

AN ORDINANCE
ENTITLED 11-101

AN ORDINANCE AMENDING THE CITY OF ALBANY'S ZONING ORDINANCE SO AS TO ENACT A NEW ORDINANCE DEALING WITH WIRELESS TELECOMMUNICATIONS; REPEALING PRIOR ORDINANCES IN CONFLICT AND FOR OTHER PURPOSES.

WHEREAS, it is in the best interest of the City of Albany that the Zoning Ordinance be amended to enact a new ordinance dealing with wireless communications; and

WHEREAS, this ordinance will amend Title III, Article 1, Section 1.41 of the City's Zoning Ordinance so as to provide for a new section 1.41,

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Albany, Georgia and it is hereby ordained by authority of same:

SECTION 1. Said Section 1.41 as it presently exists is hereby deleted.

SECTION 2. Said Section 1.41 hereinafter shall read as follows:

CITY OF ALBANY, GEORGIA WIRELESS TELECOMMUNICATIONS ORDINANCE

I. Purpose and Legislative Intent.

The purpose of this Wireless Telecommunications Ordinance is to ensure that residents, public safety operations and businesses in The City of Albany, Georgia have reliable access to wireless telecommunications networks and state of the art communications services while also ensuring that this objective is achieved in a fashion that preserves the intrinsic aesthetic character of the community and is accomplished according to The City of Albany's zoning, planning, and design standards. The Telecommunications Act of 1996 preserved, with certain limitations, local government land use and zoning authority concerning the placement, construction, and modification of wireless telecommunications facilities.

To accomplish the above stated objectives and to ensure that the placement, construction or modification of wireless telecommunications facilities complies with all applicable Federal laws and is consistent with the City of Albany's land use policies, the City of Albany adopts this single, comprehensive, wireless telecommunications ordinance. No provisions of this Ordinance shall apply to the siting of Distributed Antenna Systems (DAS) or wireless facilities located within and intended to provide wireless coverage within a structure.

This Ordinance establishes parameters for the siting of Wireless Telecommunications Facilities. By enacting this Ordinance it is the City of Albany's intent to:

- (1) Ensure the City of Albany has sufficient wireless infrastructure to support its public safety communications throughout the City of Albany;
- (2) Ensure access to reliable wireless communications services throughout all areas of the City of Albany;
- (3) Encourage the use of Existing Structures for the collocation of Telecommunications Facilities;
- (4) Encourage the location of Support Structures, to the extent possible, in areas where any potential adverse impacts on the community will be minimized;
- (5) Facilitate the responsible deployment of Telecommunications Facilities in certain residential areas to ensure comprehensive wireless services across the City of Albany;
- (6) Minimize the potential adverse effects associated with the construction of Monopoles and Towers through the implementation of reasonable design, landscaping, and construction practices;
- (7) Ensure public health, safety, welfare, and convenience.

II. Definitions.

For the purposes of this Ordinance, the following definitions apply:

Abandon – Occurs when an owner of a Support Structure intends to permanently and completely cease all business activity associated therewith.

Accessory Equipment – Any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Administrative Approval – Zoning approval that the Director is authorized to grant after Administrative Review.

Administrative Review – Non-discretionary evaluation of an application by the Director. This process is not subject to a public hearing. The procedures for Administrative Review are established in Section IV E of this Ordinance.

Antenna – Any structure or device used to collect or radiate electromagnetic waves for the provision of services including, but not limited to, cellular, paging, personal communications

services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whips. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

Collocation – The act of siting Telecommunications Facilities on an Existing Structure without the need to construct a new support structure and without a Substantial Increase in the size of a Existing Structure.

Carrier on Wheels or Cell on Wheels (“COW”) – A portable self-contained Telecommunications Facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

Director – Shall mean the Director of the Department of Planning and Development Services, also called Director of Planning, or his or her designee.

Distributed Antenna Systems (“DAS”) – A network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

Existing Structure – Previously erected Support Structure or any other structure, including but not limited to, buildings and water tanks, to which Telecommunications Facilities can be attached.

Major Modifications – Improvements to existing Telecommunications Facilities or Support Structures that result in a Substantial Increase to the Existing Structure. Collocation of new Telecommunications Facilities to an existing Support Structure without Replacement of the structure shall not constitute a Major Modification.

Minor Modifications – Improvements to Existing Structures that result in some material change to the Facility or Support Structure but of a level, quality or intensity that is less than a Substantial Increase. A Minor Modification would include an antenna modification or the Replacement of the structure.

Monopole – A single, freestanding pole-type structure supporting one or more Antenna. For purposes of this Ordinance, a Monopole is not a Tower.

Ordinary Maintenance – Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a Support Structure’s foundation or of the Support Structure itself. Ordinary Maintenance includes replacing Antennas of a similar size, weight, shape and color and Accessory Equipment within an existing Telecommunications Facility and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing

Monopole or Tower upon which they are currently located. Ordinary Maintenance does not include Minor and Major Modifications.

Planning Commission – The City of Albany and Dougherty County Planning Commission, an appointed body. Also known as the Albany Dougherty Planning Commission.

Replacement – Constructing a new Support Structure of proportions and of equal height or such other height that would not constitute a Substantial Increase to a pre-existing Support Structure in order to support a Telecommunications Facility or to accommodate Collocation and removing the pre-existing Support Structure.

Stealth Telecommunications Facility – Any Telecommunications Facility that is integrated as an architectural feature of an Existing Structure or any new Support Structure designed so that the purpose of the Facility or Support Structure for providing wireless services is not readily apparent to a casual observer, and provided the Planning Director finds the facility meets the foregoing standard.

Substantial Increase – Occurs when the mounting of the proposed antenna on an Existing Structure would increase the existing height of the Existing Structure by more than 20 feet.

Support Structure(s) – A structure designed to support Telecommunications Facilities including, but not limited to, Monopoles, Towers, and other freestanding self-supporting structures.

Telecommunications Facility(ies) – Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Telecommunication Facility can consist of one or more Antennas and Accessory Equipment or one base station.

Tower – A lattice-type structure, guyed or freestanding, that supports one or more Antennas.

III. Approvals Required for Telecommunications Facilities and Support Structures.

(A) Administrative Review

(i) Collocations that do not constitute a Substantial Increase or increase the overall height of the tower to greater than 199 feet and Minor Modifications shall be permitted on any non-residential Existing Structure after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(ii) Stealth Telecommunications Facilities that are less than sixty (60) feet in height shall be permitted in the C-R District after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(iii) Stealth Telecommunications Facilities up to 150 feet shall be permitted in the C-2 and C-8 Districts after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(iv) New Support Structures up to 150 feet in height shall be permitted in the C-3 District after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(v) New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in the M-1, M-2, and AG Districts after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance.

(vi) The use of COWs shall be permitted in the C-R, C-2, C-3, C-8, M-1, M-2, and AG Districts after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance if the use is not otherwise exempt.

- (B) Exempt. Ordinary Maintenance of existing Telecommunications Facilities and Support Structures, as defined herein, shall be exempt from zoning and permitting requirements. In addition, the following facilities are not subject to the provisions of this Ordinance: (1) antennas used by residential households solely for broadcast radio and television reception; (2) satellite antennas used solely for residential or household purposes; (3) COWs placed for a period of not more than one hundred twenty (120) days at any location within the City of Albany after a declaration of an emergency or a disaster; and (4) television and AM/FM radio broadcast towers and associated facilities.

IV. Telecommunications Facilities and Support Structures Permitted by Administrative Approval.

(A) Telecommunications Facilities Located on Existing Structures

- (1) Telecommunications Facilities that do not constitute a Substantial Increase are permitted in all zoning districts when located on any non-residential Existing Structure subject to Administrative Approval in accordance with the requirements of this Ordinance.
- (2) Antennas and Accessory Equipment may exceed the maximum building height limitations up to twenty (20) feet within a zoning district.
- (3) Minor Modifications are permitted in all zoning districts subject to Administrative Approval in accordance with the requirements of this Ordinance.

(B) New Support Structures

- (1) New Support Structures up to 150 feet in height shall be permitted in the C-3 District in accordance with the requirements of this Ordinance.
- (2) New Support Structures up to one hundred ninety-nine (199) feet in height shall be permitted in the M-1, M-2, and AG Districts in accordance with the requirements of this Ordinance. The height of any proposed support structure shall not exceed the minimum height necessary to meet the coverage or capacity objectives of the Facility.
- (3) Stealth Telecommunications Facilities that are less than sixty (60) feet in height shall be permitted in the C-R District after Administrative Review and Administrative Approval provided that it meets the applicable Stealth Telecommunications Facility standards in accordance with this Ordinance.
- (4) Stealth Telecommunications Facilities that do not exceed one-hundred fifty (150) feet in height shall be permitted in the C-2 and C-8 District after Administrative Review and Administrative Approval provided that it meets the applicable Stealth Telecommunications Facility standards in accordance with this Ordinance.

(C) Stealth Telecommunications Facilities

- (1) Stealth Telecommunications Facilities shall be permitted in the C-2, C-8, and C-R Districts after Administrative Review and Administrative Approval in accordance with the requirements below.
 - (a) Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
 - (b) Existing Structures utilized to support the Antennas must be allowed within the underlying zone district. Such structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, and steeples.
 - (c) Setbacks for Stealth Facilities that utilize a new structure shall be set back from all property lines a distance equal to their height measured from the base of the structure to its highest point.
 - (d) The analysis of the Planning Director as to whether these standards have been met shall control.

(D) COW Facilities

- (1) The use of COWs shall be permitted in the C-R, C-2, C-3, C-8, M-1, M-2, and AG Districts after Administrative Review and Administrative

Approval in accordance with the standards set forth in this Ordinance if the use is not otherwise exempt.

- (2) COWs placed for a period of not more than one hundred twenty (120) days at any location within the City of Albany after a declaration of an emergency or a disaster are exempt from Administrative Review and Administrative Approval.

(E) General Standards, Design Requirements, and Miscellaneous Provisions

- (1) Unless otherwise specified herein, all Telecommunications Facilities and Support Structures permitted by Administrative Approval are subject to the applicable general standards and design requirements of Section VI and the provisions of Section VII.

(F) Administrative Review Process

- (1) All Administrative Review applications must contain the following:
 - (a) Administrative Review application form signed by applicant.
 - (b) Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue zoning application. Such submissions need not disclose financial lease terms.
 - (c) Site plans detailing proposed improvements which comply with Title II, Article 6: Site Plan Review Requirements of the Albany Dougherty Zoning Ordinance. Drawings must depict improvements related to the requirements listed in this Ordinance, including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.
 - (d) In the case of a new Support Structure:
 - (i) Statement documenting why collocation cannot meet the applicant's requirements. Such statement may include justifications, including why collocation is either not reasonably available or technologically feasible as necessary to document the reasons why collocation is not a viable option; and
 - (ii) The applicant shall provide a list of all the existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unavailable, or technologically or reasonably infeasible.

- (iii) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered together as one application requiring only a single application fee.

(2) Procedure

- (a) Within thirty (30) days of the receipt of an application for Administrative Review, the Director shall either: (1) inform the Applicant in writing of the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) deem the application complete. If the Director informs the Applicant of an incomplete application within thirty (30) days, the overall timeframe for review is suspended until such time that the Applicant provides the requested information.
- (b) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's unreasonable failure to complete the application within sixty (60) days after receipt of written notice shall constitute a withdrawal of the application without prejudice. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.
- (c) The Director must issue a written decision granting or denying the request within ninety (90) days of the submission of the initial application for collocation or within one hundred fifty (150) days of the submission of the initial application for a new support structure unless:
 - (i) The Director notified applicant that its application was incomplete within thirty (30) days of filing. If so, the remaining time from the applicable total review time is suspended until the Applicant provides the missing information; or
 - (ii) Extension of time is agreed to by the Applicant.

Failure to issue a written decision within the applicable time period shall constitute an approval of the application.

- (d) Should the Director deny the application, the Director shall provide written justification for the denial. The denial must be based on substantial evidence of inconsistencies between the application and this Ordinance.
- (e) Applicant may appeal any decision of the Director approving, approving with conditions, or denying an application or deeming

an application incomplete in accordance with Section IX of the Ordinance.

V. **Telecommunications Facilities and Support Structures General Standards and Design Requirements.**

(A) Design

- (1) Support Structures other than Stealth Telecommunications Facilities shall be subject to the following:
 - (a) Shall be designed to accommodate a minimum number of collocations based upon their height:
 - (i) Support structures sixty (60) to one hundred (100) feet shall be designed to support at least two (2) telecommunications providers;
 - (ii) Support structures from one hundred (100) to one hundred-fifty feet (150) shall be designed to support at least three (3) telecommunications providers;
 - (iii) Support structures greater than one hundred-fifty (150) feet in height shall be designed to support at least four (4) telecommunications carriers,
 - (b) The compound area surrounding the Support Structure must be of sufficient size to accommodate Accessory Equipment for the appropriate number of telecommunications providers in accordance with Section VI(A)(1)(a).
- (2) Stealth Telecommunications Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible.
- (3) Upon request of the Applicant, the Director may waive the requirement that new Support Structures accommodate the collocation of other service providers if it finds that collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.

(B) Setbacks

- (1) Property Lines. Unless otherwise stated herein, Support Structures shall be set back from all property lines a distance equal to their height measured from the base of the structure to its highest point. Support structures in the M-1, M-2, and AG Districts shall be set back a distance of at least fifty (50) feet measured from the base of the tower to any rear or side interior property line.

- (2) Residential Dwellings. Unless otherwise stated herein, Monopoles, Towers and other Support Structures shall be set back from all off-site residential dwellings a distance equal to the height of the structure. There shall be no setback requirement from dwellings located on the same parcel as the proposed structure. Existing or Replacement structures shall not be subject to a setback requirement.
- (3) Unless otherwise stated herein, all Accessory Equipment shall be set back from all property lines in accordance with the minimum setback requirements in the underlying zoning district. Accessory Equipment associated with an existing or Replacement utility pole shall not be subject to a setback requirement.
- (4) The Planning Commission shall have the authority to grant a variance to reduce the required setbacks upon submittal of a Variance Application, including the filing of appropriate fees. The Applicant must show a satisfactory need for the setback and shall submit such technical information or other justification as is necessary to document the need for the setback variance to the satisfaction of the Planning Commission. Such technical information shall include a letter stamped by a structural engineer, licensed by the State of Georgia, documenting that the proposed structure's fall zone is contained within the proposed setbacks.

(C) Height

- (1) All Support Structures shall be designed to be the minimum height needed to meet the service objectives of the applicant and allow for the required number of additional telecommunications providers.
- (2) In the C-R District, Stealth Telecommunications Facilities shall not exceed a height equal to sixty (60) feet from the base of the structure to the top of the highest point, including appurtenances. Any proposed Stealth Telecommunications Facility shall be designed to be the minimum height needed to meet the service objectives of the applicant and to accommodate the collocation of other telecommunications providers whenever economically and technically feasible.
- (3) In the C-2 and C-8 Districts, Stealth Telecommunications Facilities shall not exceed a height equal to one-hundred fifty (150) feet from the base of the structure to the top of the highest point, including appurtenances. Any proposed Stealth Telecommunications Facilities shall be designed to be the minimum height needed to meet the service objectives of the applicant and to accommodate the collocation of other telecommunications providers whenever economically and technically feasible.

- (4) In the C-3 District, new Support Structures shall not exceed a height equal to one-hundred fifty (150) feet in height from the base of the structure to the top of the highest point, including appurtenances. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant and to accommodate the collocation of other telecommunications providers whenever economically and technically feasible.
- (5) In the M-1, M-2, and AG Districts, new Support Structures shall not exceed a height equal to one-hundred ninety-nine (199) feet from the base of the structure to the top of the highest point, including appurtenances. Any proposed Support Structure shall be designed to be the minimum height needed to meet the service objectives of the applicant and to accommodate the collocation of other telecommunications providers whenever economically and technically feasible.
- (6) The Planning Commission shall have the authority to grant a variance to the height restrictions provided in Section IV (B) upon submittal of a Variance Application, including the filing of appropriate fees. The Applicant must show a satisfactory need for a greater height and shall submit such technical information or other justification as is necessary to document the need for the additional height to the satisfaction of the Planning Commission.

(D) Aesthetics

- (1) Lighting and Marking. Telecommunications Facilities or Support Structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).
- (2) Signage. Signs located at the Telecommunications Facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.
- (3) Landscaping. In all districts, the Director shall have the authority to impose reasonable landscaping requirements surrounding the Accessory Equipment. Required landscaping shall be consistent with surrounding vegetation and shall be maintained by the facility owner. The Director may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgment of the Director, landscaping is not appropriate or necessary.

- (E) Accessory Equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the

Telecommunication Facility or Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site.

The Accessory Equipment must conform to the setback standards of the applicable zone. In the situation of stacked equipment buildings, additional screening/landscaping measures may be required by the Director.

VI. Miscellaneous Provisions.

(A) Fencing

- (1) Ground mounted Accessory Equipment and Support Structures shall be secured and enclosed with a fence not less than six (6) feet in height as deemed appropriate by the Director.
- (2) The Director may waive the requirement of Subsection (1) above if it is deemed that a fence is not appropriate or needed at the proposed location.

(B) Abandonment and Removal.

- (1) Removal of abandoned facilities. Any antenna and/ or tower that is not operated for a period of twelve (12) consecutive months shall be considered abandoned, and the owner of such antenna and/ or tower shall remove same within thirty (30) days of receipt of notice from the Director notifying the owner of such abandonment. If there are two (2) or more users of a single tower, then this provision shall not become effective unless all users cease using the tower as identified herein.
- (2) Bond required. Prior to issuance of a Building Permit for a new Support Structure, the applicant shall provide a performance bond, or a letter of credit drawn on a Georgia Bank in the amount of Twenty Thousand dollars (\$20,000.00). The performance bond or letter of credit shall be submitted to the Director prior to issuance of the Building Permit and must be maintained for the entire time the Support Structure is in place. Such performance bond or letter of credit may be used by the City to remove the Support Structure as provided in Section VI (B)(1). Neither document may contain a provision for cancellation unless ninety (90) days prior to cancellation written notice is provided to the City. A new performance bond or letter of credit must be provided to the City within thirty (30) days of such cancellation. Failure to provide a new performance bond or letter of credit within thirty (30) days of cancellation may serve as a basis for revocation of permit, after notice to owner and user(s). The City may raise the amount of the removal bond/letter of credit and the increased amount will be required of all applications subsequent to such increase.

- (C) Multiple Uses on a Single Parcel or Lot. Telecommunications Facilities and Support Structures may be located on a parcel containing another principal use on the same site or may be the principal use itself, except that a joint use of a site is prohibited when the site includes the storage, distribution or sale of volatile, flammable, explosive or hazardous materials such as propane, gasoline, natural gas and dangerous chemicals.

VII. Telecommunications Facilities and Support Structures in Existence on the Date of Adoption of this Ordinance.

- (A) Telecommunications Facilities and Support Structures that were legally permitted on or before the date this Ordinance was enacted, but do not meet the requirements of this Ordinance shall be considered a non-conforming permitted and lawful use.
- (B) Non-conforming Support Structures
 - (1) Non-conforming Support Structure. Ordinary Maintenance may be performed on a non-conforming Support Structure or Telecommunications Facility.
 - (2) Collocations that do not constitute a Substantial Increase or increase the overall height of the tower to greater than 199 feet and Minor Modifications of Telecommunications Facilities on an existing non-conforming Support Structure shall not be construed as an expansion, enlargement or increase in intensity of a non-conforming structure and/or use and shall be permitted through the Administrative Approval process defined in Section IV.

VIII. Public Property.

- (A) Telecommunications Facilities and Support Structures located on property owned, leased or otherwise controlled by the City of Albany shall be exempt from the requirements of this ordinance, provided a license or lease authorizing such antenna or tower has been approved by the City of Albany.


IX. Appeals.

- (A) Appeals from any decision of the Director shall be made to the Planning Commission within thirty (30) days of the decision.
- (B) Appeals from any final decision of the Planning Commission shall be made to the Superior Court of Dougherty County or the United States District Court for the Middle District of Georgia within thirty (30) days of such final decision of the Planning Commission.

- (C) Appeals from any final decision of the City Commission shall be made to the Superior Court of Dougherty County or the United States District Court for the Middle District of Georgia within thirty (30) days of such final decision of the City Commission.

SECTION 3. This Ordinance shall become effective immediately upon adoption.

SECTION 4. All Ordinances, or parts of Ordinances, in conflict herewith are repealed.


MAYOR

ATTEST:


CITY CLERK

Adopted: *February 22, 2011*

Introduced By Commissioner: *Bob Langstebk, jr*
Date(s) read: *Feb. 22, 2011*