



REQUEST FOR COUNCIL ACTION City of Greenville, South Carolina

Agenda Item No.

111

TO: Honorable Mayor and Members of City Council
FROM: Nancy P. Whitworth, Interim City Manager

Ordinance/First Reading
 Ordinance/Second & Final Reading
 Resolution/First & Final Reading
 Information Only

AGENDA DATE REQUESTED: January 28, 2019

ORDINANCE/RESOLUTION CAPTION:

TO AMEND SECTION 19-4.3.2(G) OF CODE OF ORDINANCES OF THE CITY OF GREENVILLE PERTAINING TO WIRELESS COMMUNICATION FACILITIES (Z-27-2018)

SUMMARY BACKGROUND:

This Ordinance amends Section 19-4.3.2(G) of the Code of Ordinances pertaining to wireless communications facilities. This amendment is needed to comply with a recent Order issued by the Federal Communications Commission. In addition, the amendment would allow rooftop telecommunication antennas on buildings in the Central Business District provided they are not visible from the street—the current ordinance allows them on buildings that are 50 feet or taller as long as the antennas are not visible from the street.

IMPACT IF DENIED:

If denied, the Code of Ordinances will not be amended.

FINANCIAL IMPACT

None.

REQUIRED SIGNATURES

Department Director _____

OMB Director _____

City Attorney Michael S. Pitts

City Manager Nancy Whitworth

DocuSigned by:

Michael S. Pitts

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DocuSigned by:

Nancy Whitworth

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A N O R D I N A N C E

TO AMEND SECTION 19-4.3.2(G) OF THE CODE OF ORDINANCES OF THE CITY OF GREENVILLE PERTAINING TO WIRELESS COMMUNICATION FACILITIES (Z-27-2018)

WHEREAS, Section 19-4.3.2(G) of the Code of Ordinances of the City of Greenville (the “City Code”) contains use-specific standards for wireless communications facilities; and

WHEREAS, the Federal Communications Commission recently issued an Order (the “Order”) which goes into effect on January 14, 2019 and addresses local regulation of such facilities; and

WHEREAS, the City desires to amend Section 19-4.3.2(G) to comply with the Order as well as to provide additional guidance for rooftop antennas in the Central Business District as more fully set forth in Exhibit A attached hereto and incorporated herein; and

WHEREAS, the Planning Commission held a public hearing on the proposed amendment on December 20, 2018 and recommended approval:

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA, Section 19-4.3.2(G) of the Code of Ordinances of the City of Greenville pertaining to wireless communication facilities is hereby amended as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

DONE, RATIFIED AND PASSED THIS THE _____ DAY OF _____, 2019.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED:

CITY MANAGER

EXHIBIT A

Sec. 19-4.3. - Use-specific standards.

(G) *Wireless communications facility.*

- (1) *General requirements.* All wireless communications facilities shall comply with the following general requirements in addition to other applicable provisions of this subsection 19-4.3.2(G):
 - (a) *Abandonment and removal.* A wireless communications facility or tower that has not been operated for a period in excess of 12 consecutive months is abandoned and must be removed; provided the city must first provide written notice to the owner(s) in order to allow the owner(s) ten business days to rebut the assertion of abandonment. Any supporting structure other than a tower, and any property affected by placement of the wireless communications facility or modification of supporting structure must be restored to its condition prior to attachment of the wireless communications facility, except as the city may otherwise direct. The city shall enforce removal by means of existing regulatory authority, with costs of removal or restoration jointly chargeable to the owner of the wireless communications facility or the supporting structure.
 - (b) *Multiple uses on a single parcel or lot.* Wireless communications facilities may be located on a parcel containing another principal use on the same site or may be the principal use itself.
 - (c) *Required buffer yards.* Wireless communications facilities shall not be located within street buffer yards that are required by subsection 19-6.2.4, Street buffer yards, with the exception of approved stealth wireless communications facilities.
 - (d) *Right-of-way.* No wireless communications facility may be installed in the public right-of-way of the city unless:
 - (i) The applicant holds a valid franchise or other written consent from the city or is otherwise authorized by South Carolina law to occupy the right-of-way;
 - (ii) Each wireless communications facility location is permitted through an individual node site license or otherwise approved pursuant to this chapter; and
 - (iii) The other applicable provisions of this section 19-4.3.2(G) are satisfied along with all ordinances and regulations governing public rights-of-way management.
 - (e) *Lighting and signage.*
 - (i) *Lighting.* Wireless communications facilities shall not be lighted unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).
 - (ii) *Signage.* Except for signage that may be approved as a concealment element, signs located at or upon wireless communications facilities or installed by or on behalf of the entity that owns or uses the wireless communications 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.
 - (f) *Site usage.*
 - (i) Any buildings, cabinets or shelters associated with the wireless communications facility, shall be used only to house equipment and other supplies in support of the

operation of the wireless communications facility. Any equipment not used in direct support of such operation shall not be stored on the site.

- (ii) Where stealth facilities are not feasible, base station and accessory equipment shall be located, designed, and/or screened to blend with the existing natural, or built surroundings to reduce the visual impacts as much as technically feasible, and to be compatible with neighboring land uses and the character of the community.
 - (iii) Except as part of a stealth facility, no ground mounted base station or accessory equipment is permitted in a residential zone with the exception of such cabinets which do not exceed the dimensions of other utility-associated cabinets within the immediate residential vicinity, and which are shielded or placed in a manner consistent with such other cabinets.
 - (iv) The wireless communications facility shall not produce noise that would interfere with the peaceable enjoyment of adjoining properties.
 - (v) The equipment installed as part of any wireless communications facility shall be minimized, so that the wireless communications facility is as unobtrusive as technically feasible.
 - (vi) The elements of the wireless communications facility, and any support structure to which it is affixed must be consistent with the overall design and character of the neighborhood and locations in which it is placed, and with publically-available planned improvements to those neighborhoods. For facilities in the rights-of-way, the wireless communications facility, and any support structure to which it is to be affixed, must be consistent with the corridor in which it is placed, and publically-available planned corridor improvements.
- (g) *Exceptions.*
- (i) Notwithstanding any other provision of the City Code, an applicant may obtain approval of an application for placement of a wireless communications facility if applicant demonstrates that denial of the application would constitute an effective prohibition within the meaning of 47 U.S.C. Section 332(c)(7) or otherwise violates applicable law such that the city is required to issue a permit for placement. Claims must be supported by sworn declarations, and engineering claims by licensed engineers authorized to practice in the State of South Carolina and qualified to attest to facts asserted.
 - (ii) Approval is not required under this section 19.4.3.2(G) for placement of ~~carriers~~ cells on wheels for a temporary period as defined under FCC regulations; for placement on a portion of strand between two utility poles of wireless communications facilities that do not cumulatively exceed one cubic foot in volume; or for ordinary maintenance or replacement of equipment which does not increase the physical dimensions of a wireless communications facility or supporting structure, or defeat any applicable concealment element. Other modifications of a wireless communications facility, or of a support structure to accommodate a modification to a wireless communications facility, do require approval; provided, however, the city engineer, with the approval of the administrator, may exempt from approval immaterial increases in the physical dimensions of a wireless communications facility or supporting structure, provided the applicable concealment elements are not defeated.

- (h) *Projects.* When an application for a wireless communications facility is part of a network of planned facilities, an applicant may submit, or may be required by the city to submit, plans for the proposed network as a whole, and the city may evaluate the planned facilities considering the impact of the project as a whole, in order to ensure that the impact of the project is minimized.
 - (i) *Other obligations.* The application for, and the placement of wireless communications facilities shall be subject to this chapter and regulations issued to implement this chapter. This section 19-4.3.2 shall not be interpreted to waive any obligations that may apply under other provisions of applicable law, including but not limited to building and electrical codes, noise codes, and codes governing use of the rights-of-way.
 - (j) *Design guidelines—generally.* In order to provide guidance to applicants concerning the design of wireless communications facilities which comply with this chapter, the city engineer shall maintain and publish on the city’s website a catalogue of site-specific designs that have been approved by the city, it being recognized that the same design as those set forth in in the catalogue should in most instances be deemed appropriate for a comparable location. A person who wishes to install a wireless communications facility may ask the city to review the design for installation in particular locations, and to add the design to the catalogue.
- (2) *Towers, monopoles and colocation.*
- (a) *Types permitted.* New towers must be either monopoles, or stealth facilities, and stealth facilities are preferred.
 - (b) *Availability of other suitable locations.* New monopoles other than stealth facilities shall not be permitted unless the applicant makes the showing required by section 19-4.3.2(G)(1)(g)(i). Except in residential zoning districts, stealth facilities may be permitted if applicant demonstrates that no existing tower would permit the provision of personal wireless services to the area which the applicant proposes to serve, while satisfying the other provisions of this section 19-4.3.2(G).
 - (c) *Design.* Towers shall be subject to the following:
 - (i) Except where inconsistent with other provisions of the City Code, towers shall be engineered and constructed to accommodate a minimum number of collocations based upon their height:
 - (1) Towers 60 to 100 feet shall support at least two communications providers;
 - (2) Towers greater than 100 feet but less than 150 feet shall support at least three communications providers; and
 - (3) Towers greater than 150 feet in height shall support at least four communications carriers.
 - (ii) Except where inconsistent with other provisions of this Code, the equipment compound area surrounding the tower must be of sufficient size to accommodate base station and accessory equipment for the appropriate number of communications providers in accordance with subsection 19-4.3.2(G)(2)(c)(i).
 - (iii) Towers shall be subject to terms and conditions that minimize the impact upon private and public property (including, where applicable, the public right-of-way), ensure consistency with the surrounding area, and employ concealment elements appropriate to the location proposed.

- (iv) Towers are not permitted within the public right-of-way or in utility easements, except in accordance with the following requirements:
 - (1) The easement area or public rights-of-way shall be a minimum of 100 feet in width;
 - (2) The easement area or public rights-of-way shall contain overhead utility transmission and/or distribution structures that are 80 feet or greater in height;
 - (3) The height of a tower or the highest point on the base station affixed to it may not exceed by more than 30 feet the height of existing utility support structures; and
 - (4) The tower and all other elements of the wireless communications facility associated with it, shall be set back a minimum of 15 feet from all boundaries of the easement or right-of-way.
 - (d) *Setbacks.* Unless otherwise stated herein, towers shall be set back from all property lines a distance equal to its engineered fall zone.
 - (i) *Residential uses.* Where allowed in residential districts, towers shall be located at least 30 feet from the property line of a lot containing a residential use and, further, setback from any structure located thereon at a distance equal to its engineered fall zone.
 - (e) *Height.* When allowed in residential districts, the highest point on the tower or base station affixed to it shall not exceed a height equal to 60 feet from ground level.
 - (f) *Fencing.* Except for towers in the rights-of-way, or where the requirement would defeat concealment elements, a tower and all other elements of the wireless communications facility associated with it shall be secured and enclosed with a fence not less than six (6) feet in height. Fencing shall be screened in accordance with subsection 19-6.2.5. Barbwire is prohibited.
- (3) *Roof-mounted communication towers and base stations.*
- (a) *Location.* Except in the C-4 district, A a proposed roof-mounted communication tower or base station may be permitted as an accessory or secondary use only on buildings that exceed 50 feet in height in accordance with subsection 19-5.2.9, Building height.
 - (b) *Height.* In the C-4 district, a roof-mounted communication tower or base station shall not exceed a height to which it is visible from the adjacent public rights-of-way. For all other districts except S-1 and I-1, such roof-mounted facilities shall not exceed the height of 40 feet, and the height may be further limited as appropriate to issuance of the conditional use permit in light of the proposed location.
 - (c) *Equipment.* All elements of the wireless communications facility shall be of a color that will minimize their visual impact unless concealed by a parapet, located on the rear elevation, or configured to have a minimal visual impact as seen from the street or existing residential development.
- (4) *Building, utility pole and light pole mounted wireless communications facilities.*
- (a) *Stealth facilities permitted.* Base stations that are stealth facilities may be placed inside any existing building or other existing structures (other than off-premises signs) provided that the placement does not alter the physical dimensions of the structure. Portions of base stations that are stealth facilities may be attached to the side of any building or other

existing structures, other than a single-family residential units and off-premises signs. However, installation is not permitted where it would adversely affect a historically significant or environmentally sensitive structure or area, and is only permitted where other elements of the wireless communications facility can be appropriately concealed by placing those elements on the rooftop, within the building, underground, or by some other means that conceals them from view. Antennas must be located at least 20 feet above ground level, and may not extend into any rights-of-way except as part of approved signage.

(b) *Placement on existing utility poles.*

- (i) Antennas associated with a wireless communications facility may be placed on an existing utility pole, colored to match or complement the color of the utility pole, and mounted in as unobtrusive a manner as technically feasible and incorporate concealment elements. Except where the utility prohibits it, the antenna should be placed in a shroud at the top of the pole, with the shroud of the same circumference as the utility pole at the point of attachment. Except for such designs as may be included in the design catalogue, pole-top antennas (including connectors) should not extend more than six (6) feet above the existing utility pole. Where the antenna cannot be placed at the top of the pole, it may be placed in the communications space on a cross-arm parallel to and consistent with the placement of cross-arms on utility poles in the same corridor and with antennas and cross-arms sized and mounted to minimize their obtrusiveness. The volume of the antennas on any utility pole should not exceed three (3) cubic feet in size.
- (ii) Accessory equipment may not be attached to the pole, or ground-mounted absent a showing that the equipment is required, and no other placement is feasible, or less intrusive.
- (iii) Other base station and permitted, pole-mounted accessory equipment shall be mounted in as unobtrusive a manner as technically feasible and incorporate concealment elements. Equipment should be flush-mounted to the pole, with all cabling neat and concealed. In no event shall any portion of the wireless communications facility be ground-mounted without the city's express approval, which approval may be conditioned on placing concealing the facilities in a manner appropriate to the location. Unless base station equipment is within the utility pole, in order to utilize concealment elements, the equipment must be designed so that it is not readily apparent from all angles of view, so that it is mounted at a height such that it is out of pedestrian sight lines, and so that the impact on adjoining properties is minimized.
- (iv) Neither the wireless communications facility, or the support structure shall interfere with pedestrian or vehicular movement or storage.

(c) *Mounted on light poles.*

- (i) This section applies to light poles situated on private property that are not owned or controlled by the city. Other light poles require a license from the city, which license will specify the design permitted for particular light poles.
- (ii) Wireless communications facilities may be placed on existing light poles subject to the same conditions that apply to existing utility poles provided that:

- (1) The design and placement of all elements of the wireless communications facility is consistent with the design of the light pole to which it will be attached and;
 - (2) The design and placement of all elements of the wireless communications facility will not adversely affect the overall design of the area within which the Light Pole is located.
 - (3) The city must know who will own and control the light pole, and who is responsible for emergency responses and ensuring the safety of the light pole.
- (d) *Replacement.* For purposes of this section, if an existing utility or light pole must be replaced it may be replaced provided that it meets other applicable requirements of this section and:
- (i) In the case of the utility pole, the overall height of the pole, measured from ground level to the highest point on the wireless communications facility, does not increase by more than six feet, and the diameter measured at six feet from the butt, does not increase by more than two inches; and
 - (ii) In the case of the light pole, its overall height, measured from ground level to the highest point on the wireless communications facility, does not increase by more than six feet, and the design, height and proportions remain consistent with design of the light pole that is being replaced.
- (5) *Special rules for placement within the public rights-of-way.* In addition to the above requirements, the following rules apply to wireless communications facilities located within the public rights-of-way.
- (a) Applications for placement of wireless communications facilities must be submitted to the division of public works, to the attention of the city engineer and such applications may be decided administratively. If the city engineer determines that the installation complies with the requirements of any required franchise, and this ordinance, and has been appropriately designed for the existing and publically-available planned design of the corridor in which it is placed; or where applicant shows that denial would result in an effective prohibition within the meaning of 47 U.S.C. § 332(c)(7), or otherwise violates applicable law such that the City is required to issue a permit for placement, the application may be preliminarily approved, subject to appeal, and otherwise preliminarily denied or approved subject to conditions. Preliminary decisions become final unless appealed to the zoning board of appeals.
 - (b) Preliminary decisions adverse to the applicant may be appealed to the zoning board of appeals within five business days of a preliminary decision, and in any case where there is a claim that denial will result in an effective prohibition within the meaning of 47 U.S.C. § 332(c)(7), or otherwise violates applicable law such that the City is required to issue a permit for placement, the zoning board of appeals shall hear and determine the matter, applying standards and following procedures that would be followed in issuing a special exception.
 - (c) Approval shall be by way of an individual, site-specific node site license jointly issued by the administrator and the city engineer (or their designees). Denials shall be in writing, based upon substantial evidence in a written record.

- (d) With respect to any location within the central business district or a preservation overlay district with residential character, wireless communications facilities shall be of a design approved by the design review board.
 - (e) Wireless communications facilities shall not be located above-ground in any location where the lines of the incumbent local exchange carrier are underground, unless co-located on an existing structure or an existing structure is removed and replaced with a new structure which is substantially similar in size and appearance to the structure that is being replaced.
 - (f) Placement of wireless communications facilities in the public rights-of-way shall not result in an increase in the number of support structures located in the public rights-of-way as of the date of enactment of this ordinance with the exception of those towers permitted under section 19-4.3.2(G)(2) or new utility poles. Provided, in the case of the latter, there must be existing utility poles in the same right-of-way in the immediate vicinity and the applicant must demonstrate that co-location upon said existing utility poles is not feasible or would require a modification such that an additional utility pole would be less intrusive or safer. If an additional utility pole is permitted under this provision, it shall be similar in size and design to existing poles in the same right-of-way and in the immediate vicinity, and spaced appropriately to minimize intrusiveness and to avoid creating undue hazard to persons or property; and
 - (g) Where above ground facilities are permitted under this section 19-4.3.2(G)(4)(e) and/or (f) and the above-ground facilities of the incumbent local exchange carrier are subsequently placed underground, all wireless communications facilities in the same right-of-way, in the same area shall be placed underground at the sole expense of the owner.
 - (h) Placement of wireless communications facilities or support structures for wireless communications facilities, or any modification thereto, is not permitted where the city engineer determines that, due to insufficient capacity, safety, reliability, or engineering concerns, existing infrastructure is not adequate to support the same; or the placements or modifications will unduly interfere with other uses of the rights-of-way, or require construction that will be unduly disruptive.
- (6) *Application and procedure.* The administrator, in consultation with the city engineer and planning and development division shall develop forms requiring such information and documentation as they deem prudent and necessary for the city's review of eligible facilities requests and with respect to all other applications, the issuance of the approvals contemplated hereunder. The administrator, in consultation with the city engineer and planning and development division may develop regulations governing the number of applications that may be submitted by or on behalf of any person at any time, and may require a person, to identify all facilities that it intends to construct within the city, and (in the case of a person who will be leasing facilities to another) all facilities its lessees intend to install within the city. All applications shall be processed in accordance with the following time frames:
- (a) Upon receipt of the application, the administrator or his/her designee shall review such application to determine whether the application is complete, shall notify the applicant that the application is incomplete within 30 days of receipt or such shorter period as may be required in order to toll or reset the time for review under applicable FCC regulations. An application is incomplete if it omits or withholds any required information, or fails to provide information in sufficient detail to determine whether the application is eligible for administrative review, or to determine whether the work will be performed in

accordance with, and will result in a wireless communications facility that complies with applicable law. If the applicant fails to respond to the notice of incompleteness within a time specified by the administrator, the application shall be denied. If applicant responds, but the application remains incomplete, the administrator shall promptly notify the applicant that the application remains incomplete, within the times specified by applicable law.

- (b) Final action approving or denying an application shall be taken within the following periods, unless applicant agrees to a different schedule, or applicable law requires a different schedule:
- (i) In the case of an application to place a small wireless facility (as that term is defined by FCC regulations) using an existing structure, sixty (60) days from receipt of the application, provided that the time period may be reset upon initial notification of an incomplete application, and restart upon resubmission, subject to further tolling if the application remains incomplete;
 - (ii) Review of an application to place a small wireless facility (as that term is defined by FCC regulations), using a new structure, ninety (90) days from receipt of the application, provided that the time period may be reset upon initial notification of an incomplete application, and restart upon resubmission, subject to further tolling if the application remains incomplete;
 - (iii) Except for applications for small wireless facilities (as that term is defined by FCC regulations) ~~in~~ in the case of an application that does not involve modification of, or collocation upon an existing wireless communications facility, 150 days of receipt of the application, subject to tolling provided the time period is tolled after notification of an incomplete application until the date when the applicant submits all the documents and information identified in the notice of incompleteness; such time as a complete application is on file with the city;
 - (iv) If the application is an eligible facilities request, the administrator shall approve the application within 60 days of receipt of the application, subject to tolling after notification of an incomplete application until the date when the applicant submits all the documents and information identified in the notice of incompleteness. provided the time period is tolled after notification of an incomplete application until such time as a complete application is on file with the city. Any approval shall be operative, and any permit issued pursuant to this subsection shall remain in effect only so long as Federal law, 47 U.S.C. § 1455, and implementing Federal Communications Commission regulations, 47 C.F.R. §1.40001 regulations require approval of an eligible facilities request as defined herein. By approval, the city solely intends to comply with a requirement of Federal law and not to grant any property rights or interests except as compelled by Federal law;
 - (v) In the case of any other application, 90 days, from receipt of the application, subject to tolling after notification of an incomplete application until the date when the applicant submits all the documents and information identified in the notice of incompleteness. provided the time period is tolled after notification of an incomplete application until such time as a complete application is on file with the city.

(7) *Miscellaneous.*

- (a) *Severability*. Should any section or provision of this ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.
- (b) *Conflict with other Laws*. Whenever the regulations of this ordinance conflict with the requirements of another South Carolina or Federal Statute or the City Code of Ordinances, the more restrictive standard shall govern.
- (c) *No additional cost to the city*. Whenever this ordinance specifies co-location, the replacement of an existing structure, or any other action (besides governmental approvals), all such action shall be taken at the sole expense of the applicant.
- (d) *References to other laws*. All references to state or federal laws and regulations refers to those laws and regulations as they may be amended from time to time.