

Telecommunications Ordinance Amendments (Cell Towers and Facilities)

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William Linkous, County Attorney



Telecommunications Ordinance

Revision (Cell Towers and Facilities)

- Telecommunications towers and facilities are highly regulated
- Federal Laws Relating to Towers and Facilities:
 - Section 704 of the Federal Telecommunications Act of 1996 (Governs siting of telecommunications towers and facilities)
 - 47 U.S.C. § 332
 - Nothing shall limit or affect the authority of a state or local government over decisions regarding the placement of cell towers (statement gives lip service to local government authority)
 - But

Telecommunications Ordinance Revision (Cell Towers and Facilities)

- The FTA restricts local governments as follows:
- Local governments shall not unreasonably discriminate among providers of functionally equivalent services
- Local governments shall not prohibit or have the effect of prohibiting the provision of personal wireless services
- Local governments shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed (shot clock)
- Local governments shall render decisions to deny a request to place, construct, or modify personal wireless service facilities in writing and support them with “substantial evidence” contained in a written record (Requires the hiring of an expert engineer to present at public hearings)
- Local governments may not regulate the placement, construction, and modification of personal wireless service facilities on the basis of the “environmental effects of radio frequency emissions” to the extent that such facilities comply with FCC regulations
- “Any person adversely affected” by local government action may appeal to court within 30 days

Telecommunications Ordinance

Revision (Cell Towers and Facilities)

- Georgia Laws Relating to Towers and Facilities:
 - O.C.G.A. §§ 36-66B-1 to 36-66B-7 (Mobile Broadband Infrastructure Leads to Development Act) provides comprehensive regulations
 - O.C.G.A. §§ 36-66C-1 to 36-66C-21 (Streamlining Wireless Facilities and Antennas Act) also provides comprehensive regulations
 - O.C.G.A. § 32-4-42 (6) provides that counties have the authority to establish reasonable regulations for the installation, construction, maintenance, etc. of cables, wires, poles, towers, and other equipment or facilities in, on, along, over, or under public roads of the county (this is helpful)

Telecommunications Ordinance Revision (Cell Towers and Facilities)

- The County currently has two ordinances that govern telecommunications towers and facilities
- Chapter 17.410 – Standards for Telecommunication Antennas and Towers
- Chapter 17.412 – Standards for Small Wireless Facilities Placed in the County Right of Way
- **The County's two telecommunications ordinances were last revised in 2002**

Telecommunications Ordinance

Revision (Cell Towers and Facilities)

- Hall County's current ordinances contain provisions that need to be changed – examples include:
 - We currently disfavor sites within 4 tower lengths of residentially-zoned property
 - We require setbacks of at least 2 tower lengths from the base of the tower to all property lines
 - We require setbacks from any residential structure of either 4 tower lengths or 500 feet, whichever is greater
 - There are no tower height restrictions in any non-residential zoning districts (only 195 foot height restriction in AR-III and AR-IV)
 - Our fees may in some instances exceed legal maximums (up to \$3000)
 - We do not currently have a process for hiring an engineer to evaluate cell tower applications based upon factors that may be legitimate grounds for denial of applications
 - Our ordinances do not require conformity with the FCC's shot clock requirements (especially for towers and antennas)

Telecommunications Ordinance Revision (Cell Towers and Facilities)

- In order to successfully deny any cell tower application, we must first revise our ordinances
- Our best option is a full re-write of Chapters 17.410 and 17.412
- Van Stephens drafted the model for the ordinance re-write with assistance from Gerard Lederer – Best Best & Krieger, LLP (Washington, D.C.)

Telecommunications Ordinance

Revision (Cell Towers and Facilities)

- Chapter 17.410 – This rewrite will establish guidelines for the siting of all wireless, cellular, television and radio telecommunications towers and antennas
 - Encourage location of towers in non-residential areas
 - Minimize the total number of towers within the community commensurate with needs
 - Encourage joint use of new and existing tower sites (co-location)
 - Locate towers where adverse impacts are minimal
 - Encourage design and construction of towers and antennas to minimize visual impacts
 - Enhance the ability of providers to deliver telecommunications services to the community effectively and efficiently

Telecommunications Ordinance Revision (Cell Towers and Facilities)

- Chapter 17.412 – This rewrite on small wireless facilities and antennas will take into account federal and state law and will:
 - Establish requirements, specifications, and reasonable conditions regarding placement of small wireless facilities and poles in the public right-of-way
 - Goal is to reasonably manage and protect the public rights-of-way and its uses in the County
 - Implement Georgia’s Streamlining Wireless Facilities and Antennas Act
 - Ensure the use of public rights-of-way is consistent with the design, appearance, and other features of nearby land uses
 - Protect the integrity of historic, cultural, and scenic resources
 - Prevent harm to residents’ quality of life

Telecommunications Ordinance

Revision – Major Points

- The new ordinance applies to all telecommunications towers and antennas that are installed at a height of 50 feet or more
- Government facilities and structures are exempt
- Pre-existing towers are exempt - except from federal requirements and building/safety codes
- Amateur radio antennas less than 75 feet are exempt if they are receive-only or owned and operated by a federally-licensed amateur radio operator

Telecommunications Ordinance

Revision – Major Points

- Towers not operated for a continuous period of six months are considered abandoned and must be removed within 60 days of receipt of notice of designation as abandoned
- If not removed within 60 days of receipt of notice, the County may remove the antenna or tower at the owner's expense under O.C.G.A. §§ 41-2-7 to 41-2-17
- Prior to issuance of a permit for tower/antenna construction, the owner must post a bond of not less than \$25,000 conditioned upon removal of the tower/antenna
- The bond must be from a Georgia surety with a Hall County office



Telecommunications Ordinance

Revision – Major Points

- Each calendar year the owner of a telecommunications tower must register the tower with the Director of Planning and Development on County forms
- The registration requires disclosure of all relevant information, including information on all structures and equipment on site
- The owner must disclose any ownership transfers or modifications to the tower
- After ten years, the tower must be inspected every three years by an appropriate engineer and certified as not hazardous
- Yearly registration fees are \$100.00 (first year) and \$50.00 thereafter



Telecommunications Ordinance

Revision – Major Points

- The Planning and Development Department must maintain an inventory of all towers or alternative tower structures present in the County
- Essential information, including suitability for co-location, shall be maintained
- Tower/antenna applicants must submit affidavits setting forth an inventory of its existing towers and structures present in the County or its cities, or within 1 mile of the County border
- Tower/antenna applicants must submit specific information about each such tower, including coordinates, height, design, tower type, suitability for co-location, etc.
- The information can be shared with other applicants by the County



Telecommunications Ordinance

Revision – Major Points

- All towers must be designed to accommodate co-location of other cellular telecommunications antennas
- Towers up to 125 feet must be designed to accommodate at least two providers
- Towers greater than 125 feet must be designed to accommodate at least four providers
- All towers must also meet all applicable building and safety codes

Telecommunications Ordinance

Revision – Major Points

- No new tower shall be permitted unless the applicant demonstrates to the satisfaction of the Department and Board of Commissioners that no existing tower or alternative structure can accommodate the applicant's proposed antenna
- All evidence must be signed and sealed by appropriate licensed professionals and industry experts
- The ordinance provides a list of evidence that must be provided by the applicant to show co-location is not possible
- The applicant must include, for each listed evidentiary conclusion, an affidavit listing the existing towers which were considered and rejected and a detailed explanation of why the existing towers are not useable

Telecommunications Ordinance

Revision – Major Points

- The new ordinance contains extensive provisions on aesthetics
 - Tower finish
 - Landscaping, color, and material to blend into environment
 - Neutral color antennas when not on towers
 - No lighting unless required by the FAA and lighting alternatives should be considered (including lowering tower)
 - No signs or commercial identifying markings on towers or antennas

Telecommunications Ordinance

Revision – Major Points

- The ordinance includes setbacks and separation requirements:
 - $\frac{1}{2}$ the height of the tower from tower base to any public way or property line
 - Towers in residentially zoned areas in excess of 50 feet require a setback of one full tower height from any adjoining off-site residential structure
 - In zoning districts other than S-S, H-B, I-I, and I-II, towers over 100 feet in height cannot be located closer than 1500 feet from any existing tower that is over 100 feet

Telecommunications Ordinance

Revision – Major Points

- The ordinance requires installation of security chain-link fencing and anti-climbing devices
- The ordinance contains extensive landscaping requirements for the area surrounding and in the vicinity of towers
- The Department must review applications to ensure that any proposed tower structure does not interfere with County public airways or the operation of airports
- Towers must meet or exceed all federal standards, including FCC and FAA standards or face removal at owner's expense
- Towers must meet all building codes and safety standards
- The Department must be notified of all transfers of ownership



Telecommunications Ordinance

Revision – Major Points

- Permitted zoning uses:
 - Co-location is required unless applicant demonstrates that that co-location is not possible
 - Towers are permitted uses in S-S, H-B, I-I, and I-II districts provided that towers must be located a minimum of 2 times the tower height from any residentially zoned property and all setback, screening, and buffer requirements are satisfied
 - Installation of antennas up to 20 feet in height on existing structures (other than a tower) that are 50 or more feet in height is a permitted use in S-S, H-B, I-I, and I-II

Telecommunications Ordinance

Revision – Major Points

- Permitted zoning uses that are subject to the Board of Commissioners' approval:
 - Co-location is required unless applicant demonstrates that that co-location is not possible
 - Towers are uses subject to the approval of the Board in AR-III and AR-IV districts provided that towers must be located a minimum of 2 times the tower height from any residentially zoned property and all setback, screening, and buffer requirements are satisfied
 - Towers on residentially-zoned property cannot exceed 100 feet in height

Telecommunications Ordinance

Revision – Major Points

- Uses that can be approved by the Department after an administrative review:
 - Antennas less than 20 feet in height installed on any alternative tower structure
 - Antennas less than 20 feet in height on an existing tower of any height

Telecommunications Ordinance

Revision – Major Points

- Applications for building permits for tower construction trigger public notice via signs and newspaper advertisement
- If an objection is raised to the permit application, then the Planning Commission determines the validity of the application
- The ordinance contains strict timing requirements for such appeals
- Appeals to the Planning Commission are also allowed for Department administrative denials of building permits

Telecommunications Ordinance

Revision – Major Points

- Tall Structure Permit (TSP) – Required in any zoning district when the proposed location, height, setback, or other aspect of a tower or antenna cannot comply with the minimum requirements in the ordinance
 - In granting a TSP, the Board may impose necessary conditions to minimize adverse effects
 - New towers on residentially-zoned property may not exceed **100 feet in height**, and all other new towers cannot exceed **195 feet in height**
 - Applicants must submit all listed applicable information from experts and engineers
 - County then sends the information to a radio-frequency engineer for review and recommendation which is then submitted to the Board and the Applicant for review
 - The Applicant is given the opportunity to withdraw its application
 - If no withdrawal, the Board holds an advertised public hearing on the TSP
 - Application fee consistent with law and calculated to reimburse County for services of processing TSP application



Telecommunications Ordinance

Revision – Major Points

- TSP permit timelines comply with the FCC's shot clock requirements
- Any denial of a request to place, construct, or modify a telecommunications facility must be in writing and supported by substantial evidence contained in a resolution signed by the Chairman and Board –
Complies with federal law
- The ordinance lists various legitimate factors that the Board may consider in acting upon a TSP

Telecommunications Ordinance

Revision – Small Wireless Facilities

- Applies to all equipment at a fixed location or locations that enable communication or surface wave communication between user equipment and a communications network and:
 - Each provider's antenna could fit within an enclosure of six cubic feet, and
 - All other associated wireless equipment is cumulatively no more than 28 cubic feet in volume
 - Does not include pole(s) or cables



Telecommunications Ordinance

Revision – Small Wireless Facilities

- A permit is required to co-locate a small wireless facility (SWF) in the public ROW or to install, modify, or replace a pole or decorative pole in the ROW
- State law exempts certain activities from the permit requirement
- Permits are sought via applications
- Pre-application meetings with Planning and Development are required 30 days or more prior to submitting an application
- Applications are required to include certain listed information
- Application fees are consistent with Georgia law maximums together with built-in increases (\$100/\$250/\$1000)
- Application review periods consistent with Georgia law



Telecommunications Ordinance

Revision – Small Wireless Facilities

- The ordinance contains a list of reasons why an SWF application may be denied. Examples:
 - Interferes with operation of traffic control equipment
 - Interferes with sight lines or clear zones for transportation or pedestrians
 - Fails to comply with federal law relating to disabled pedestrian access
 - Fails to comply with applicable codes or Georgia law

Telecommunications Ordinance

Revision – Small Wireless Facilities

- In residential zones the Department can propose alternate locations within 100 feet of the location set forth in the application
- Permit holders must submit to the County the maximum occupancy fee payment allowed by Georgia law on an annual basis, including built-in annual increases (\$100/\$200/\$40 attachment fee)
- The County charges permit fees as allowed by Georgia law
- The County may revoke permits if the wireless provider or its equipment is not in compliance with the ordinance or Georgia law relating to small wireless facilities
- Co-location on County poles is allowed and the provider will need to perform the “make-ready” work or pay the estimated cost thereof

Telecommunications Ordinance

Revision – Small Wireless Facilities

- The ordinance includes strong provisions relating to removal, relocation, replacement, and abandonment of SWFs
 - Upon removal of a SWF the ordinance requires the ROW to be restored, otherwise the County can recover its costs plus a penalty up to \$500
 - The County can require relocation to accommodate certain County projects
 - Providers must notify the County upon abandonment of SWFs

Telecommunications Ordinance

Revision – Small Wireless Facilities

- The ordinance also contains SWF standards:
 - All SWFs must have a permit, must comply with applicable codes, and comply with State law prior to installation
 - SWFs in historic districts and on decorative poles must also be permitted and comply with applicable codes
 - All SWFs are subject to standards for concealment designed to reduce visual impact, including pole integration, shrouds, height, and neat cabling



Telecommunications Ordinance Revision (Cell Towers and Facilities)

- Points of Discussion:
- Should we move forward with changes to the County's Cell Towers and Small Wireless Facilities ordinances?
- Should we begin discussions with the Cities about a possible Cell Tower Comprehensive Plan for the entire County, including the municipalities?

Questions and Further Discussion

