunications purpose.
- i. The environmental effects of radio frequency emissions may not serve as a basis to approve, deny or otherwise regulate a telecommunications tower to the extent that emissions comply with Federal Communications Commission regulations.
- j. All decisions denying a request to place, construct or modify a telecommunications tower must be in writing and be supported by a written record documenting the reasons for the denial and the evidence in support of the decision. Decisions must be made within a reasonable time from the date a completed application is duly filed.
- k. Each applicant requesting approval of a telecommunications tower must provide to the community development director as a part of the application an inventory of its existing towers that are either within the city or within one-quarter mile of the city boundaries, including information regarding the location, height and design of each tower. The community development director may share this information with other applicants or with other organizations seeking to locate a telecommunications tower within the city. In sharing this information, the community development director is not in any way representing or warranting that the sites are available or suitable.
- l. No new telecommunication tower may be permitted unless the applicant demonstrates that no existing tower or structure can accommodate the applicant's proposed antenna. Evidence must be submitted at the time of application demonstrating that no existing tower or structure can accommodate the applicant's proposed antenna and may consist of one or more of the following:
 1. No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements;

2. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements;
 3. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment;
 4. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna;
 5. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable; or
 6. There are other limiting factors that render existing towers and structures unsuitable.
- m. The placement of additional buildings or other supporting equipment necessarily required in connection with an otherwise authorized telecommunication tower or antenna is specifically authorized.
 - n. Any telecommunications antenna or tower that is not operated for a continuous period of six months will be considered abandoned, and the owner of such antenna or tower must remove the antenna or tower within 90 days of receipt of notice from the city.
- (4) *Special land use permit approval criteria.* In reviewing and acting on special land use permit applications for telecommunication towers, authorized review and decision-making bodies must consider the following factors in addition to the generally applicable special land use permit approval criteria of section 27-359:
- a. Height of the proposed tower;
 - b. Proximity of the tower to residential structures;
 - c. Nature of uses on adjacent and nearby properties;
 - d. Surrounding topography;
 - e. Surrounding tree cover and foliage;
 - f. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
 - g. Compliance with telecommunication tower regulations of this section.

- (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.

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 freestanding 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:
- a. 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). 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.
 - b. 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.
 - c. In applying for an administrative variance for a small cell wireless support structure, the review process, including 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:
 1. Demonstrated need for the small cell technologies within the geographic area requested in order to deliver adequate service.
 2. 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.
 3. The character of the area in which the small cell technology wireless support structure is requested, including evidence of surrounding properties and uses.
 4. Stealth technology, if any, proposed to be utilized by the applicant, or proof that stealth technology is either unnecessary or cannot be used.
 5. Proof that the proposed small cell technology wireless support structure is the minimal physical installation which will achieve the applicant's goals.
 6. The safety and aesthetic impact of: any proposed small cell technology wireless support structure; related accessory equipment; and/or equipment compound.
 - d. 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:

1. Make his final decision to approve or disapprove the application; and
 2. 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.
- e. 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) [Notification.] 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) [*Applicant election.*] 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.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-9.200), 10-14-2013; Ord. No. 2015-09-18, § 1, 9-28-2015)

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ORDINANCE 2019-XX-XX

**AN ORDINANCE OF THE CITY OF DUNWOODY TO REVISE
TELECOMMUNICATION REGULATIONS FOR SMALL CELL INSTALLATIONS TO
COMPLY WITH REQUIREMENTS OF THE FCC AND STATE LAW**

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 City has the power to regulate the development, siting and use of telecommunications towers and related equipment and facilities within its limit pursuant to its exclusive zoning and planning authority granted by the 1983 Constitution of the State of Georgia, including, but not limited to, Article IX, Section II, Paragraph IV and Article IX, Section II, Paragraph III; the authority granted the General Assembly of the State of Georgia, including, but not limited to, O.C.G.A. § 36-70-3; as well as the general police powers of the City and other authority provided by federal, state and local laws applicable thereto; and

WHEREAS, the City previously exercised such power, having adopted a comprehensive code governing the manner in which people and entities develop, site and use telecommunications towers and related equipment and facilities that presently is codified in Section 27-150 in the City of Dunwoody Zoning Ordinance; and

WHEREAS, the State of Georgia Legislature, in the 2019 Legislative Session, adopted SB 66, creating additional regulatory measures for placement of cellular telecommunication equipment in rights-of-way and requiring certain regulatory changes in local ordinances to match the requirements of the state law; and

WHEREAS, as a result of SB 66, the City desires to revise its regulations as dictated by the new regulatory requirements; and

WHEREAS, a properly-advertised public hearing in conformance with the Zoning Procedures Act has been held prior to the adoption of this Ordinance; and

WHEREAS, the health, safety, and general welfare of the citizens of the City will be positively impacted by the adoption of this Ordinance.

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

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Regulations), Section 27-150 (Telecommunications Towers and Antennas), as well as adding new Sections 27-150.1 and 27-150.2 to read as follows:

Sec. 27-150. Telecommunications ~~towers and Antennas~~Facilities and Structures in General.

The regulations of this section apply to all telecommunications ~~towers and antennas~~facilities and structures.

(1) Definitions.

- a. (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.
- b. Alternative Telecommunication Support Structure shall mean clock telecommunication support structures, bell telecommunication support structures, church steeples, light/power poles, electric transmission telecommunication support structures, man-made trees and similar natural or man-made alternative-design mounting structures that camouflage or conceal the presence of Antennas or Telecommunication Support Structures. An Alternative Telecommunication Support Structure may include a pre-existing building.
- c. Antenna shall mean any Equipment designed for wireless telecommunication, radio, or television communications through the sending and/or receiving of electromagnetic waves or beams of visible or invisible light and radio signals used in the provision of all types of Telecommunication Services, including standalone Equipment and Equipment affixed to or proposed to be affixed to existing Telecommunication Support Structures and/or authorized Alternative Telecommunication Support Structures.
- d. Applicant shall mean a person or entity with an application for the permit for the erection of, Modification of, or Co-location of Telecommunication Facilities in the City, whether located on private lands or in a Public Right-of-Way. For purposes of this Section, this term shall include any Co-Applicant or party with an ownership interest in a proposed or affected existing Telecommunication Facility, including, but not limited to,

property owners, telecommunication support structure owners, and any proposed tenants for the facility.

- e. Application shall mean a formal request submitted to the City to construct a tower, small cell technology wireless support structure or collocated 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.
- f. Collocation shall mean the placement or installation of a new antenna, including new small cell wireless technology on the property of a legally existing tower or, if on a right-of-way, that 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.
- g. Decorative Pole shall mean a pole owned by the City of Doraville that is specially designed and placed for aesthetic purposes.
- h. Equipment compound shall mean an area surrounding or adjacent to the base of a wireless support structure within which accessory equipment is located.
- i. FAA shall mean the Federal Aviation Administration.
- j. FCC shall mean the Federal Communication Council.
- k. Governing authority shall mean the governing authority of the City.
- l. Geographic Search Area shall mean the geographic area within which the placement of Accessory Equipment is necessary to meet the engineering requirements of an Applicant's cellular network or other broadcasting need.
- m. Height shall mean, when referring to a tower Telecommunication Support Structure or other structure, the distance measured from ground level to the highest point on the tower—Telecommunication Support Structure or other structureAlternative Telecommunication Support Structure, even if said highest point is an antenna or lightning rod.

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- n. Micro Wireless Facility shall mean a Small Wireless Technology not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height that has an exterior antenna, if any, no longer than 11 inches.
- o. Modification or Modify shall mean the change, or proposed change, of any portion of an existing Telecommunication Facility from its description as previously approved by the City, including improvements, upgrades, expansions, or the replacement of any existing telecommunication Equipment, conduit, or infrastructure apparatus, provided such improvement, upgrade, expansion, or replacement does not increase the Height of the telecommunication support structure.
- p. Pole shall mean a vertical pole, such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal or other material that is lawfully located or to be located within a right of way, including without limitation a replacement pole and an authority pole. Such term shall not include any other Telecommunication Support Structure or Alternative Telecommunication Support Structure, as otherwise defined herein, Decorative Pole, or electric transmission structure.
- q. Provider shall mean any legal entity authorized and/or engaged in the provision of Telecommunication Services.
- r. Small cell technology shall mean an antenna facility that meets the following conditions:
- (a) Mounted on structures 50 feet or less in height, including their antennas; or
 - (b) Mounted on structures no more than 10 percent taller than other adjacent structures; or
 - (c) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- AND
- (d) Each antenna, excluding associated Equipment, is no more than three cubic feet in volume; and

- (e) All wireless equipment associated with the structure, including any pre-existing associated Equipment on the structure, is no more than 28 cubic feet in volume.
- s. Small cell wireless support structure shall mean a free-standing wireless support structure, designed to support or capable of supporting small cell technology wireless facilities.
- t. Stealth technology shall mean a method of concealing or reducing the visual impact of wireless support structures, including small cell wireless support structures, antennas and small cell technology, 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.
- u. Telecommunication Facility or Facilities shall mean any physical component utilized in the provision of all types of telecommunications services, including all telecommunication support structures, Alternative Telecommunication Support Structures, Antennas, Equipment, infrastructure apparatus, base support mechanism, accessory Equipment, towers, Monopoles, Small Cell Installations, and physical attachments necessary for the provision of such Telecommunications Services.
- v. Telecommunication Facility Owner shall mean any person or entity that directly or indirectly owns, controls, operates, or manages Telecommunications Facilities, including any related Equipment or property within the City, used or to be used for the purpose of offering or transmitting signals used in the provision of any Telecommunication Services.
- w. Telecommunications Service(s) shall mean the transmittal of voice, data, image, graphic, and video programming between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or other facilities. This term shall include commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange services as identified in the Telecommunications Act of 1996.
- x. Telecommunication (Wireless) Support Structure shall mean any freestanding structure that is designed to support or capable of supporting and constructed primarily for the purpose of

supporting telecommunication Equipment; this term shall include self-supporting, guyed, and Monopole support structures. The term includes, and is not limited to, radio and television transmission telecommunication support structures, microwave telecommunication support structures, common-carrier telecommunication support structures, cellular telecommunication support structures, man-made trees, Alternative Telecommunication Support Structures, and other similar structures. In the Public Rights-of-Way, only Telecommunication Support Structures erected for the installation of Small Cells shall be permitted.

(12) *Co-located antennas on private property.*

- a. Antennas that are attached or affixed to existing telecommunications ~~towers~~support structures or alternative telecommunication support structures ~~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.
- b. 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 Section 27-150.1 subsection (6) below (right-of-way). For the purpose of this section, "substantial change" shall mean:
 - 1. Increases height by more than ten percent or ~~10/20 feet (right-of-way/private property)~~, whichever is greater, as measured from facility as it existed as of October 1, 2012.
 - 2. Appurtenance added protrudes from body of structure more than ~~six feet in width (right-of-way) or 20 feet in width (private property)~~.
 - 3. 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 ten percent larger in height or overall volume than any other associated ground cabinets ~~(right-of-way)~~.
 - 4. 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).~~

- 5. For concealed or stealth-designed facilities, if a modification would defeat the concealment elements of the wireless tower or base station.
- 6. The modification would not comply with other conditions imposed on the applicable wireless ~~tower—support structure~~ 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.

~~BuildingAlternative Telecommunication Support Structure~~-mounted antennas in residential zoning districts must be visually screened from view of all abutting lots. ~~BuildingAlternative Telecommunication Support Structure~~-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.

(23) ~~Federal-Applicable~~ law. The regulations of this section and sections 27-150.1 and 27-150.2 must be applied within the constraints of the Telecommunications Act of 1996 and Section 6409 of the Middle Class Tax Relief and Job Creation Action of 2012, as well as all applicable rulings of the FCC and the Streamlining Wireless Facilities and Antennas Act of 2019, as codified in Title 36, Chapters 66B and 66C.

(34) General Regulations.

- a. Telecommunication ~~towers—Facilities~~ that require administrative permit approval are subject to the following setbacks:
 - 1. If located on a lot abutting a residential zoning district or a lot occupied by a residential use, the ~~tower—Facility~~ must be set back from the zoning district or lot boundary by a minimum distance of one-half the overall height of the tower or 200 feet, whichever is greater; or
 - 2. If located on a lot abutting a nonresidential or mixed-use district that is not occupied by a residential dwelling, the ~~tower—Facility~~ must be set back from the abutting lot by a minimum distance of 33 percent of the overall height of the tower or 200 feet, whichever is greater.
- b. Telecommunications ~~towers—Facilities~~ that require special land use permit approval must be set back at least 200 feet from any property line, unless a greater setback is expressly required as part of the special land use permit approval.
- c. Telecommunications ~~towers—Facilities~~ must either maintain a galvanized steel finish or, subject to any applicable standards of the Federal Aviation Administration or Federal Communications

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Commission, be painted a neutral color, so as to reduce visual obtrusiveness. These color and design requirements do not apply to ~~a~~Alternative tower—Telecommunication Support sStructures.

- d. At a ~~tower~~Facility site, the design of the buildings and related structures must, to the maximum extent possible, use materials, colors, textures, screening and landscaping that will blend the ~~tower—_f~~Facilities to the natural setting and built environment.
- e. ~~Towers—Telecommunication Support Structures or Alternative Telecommunication Support Structures~~ may not be artificially lighted, unless required by the Federal Aviation Administration, Federal Communications Commission or other applicable authority. If lighting is required, it must be done in a way that minimizes the disturbance to surrounding views.
- f. Telecommunications ~~towers—Support Structures~~ must be entirely enclosed by a security fence of at least six feet in height. Towers must be equipped with an anti-climbing device. This requirement does not apply to ~~a~~Alternative towerTelecommunication sStructures, or Telecommunication Facilities on the Right of Way, provided equivalent alternative security measures are installed.
- g. In addition to any other landscaping or buffer requirements that may apply, ~~t~~Telecommunications towers—Facilities must be landscaped with plant material that effectively screens the ~~tower~~Facility site from adjacent uses. Existing tree growth and natural land forms on-site must be preserved to the maximum extent possible. At a minimum, a landscaped strip ten feet in width must be provided around the perimeter of the ~~tower~~Facility site.
- h. Telecommunications ~~towers—Support Structures~~ must be constructed to the minimum height necessary to accomplish their required telecommunications purpose.
- i. The environmental effects of radio frequency emissions may not serve as a basis to approve, deny or otherwise regulate a ~~t~~Telecommunications towerFacility to the extent that emissions comply with Federal Communications Commission regulations.
- j. All decisions denying a request to place, construct or modify a ~~t~~Telecommunications towerFacility must be in writing and be supported by a written record documenting the reasons for the denial and the evidence in support of the decision. Decisions must be made within ~~a~~the reasonable time ~~specified herein~~from the date a completed application is duly filed.

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- k. Each applicant requesting approval of a ~~telecommunications tower~~ Facility must provide to the community development director as a part of the application an inventory of its existing ~~towers~~ Facilities that are either within the city or within one-quarter mile of the city boundaries, including information regarding the location, height and design of each ~~tower~~ Facility. The community development director may share this information with other applicants or with other organizations seeking to locate a ~~telecommunications tower~~ Facility within the city. In sharing this information, the community development director is not in any way representing or warranting that the sites are available or suitable.
- l. No new ~~telecommunication tower~~ Support Structure may be permitted unless the applicant demonstrates that no existing ~~tower~~ Facility or structure can accommodate the applicant's proposed antenna. Evidence must be submitted at the time of application demonstrating that no existing ~~tower~~ Facility or structure can accommodate the applicant's proposed antenna and may consist of one or more of the following:
1. No existing ~~towers~~ Facilities or structures are located within the geographic area required to meet applicant's engineering requirements;
 2. Existing ~~towers~~ Facilities or structures are not of sufficient height to meet applicant's engineering requirements;
 3. Existing ~~towers~~ Facilities or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment;
 4. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing ~~towers~~ Facilities or structures, or the antenna on the existing ~~towers~~ Facilities or structures would cause interference with the applicant's proposed antenna;
 5. The fees, costs, or contractual provisions required by the owner in order to share an existing ~~tower~~ Facility or structure or to adapt an existing ~~tower~~ Facility or structure for sharing are unreasonable; or
 6. There are other limiting factors that render existing ~~towers~~ Facilities and structures unsuitable.
- m. The placement of additional buildings or other supporting equipment necessarily required in connection with an otherwise authorized ~~telecommunication tower~~ Support Structure or antenna is specifically authorized.
- n. Any telecommunications antenna or ~~tower~~ Support Structure that is not operated for a continuous period of six months, or in

the case of a Facility or Structure on the Right of Way, twelve (12) months, will be considered abandoned, and the owner of such antenna or ~~tower-Structure~~ must remove the antenna or ~~tower-Structure~~ within 90 days of receipt of notice from the city. If such abandoned antenna or structure is not removed within said ninety (90) days, the City may enforce this subsection by all available legal means as authorized by the City Code, and not prohibited by state or federal law, including removal of the structure at the Owner's expense with an additional assessed fine of \$500. Until the Owner pays said expense and penalty, the Owner shall not be entitled to apply for, or receive, any future permits under this section. If there are two (2) or more users of a single structure, then this provision shall not become effective until all users cease using the structure.

Sec. 27-150.1. Telecommunication Facilities and Structures on Private Property.

- (1) Application Submittals. Applications for administrative permit or special use permit in accordance with this section shall include the following:
- a. Name, address, and telephone number of a principal officer and local agent of the Applicant;
 - b. Physical address of the parcel upon which the proposed Antenna, Telecommunication Support Structure or Alternative Telecommunication Support Structure is to be erected;
 - c. Name of the person, firm, corporation, or association erecting the Antenna, Telecommunication Support Structure or Alternative Telecommunication Support Structure, including all parties with a prospective ownership interest in the proposed Antenna, Telecommunication Support Structure or Alternative Telecommunication Support Structure;
 - d. Written consent of all parties with an existing ownership interest, including all underlying land owners and owners or licensees of any affected, existing Telecommunication Support Structures or Alternative Telecommunication Support Structures, allowing the application;
 - e. A site plan showing existing vegetation to be removed from the site and vegetation to be replanted to replace the vegetation that will be removed;
 - f. A certified statement prepared by an engineer licensed in Georgia or other qualified industry professional indicating that the erection and operation of the proposed Antenna,

Telecommunication Support Structure or Alternative Telecommunication Support Structure, including reception and transmission functions, will not interfere with public safety communications or the usual and customary transmission or reception of radio, television, or other Telecommunication Service enjoyed by adjacent properties;

- g. Proof of and/or certified copies of any required approval, registration, and/or licensure from the Commission for any Provider of Telecommunications Services to provide such services in the State of Georgia, where applicable, and any other required FAA, FCC, or otherwise state and federal approval, registration, and/or licensure required to erect the proposed Antenna, new Telecommunication Support Structure or Alternative Telecommunication Support Structure;
- h. Written certification that all emissions from any Antenna on the Telecommunication Support Structure will comply with FCC frequency emissions standards;
- i. For new Telecommunication Support Structure applications, the Applicant shall provide photo-simulated, post-construction renderings of the completed proposed Telecommunication Support Structure Equipment compound and/or Equipment cabinets, ancillary structures, and landscaping, if any. The views shall incorporate before and after scenarios, a scaled, color image of the proposed type of facility, an aerial map with the location of the selected views, and a description of the technical approach used to create the photo simulations. The simulations shall include a minimum of four (4) vantage points (generally north, south, east, and west). Based on the information provided the Applicant may be required to provide other pictorial representations from other viewpoints including, but not limited to, state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents;
- j. The Community Development Director may, at his sole discretion, require a balloon test to be conducted at any time during which an application is pending before the City;
- k. Six (6) sets of accurate scale drawings including a scaled site plan and a scaled elevation view and other supporting drawings, calculations, and other documentation including, but not limited to, the method of construction and attachment to the ground for the Telecommunication Support Structure. The plans for the

Telecommunication Support Structure construction shall be certified by a registered structural engineer licensed in the State of Georgia as meeting all current safety and design standards of all applicable federal, state, and City codes, and shall show the location and dimensions of all improvements, including information concerning topography, radio frequency coverage, Telecommunication Support Structure Height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses, and other information deemed by the Community Development Director to be necessary to assess compliance with this Article. In addition, the report from the structural engineer must contain:

- (i) Telecommunication Support Structure Height and design, including technical, engineering, economic, and other pertinent factors governing selection of the proposed design. A cross-section of the Telecommunication Support Structure shall be included;
- (ii) Total anticipated capacity of the structure, including number and types of Antenna(s) which can be accommodated;
- (iii) Evidence of structural integrity of the proposed Telecommunication Support Structure; and
- (iv) Failure characteristics of the Telecommunication Support Structure and demonstration that site and setbacks are of adequate size to contain debris.

(42) ~~Special land use permit a~~Approval c~~Criteria~~. In reviewing and acting on ~~administrative and special land use permit applications for telecommunication towers,~~ authorized review and decision-making bodies must consider the following factors in addition to the generally applicable ~~special land use permit~~ approval criteria of section 27-359 and 27-441, as applicable:

- a. Height of the proposed ~~tower~~Facility;
- b. Proximity of the ~~tower~~Facility to residential structures;
- c. Nature of uses on adjacent and nearby properties;
- d. Surrounding topography;
- e. Surrounding tree cover and foliage;
- f. Design of the ~~tower~~Facility, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and

- g. Compliance with ~~telecommunication tower regulations~~ of this section and Section 27-150.

(3) Review process.

- a. All Co-location Antennas and any new Small Cell Installation support structures require a Special Administrative Permit from the Community Development Director. Any new non-Small Cell Telecommunication Support Structure requires a Special Use Permit from the Mayor and City Council. Fees for Administrative Permits for Small Cell installations may not exceed \$500 for the first five (5) locations, and \$100 for each additional location, requested simultaneously.
- b. For non-small cell technology installations, the Community Development Director shall have thirty (30) days in which to review the application for completeness in accordance with the requirements of this section, the Federal Telecommunications Act and any applicable state law. If the application is found to be incomplete, the Community Development Director shall state so in writing to the applicant, detailing the specific Code section, statute or provision of federal law under which that determination was made. Upon the issuance of the written notice, the required federal and/or state decision clock shall be tolled until such time as an updated application is filed. If the application remains incomplete after the resubmission, said incompleteness may serve as valid reason for denial of the application by either the Community Development Director or City Council, as applicable.
- c. For small cell technology installations the Community Development Director shall notify an Applicant submitting an application of any identified deficiencies therein within ten (10) calendar days of receipt of such an application. If the Community Development Director determines an application is not complete, he shall notify the applicant in writing of said deficiencies. Upon resubmission of the application, the initial ten (10) day period shall not be counted towards the review period defined herein. The Community Development Director shall have an additional ten (10) calendar days to notify Applicant of any other deficiencies in the re-submitted application. To the extent additional information is required after resubmission, the time required for an Applicant to provide such information shall not be counted toward the review period

set forth herein. If the application remains incomplete after the second resubmission, said incompleteness may serve as valid reason for denial of the application.

- d. The Community Development Director must grant or deny an Administrative Permit within sixty (60) days of the filing of a completed application for any Small Cell co-location and any co-location that does not substantially increase the size of the Facility as defined in Section 27-150, and within ninety (90) days of the filing of a completed application for a new Small Cell Facility Structure and Antenna. If a denial is issued, said denial must be in writing and include specific reason(s) for same as found in this section and based on substantial evidence in the record.
- e. For applications requiring a special use permit, the procedure of Article V, Division III of the Zoning Ordinance must be utilized with the exception that the decision by the Mayor and City Council must be made within 150 days of the filing of a completed application and shall be in writing and based on substantial evidence in the Record.
- f. Decisions of the Community Development Director denying an administrative permit may be appealed to the Mayor and City Council within ten (10) days of the written decision and shall follow Article V, Division VIII of this Chapter.
- g. All decisions of the Mayor and City Council pursuant to this section may be appealed by the Applicant by Petition for Writ of Certiorari with the DeKalb County Superior Court in accordance with State Law.

~~(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.~~

~~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 freestanding 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.~~

Sec. 27-150.2. Telecommunication Structures and Antennas in the Right of Way.

(1) Access to the Right of Way. The City shall not require any Telecommunications Facility Owner to sign an agreement of any kind as pre-condition for access to the City's Right of Way. The provisions of this section and the ACT shall serve as the only pre-conditions for location of Telecommunication Facilities in the Rights-of-Way. Any Telecommunications Facility Owner may, voluntarily, enter into any such Right of Way access agreement with terms that deviate from the provisions of the ACT or this section, so long as said agreements are available for public inspection and are non-discriminatory as to terms and conditions with different Telecommunication Facility Owners.

(2) Fees.

a. Application Fee for co-location of a Small Cell Installation on an existing pole: \$100 for each facility.

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- b. Application Fee for each replacement pole with an associated Small Cell Installation: \$250.00.
- c. Application Fee for each new pole with an associated Small Cell Installation: \$1,000 per pole.
- d. Right of Way Occupancy Rate:
 - i. Co-Located Small Cell Installation on existing or replacement pole: \$100.00 per year.
 - ii. New Pole with associated Small Cell Installation: \$200.00 per year.
- e. Annual Attachment rate for poles owned by the City: \$40.00 per year per Small Cell Installation.
- f. On January 1, 2021, each of the fees delineated above shall increase 2.5 percent annually.

(3) Contents of Application.

- a. The Application pursuant to this section shall be submitted to the Community Development Director and contain the following:
 - i. The Applicant's name, address, telephone number, and email address, including emergency contact information;
 - ii. The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application.
 - iii. A general description of the proposed work and the purposes and intent of the proposed facility. The scope and detail of such description shall be appropriate to the nature and character of the physical work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed.
 - iv. Detailed construction drawings regarding the proposed use of the Public Right of Way.
 - v. To the extent the proposed installation involves co-location on a pole, decorative pole, or support structure, a structural report performed by a duly licensed engineer evidencing that the pole, decorative pole, or support structure will structurally support the co-location, or that the pole, decorative pole, or support structure may and

will be modified to meet structural requirements, in accordance with applicable codes.

- vi. Visual depictions or representations if such are not included in the construction drawings.
- vii. Information indicating the horizontal and approximate vertical location, relative to the boundaries of the right of way, of the Small Cell Installation for which the application is being submitted.
- viii. If the application is for the installation of a new pole or decorative pole, a certification that the Applicant has determined, after diligent investigation, that it cannot meet the service objectives of the permit by co-locating on an existing pole or support structure on which:

 - (i) The Applicant has the right to co-locate subject to reasonable terms and conditions; and
 - (ii) Such co-location would not impose technical limitations or significant additional costs.

The Applicant shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and shall provide a written summary of the basis for such determination.

- ix. A certification that the Applicant has permission from the owner to co-locate on the structure or pole.
- x. If the Applicant is not provider of wireless services, a certification that a wireless service provider has requested in writing that the Applicant co-locate the Small Cell Installation or install, modify, or replace the pole or decorative pole at the requested location.

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- b. Any material change to information contained in an Application shall be submitted in writing to the Community Development Director within 30 days after the events necessitating the change. Failure to do so shall be a violation of this section.

(4) Exemption from Permit.

- a. An Application shall not be required for the following activities, provided that applicable electrical or encroachment permits may still be required pursuant to the provisions of the City Code:

- i. With respect to a pole or decorative pole on which the Small Cell Installation is co-located, inspections, testing, repairs and modifications that maintain functional capacity and aesthetic and structural integrity, provided that modifications are limited by the structural load analysis supplied by the Applicant in its prior Application for installation of the Facility; and
- ii. Inspections, testing, or repairs that maintain functional capacity or the replacement or upgrade of Antennas or other components of the Small Wireless Installation such as a swap out or addition of Antennas and radio equipment as required by the Applicant, with Antennas and other components that are substantially similar in color, aggregate size, and other aesthetics to that previously permitted by the City and consistent with the Height and volume limits for Wireless Installations under this section, so long as the pole, decorative pole, or support structure will structurally support, or prior installation will be modified to support, the structural load in accordance with the structural load analysis supplied by the Applicant in its prior Application for the Installation.

- b. A permit shall not be required for the installation, placement, maintenance, operation or replacement of Micro Wireless Facilities that are suspended on cables that are strung between poles or support structures in the right of way in compliance with applicable codes, subject to the requirement that other applicable permits, such as electrical, excavation, street closure, or as otherwise required by this Code, be obtained.

(5) Procedure After Submission of Application.

- a. Within 20 days of receipt of a written application pursuant to this section, the Community Development Director shall:
 - i. Notify the Applicant in writing of the commencement and completion dates of any widening, repair, reconstruction, or relocation of the applicable right of way that is scheduled to commence, or is anticipated in good faith to commence, within 24 months after the Application is filed;

- ii. Notify the Applicant of any aspect of the Application that appears to be grounds for the denial of the Application pursuant to this section; and
 - iii. Determine whether the Application is complete and inform the Applicant of his determination in writing.
- b. If the Application is deemed incomplete, the Community Development Director shall specifically identify in writing all missing information within such 20 day period.
- c. If notified of incompleteness, the Applicant may submit such missing information within 20 days of the receipt of the notification from the Community Development Director, and, upon resubmission, any subsequent review for completeness shall be limited to the previously missing information. If the Application remains incomplete or is materially changed other than to address the missing information, the Community Development Director shall notify the Applicant of such within 10 days of the resubmission and such notice shall constitute an official denial of the Application.

(6) *Time for Review.*

- a. Within 30 days of the City's written determination that the Application is complete, or upon it becoming complete by operation of law 20 days after submission, for a co-location, and within 70 days for installation, modification or replacement of a pole or decorative pole, the Community Development Director shall make the determination whether to approve or deny the Application.
- b. A decision to deny the Application shall be in writing, shall identify all reasons for denial, and shall identify the provision(s) of this section on which the denial was based.
- c. If the Community Development Director fails to act on an application within the review period provided in this section, the Applicant may provide the City written notice that the time period for acting has lapsed, and the Community Development Director shall then have 20 days after receipt of said notice to render a written decision. If the Community Development Director does not act within that additional 20 days, the Application shall be deemed to be approved by operation of law.

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- (67) Placement of small cell technologies in the right-of-way Standards of Review. The Community Development Director shall approve the Application unless the co-location of a Small Cell Installation or requested installation, modification, or replacement of a pole or decorative pole;The following standards shall apply for the placement of small cell technology in the public right-of-way or public road:
- a. Interferes with the operation of traffic control equipment;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.
 - b. Interferes with the sight lines or clear zones for transportation or pedestrians;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.
 - c. Fails to comply with the Americans with Disabilities Act, 42 U.S.C. Section 12101, et. seq., or similar laws of general applicability regarding pedestrian access or movement;In applying for an administrative variance for a small cell wireless support structure, the review process, including 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:
 - 1d. Requests that ground-mounted equipment be located more than 7.5 feet in radial circumference from the base of the pole, decorative pole, or support structure to which the Antenna would be attached, provided that this shall not serve as reason for denial if the Applicant can show that the greater distance is necessary to avoid interfering with sight lines or clear zones for transportation or pedestrians or to otherwise protect public safety;Demonstrated need for the small cell technologies within the geographic area requested in order to deliver adequate service.

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- ~~2e. Fails to comply with applicable codes;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.~~
- ~~3f. Fails to comply with the maximum limitations of what is defined as a Small Cell Installation under this Article or otherwise refuses to locate the facilities underground in those areas where the City requires same of all utilities in the right of way;The character of the area in which the small cell technology wireless support structure is requested, including evidence of surrounding properties and uses.~~
- ~~4g. With respect to an Application to install a pole or decorative pole, interferes with the widening, repair, reconstruction, or relocation of a public road or highway by the City or GDOT that has been advertised for bid and scheduled for completion within six months after the Application is filed;Stealth technology, if any, proposed to be utilized by the applicant, or proof that stealth technology is either unnecessary or cannot be used.~~
- ~~5h. With respect to an Application to install a pole or decorative pole, interferes with a public works construction project governed by Chapter 91 of Title 36 of the O.C.G.A. and scheduled for completion within six months after the application is filed;Proof that the proposed small cell technology wireless support structure is the minimal physical installation which will achieve the applicant's goals.~~
- ~~6i. Fails to comply with aesthetic requirements or alternate location requirements of this section;The safety and aesthetic impact of: any proposed small cell technology wireless support structure; related accessory equipment; and/or equipment compound.~~
- ~~dj. Fails to comply with laws of general applicability that address pedestrian and vehicular traffic and safety requirements; orWithin 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:

 - ~~1. Make his final decision to approve or disapprove the application; and~~
 - ~~2. 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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- ek. Fails to comply with laws of general applicability that address the occupancy or management of the right of way and that are not otherwise inconsistent with this Article or the ACT. 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.
- (87) [Notification.] 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. Expiration of Permit. The co-location, installation, modification or replacement for which a permit is issued under this section shall be completed within six (6) months after issuance, provided that the City shall grant an extension for up to an additional six (6) months upon written request made before the expiration of the initial six-month period if a delay results from circumstances beyond the reasonable control of the Applicant.
- (89) [Applicant election.] 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. Relocation, Recondition and Replacement.
- a. If the City requires any widening, repair, reconstruction, or relocation of a public road or highway, or relocation of poles, support structures, or Small Cell Installations as a result of a public project, the Telecommunication Facility Owner shall relocate poles and support structures that have been installed in the right of way at no cost to the City in case said poles and support structures are found to unreasonably interfere with the widening, repair, reconstruction or relocation project or the public project. The Telecommunication Facility Owner shall relocate the poles or support structures:
- i. By the date designated in a written notice by the City that contains a good faith estimate of the date by which the City intends to commence work so long as the time

- frames are applied to all utilities in the right of way, provided, however, that the date designated for relocation shall be at least 45 days after the City provides written notice of same; or
- ii. Within the time frame that the Telecommunication Facility Owner estimates in good faith is reasonably needed to complete the relocation, so long as such good faith estimate is provided to the City in writing within 30 days following receipt of the City's written notice and explains in detail why such relocation cannot be reasonably completed by the date designated by the City.
- b. The Telecommunication Facilities Owner shall reasonably cooperate with the City to carry out reconditioning work activities for any poles or decorative poles owned by the City in a manner that minimizes interference with the approved use of the facility. The City shall use reasonable effort to provide the Telecommunication Facility Owner with written notice of reconditioning work at least 120 days before such work begins. Upon receiving such notice, it shall be the Telecommunication Facility Owner's sole responsibility to provide adequate measures to cover, remove, or otherwise protect the facility from the consequences of the reconditioning work, including but not limited to paint and debris fallout. The City reserves the right to require removal of all facilities from the City's pole and surrounding premises during reconditioning work, provided that the requirement to remove such is contained in the written notice required herein. All costs associated with the protection measures shall be the sole responsibility of the Telecommunication Facility Owner.
- c. In the case of the City needing to replace its poles or decorative poles, the City shall provide the Telecommunication Facility Owner with at least 120 days written notice of same before the City may remove the Facility. The City shall promptly notify the Telecommunication Facility Owner when the poles have been replaced and the equipment can be reinstalled. During the replacement work, the Telecommunication Facility Owner may maintain a temporary communications facility on the property, or, after approval by the City, on any land owned or controlled by the City in the vicinity of the property.

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- d. If the Telecommunication Facility Owner fails to relocate a support structure as required in this section, or fails to provide a good faith estimate of the time needed to relocate, the City shall have the right, ten (10) days after written notice of same, to cut power or move any support structure or pole located in the right of way as the City may determine to be necessary, appropriate, or useful in order to commence work on the public project.

(10) Public Safety.

- a. An Applicant in the Public Right-of-Way shall employ due care during the installation and maintenance process and shall comply with all safety and Public Right of Way protection requirements in the City codes and regulations and State Law.
- b. An Applicant or permittee pursuant to this section shall not place any Small Cell Installations, support structures, poles or decorative poles where they will interfere with any existing infrastructure or equipment and shall locate its lines and Equipment in such a manner as not to interfere unnecessarily with the usual vehicular or pedestrian traffic patterns or with the rights or reasonable convenience of owners of property that abuts any Public Right of Way.
- c. If the City determines that a Telecommunication Facility Owner's activity in the Public Right of Way pursuant to this section creates an imminent risk to public safety, the City shall provide written notice to the Facility Owner requiring the Facility Owner to address said risk. If the Facility Owner fails to address the issue within 24 hours of the written notice, the City shall be authorized to address said issue at the Facility Owner's expense.
- d. Any damage to the Public Right of Way caused by the activities of the Telecommunication Facility Owner while occupying, installing, repairing or maintaining Small Cell Installations, poles, or support structures shall be repaired promptly by the Facility Owner. If the Facility Owner fails to conduct such repairs within 90 days of receipt of a written notice from the City notifying the Facility Owner of the damage to the right of way, the City shall be authorized to correct and repair the damage at the Facility Owner's expense, plus a \$500.00 penalty. Failure of the Facility Owner to pay the City's expenses under those circumstances, as well as the penalty, shall result in the Facility Owner being prohibited from applying for, or

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receiving, any further permits under this section until the full amount is paid to the City.

(11) *Alternate Locations.* For application for new poles in the Public Right of Way in areas zoned for residential use, the City may propose an alternate location in the Public Right of Way within 100 feet of the location set forth in the application, and the Applicant shall use the City's proposed alternate location unless the location imposes technical limits or significant additional costs, a fact the Applicant must certify to have determined in good faith, based on the assessment of a licensed engineer, and shall provide a written summary of the basis for such determination.

(12) *First Come, First Served Requests.* If multiple Applications are received by the City to install two or more poles or decorative poles at the same location or to co-locate two or more Small Cell Installations on the same pole, decorative pole or support structure, the Applications shall be considered in the order they were received once deemed complete and, if a permit is granted for the first completed application, the subsequent completed applications for the same location shall be deemed to be automatically denied.

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 _____, 2019.

Approved:

Denis Shortal, Mayor

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk

Office of City Attorney