

ARTICLE 11.5

STANDARDS FOR TELECOMMUNICATIONS ANTENNAE AND TOWERS

SECTION 1151. PURPOSES. This ordinance is designed and intended to balance the interests of the residents of the City of Duluth, telecommunications providers, and telecommunications customers in the siting of telecommunications facilities within the City of Duluth so as to protect the health, safety and integrity of residential neighborhoods and foster, through appropriate zoning and land use controls, a competitive environment for telecommunications carriers that does not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting the provision of personal wireless services, and so as to promote the City of Duluth as a proactive city in the availability of wireless telecommunications service. To that end, this ordinance shall:

- A. Provide for the appropriate location and development of telecommunications facilities to serve the residents and businesses of the City of Duluth;
- B. Protect the City of Duluth's built and natural environment by promoting compatible design standards for telecommunications facilities;
- C. Minimize adverse visual impacts of telecommunications facilities through careful design, siting, landscape screening and innovative camouflaging techniques;
- D. Avoid potential damage to adjacent properties from tower or antennae failure through engineering and careful siting of telecommunications tower structures and antennae;
- E. Maximize use of any new and existing telecommunications towers so as to minimize the need to construct new towers and minimize the total number of towers throughout the City;
- F. Maximize and encourage use of alternative telecommunication tower structures as a primary option rather than construction of additional single-use towers; and
- G. Encourage and promote the location of new telecommunications facilities in areas which are not zoned for residential use.

SECTION 1152. DEFINITIONS. As used in this ordinance, terms shall have the meanings indicated in Section 301 of the City of Duluth Zoning Ordinance.

SECTION 1153. EXCLUSIONS. The following shall be exempt from this ordinance:

- A. Any tower and antenna under seventy (70) feet in total height and owned and operated by an amateur radio operator licensed by the Federal Communications Commission;

- B. Any device for over-the-air reception of television broadcast signals, multi-channel multi-point distribution service or direct broadcast satellite service; or
- C. Any telecommunications facilities located on property owned, leased or otherwise controlled by the City of Duluth provided a license or lease authorizing telecommunications facility has been approved by the governing body.
- D. Any monopole tower and antenna up to seventy (70) feet in total height except as set forth in Section 1154,D. of this Ordinance.
- E. Any antenna located on any existing structure. (i.e. existing towers, watertanks, buildings, utility poles, street lights, etc.
- F. Any antenna located on a new or existing utility pole to include poles used for lighting for City owned recreation facilities (i.e. ball fields, tennis courts, etc.) or on new structures properly permitted (i.e. bell towers, steeples, clock towers, street lights, etc.)
- G. Any monopole tower and antenna one hundred (100) feet or less located in an electrical substation.
- H. Any telecommunications facilities operative on the effective date of this ordinance.

SECTION 1154. PLACEMENT OF TELECOMMUNICATIONS FACILITIES BY ZONING DISTRICT

- A. In Light Industrial (M-1) and Heavy Industrial (M-2) zoning districts telecommunications facilities shall be allowed as a use by right. Telecommunications towers are permitted as a use by right up to a height of 120 feet following design review and approval by the Director. Telecommunications towers greater than 120 feet in height shall require a Special Use Permit. An additional 20 feet may be allowed by right for towers, which provide proof of three (3) or more companies locating on the same tower.
- B. In Neighborhood Business (C-1), General Business (C-2), Highway Commercial (HC), Planned Commercial Development (PCD) zoning districts antennas shall be allowed as a use by right on existing structures. New towers and antennas greater than seventy (70) feet in height shall be allowed if permitted by a Special Use Permit approved by the City Council following design review by the Director. Monopole towers up to a height of seventy (70) feet shall be permitted.
- C. In Planned Office Development (POD), Mixed Planned Unit Development (PUD), Office and Institutional (O-I) and Residential-Agricultural (RA-200) zoning districts, telecommunications facilities greater than fifty (50) feet shall be allowed if permitted by a Special Use Permit approved by the City Council following design review by the Director. Telecommunications towers fifty (50) feet or less are permitted.
- D. Except as set forth in this section or listed as an "exclusion" in Section 1153, A.,B,C,E,F,G of this Ordinance, telecommunication facilities shall not be

permitted in Single Family Residential (R-100, R-75, CPD-R, PRD, PUD), Multi Family Residential (RM), or Manufactured Housing (MH) zoning districts . Telecommunications facilities shall be allowed only if the applicant provides evidence that such placement is a technological necessity in order for the applicant to be in compliance with federal law; upon such evidence, such use shall be allowed if approved with a Special Use Permit by the City Council following design review by the Director.

- E. Telecommunications facilities outside the guidelines listed above may only be built upon approval of a Special Use Permit except for variances to the Zoning Ordinance setbacks for a specific zoning district which shall be presented to the Zoning Board of Appeals unless the request is part of a Special Use Permit application which is presented to the City Council.

SECTION 1155. PREFERRED LOCATION SITES

- A. Publicly used structures: Publicly used structures are preferred locations throughout the city because they appear in virtually all neighborhoods, are dispersed throughout the city, and due to their institutional or infrastructure uses are generally similar in appearance to or readily adaptable for telecommunications facilities. Therefore, telecommunications facilities should be less noticeable when placed on publicly used structures than when placed on commercial or residential structures. Publicly used structures include facilities such as police or fire stations, libraries, community centers, civic centers, courthouses, utility structures, water towers, elevated roadways, bridges, flag poles, schools, hospitals, clock or bell towers, light poles and churches.
- B. Co-Location Sites: Any existing site on which a legal wireless telecommunications facility is currently located shall be a Preferred Location Site regardless of the underlying zoning designation of the site, provided, however, that locations which meet this criteria shall be subject to the design and siting components of this ordinance and co-location sites shall not become an “antenna farm” or otherwise be deemed by the Director or the governing authority to be visually obtrusive.
- C. Industrial and Commercial Structures: Wholly industrial and commercial structures such as warehouses, factories, retail outlets, supermarkets, banks, garages, or service stations shall be Preferred Locations particularly where existing visual obstructions or clutter on the roof or along a roof line can and will be removed as part of the installation of the telecommunications system.
- D. Mixed Use Buildings in Planned Development Districts: Mixed use buildings (housing above commercial or other non-residential space) are also Preferred Location sites.

SECTION 1156. REQUIREMENTS FOR TELECOMMUNICATIONS FACILITIES.

- A. **General Requirements for All Telecommunications Facilities:** The requirements set forth in this Section shall govern the location and construction of all telecommunications facilities governed by this ordinance.
1. **Building Codes and Safety Standards:** To ensure the structural integrity of telecommunications facilities, the owner of a telecommunications facility shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for such telecommunications facilities that are published by the FCC as amended from time to time. Owners of telecommunications facilities shall conduct periodic inspections of such facilities at least once every three years to ensure structural integrity. Inspections shall be conducted by a structural engineer licensed to practice in Georgia. The results of such inspection shall be provided to the Director.
 2. **Regulatory Compliance:** All telecommunications facilities must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate communications towers and antennae. If such standards and regulations are changed then the owners of the telecommunications facilities governed by this ordinance shall bring such communications towers and antennae into compliance with such revised standards and regulations within the date established by the agency promulgating the standards or regulations.
 3. **Security:** All telecommunications facilities shall be enclosed by decay-resistant security fencing not less than six (6) feet in height and shall be equipped with an appropriate anti-climbing device. This requirement may be waived by the Planning Director if it is deemed that this would produce negative visual clutter or obstruct a view corridor.
 4. **Lighting:** No illumination is permitted on telecommunications facilities unless part of a approved public lighting program or required by the FCC, FAA or other state or federal agency of competent jurisdiction in which case the Director may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding uses and views.
 5. **Advertising:** No advertising is permitted on telecommunications facilities.
 6. **Visual Impact:**
 - a. Telecommunications facilities shall, subject to applicable standards of the FAA or other federal or state agencies, be maintained with a galvanized metal finish, painted a neutral color, or painted and/or textured to match the existing structure so as to reduce visual obtrusiveness. Telecommunications facilities located in residentially zoned areas shall be painted in a neutral color or textured to match the existing environment to minimize visual obtrusiveness. If federal or state regulations require, telecommunication facilities shall maintain a galvanized steel finish or other required finish.

- b. If an antenna is installed on a structure other than a tower and is generally visible to the public, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible. Roof mounted antennas shall be made visually unobtrusive by screening to match existing air conditioning units, stairs, elevator towers, or other background.
- c. Antennas mounted on architecturally significant structures or significant architectural details of the building shall be covered by appropriate casings, which are manufactured to match existing architectural features found on the building.
- d. Where feasible, antennas can be placed directly above, below or incorporated with vertical design elements of a building to help in camouflaging.
- e. Towers or roof mounted antennas shall not be placed in direct line with significant view corridors, as designated by the City of Duluth or by any state or federal law or agency. For purposes of this ordinance a significant view corridor shall be defined as an area to be kept free of obstructions or structures which interfere with the view of any scenic area, or historic building or area. A view corridor shall be established by ordinance of the City of Duluth, by zoning restrictions adopted in accordance with the ordinances of the City of Duluth, or by any state or federal law or agency in accordance with provisions of federal laws or duly adopted regulations.
- f. Any equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground. Equipment shelters shall be screened from public view and may use landscaping or materials and colors consistent with the surrounding structures. The shelter or cabinet must be regularly maintained.

7. Landscaping:

- a. Landscaping shall be used to effectively screen the view of the tower compound from adjacent public ways, public property and residential property.
- b. Native vegetation on the site shall be preserved to the greatest practical extent. The applicant shall provide a site plan showing existing significant vegetation to be removed, and vegetation to be replanted to replace that lost.
- c. The Director may waive or modify the landscaping requirement where lesser requirements are desirable for adequate visibility for security purposes or for continued operation of existing bona fide agricultural or forest uses such as farms, nurseries and tree farms. In certain locations where the visual impact of the tower would be minimal, such as remote agricultural or rural locations or developed heavy industrial areas, the landscaping requirement may be modified or waived by the Director.

8. Maintenance Impacts. Equipment at a transmission facility shall be automated to the greatest extent possible to reduce traffic and congestion. Where the site abuts or has access to a collector and local street, access for maintenance vehicles shall be exclusively by means of the collector street. Access drives and maintenance vehicle parking shall be paved unless the requirement is waived by the Director.

9. Principal, Accessory and Joint Uses:

- a. Accessory structures used in direct support of a tower shall be allowed but not be used for offices, vehicle storage or other outdoor storage. Mobile or immobile equipment not used in direct support of a tower facility shall not be stored or parked on the site of the tower.
- b. Towers may be located on sites containing another principal use in the same build able area. Joint use of a site is prohibited when a proposed or existing principal use includes the storage, distribution or sale of volatile, flammable, explosive or hazardous materials such as propane, gasoline, natural gas and dangerous chemicals.

10. Lot Size and Setbacks:

- a. The site shall be of a size and shape sufficient to provide an adequate setback from the base of the tower to any property line abutting a residential district, public property, or public street. Such setback shall be sufficient to:
 - (1) Provide for an adequate vegetative, topographic or other buffer as required in Section 1156 (A)(7);
 - (2) Preserve the privacy of surrounding residential property; and

(3) Protect adjoining property from the potential impact of tower failure by being large enough to accommodate such failure on the site, based on the engineer's analysis required in Section 1157 (B)(1)(d.)(iv.).

11. The proposed project must not disrupt the overall community character. For purposes of this ordinance, the term overall community character shall be determined by applying the criteria set forth in Section 1902 of Article 19 of the Zoning Ordinance of the City of Duluth, Georgia.

B. Additional Requirements for Towers:

1. Site location and development shall preserve the preexisting character of the surrounding buildings and land uses and the zone district as much as possible. Wireless communication towers shall be integrated through location and design to blend in with existing characteristics of the site to the extent practical (i.e. camouflaging through integration with structures or appearance such as artificial trees, etc.).
2. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.
3. At a tower site the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and built environment. (i.e. artificial tree appearance, steeples, decorative fencing, etc.)
4. Towers greater than 70 feet in height shall not be located any closer than 1500 feet from an existing tower unless technologically required or visually preferable as determined by the ZBA through a variance request.
5. When a tower is adjacent to a residential use, it must be set back from the nearest residential lot line a distance at least equal to its total height.
6. Towers shall not be sited where they will create visual clutter or negatively affect specific view corridors as designated by the City of Duluth or any state or federal law or agency.
7. Placement of more than one tower on a lot shall be permitted, provided requirement number 4 above is met along with all setback, design and landscape requirements as to each tower. Structures may be located as close to each other as technically feasible, provided tower failure characteristics of the towers on the site will not lead to multiple failures in the event that one fails.

SECTION 1157. APPLICATION PROCEDURES.

A. Special Use Permits:

1. A request for a Special Use Permit shall be initiated by application to the Director and handled in accordance with the Special Use Permit provision of Article 19 of the City of Duluth Zoning Ordinance. The applicant may obtain a Special Use Permit pursuant to the City of Duluth Zoning Ordinance provided that all of the requirements of Section 1156 have been satisfied and further, that the benefits of and need for the proposed tower are greater than any possible depreciating effects and damage to the neighboring properties.
2. In granting a special use permit, the City Council may impose additional zoning conditions to the extent determined necessary to buffer or otherwise minimize adverse effects of the proposed tower or antenna on surrounding properties.

B. General Application Requirements for All Building and Special Use Permits.

Application for a building permit or special use permit for any telecommunications facility shall be made to the Director. An application will not be considered until it is complete. The following information shall be submitted when applying for any Building Permit, Special Use Permit or other permit or variance included in this ordinance:

1. Basic Information:

- a. Site plan or plans to scale specifying the location of telecommunications facilities, transmission building and/or other accessory uses, access, parking, fences, landscaped areas; and adjacent land uses.
- b. Landscape plan to scale indicating size, spacing and type of plantings required in Section 1156 (7)(A).
- c. An Impact Statement fully describing the effects that the proposed telecommunications facility will have on the environment and surrounding area including the impacts on adjacent residential structures and districts, impacts on structures and sites of historic significance and impacts on streetscapes and significant view corridors. The Impact Statement shall include a description of anticipated maintenance needs for the telecommunications facility, including frequency of service, personnel needs, equipment needs, and traffic noise or safety impacts of such maintenance.
- d. Report from a professional structural engineer licensed in the State of Georgia, documenting the following:
 - i. Telecommunications facility height and design, including technical, engineering, economic, and other pertinent factors governing selection of the proposed design;

- ii. Total anticipated capacity of the telecommunications facility, including number and types of antennae which can be accommodated;
 - iii. Evidence of structural integrity of the tower structure (i.e. Engineers statement that structure is built to meet or exceed Standard Building Code); and
 - iv. Structural failure characteristics of the telecommunications tower(s) over seventy (70) feet and demonstration that site and setbacks are of adequate size to contain debris.
 - v. Setbacks for telecommunication tower(s) seventy (70) feet and less shall not be closer to a residential structure than the height of the tower or closer to a residential property line than forty (40) feet.
- e. A definition of the area of service to be served by the antenna or tower and whether such antenna or tower is needed for coverage or capacity.
 - f. The identity of a community liaison officer to resolve issues of concern to neighbors and residents relating to the construction and operation of the facility. Include name, address, telephone number, facsimile number and electronic mail address, if applicable.
 - g. The existing towers and tall structures located within the geographic service area should be identified on a map along with written justification at to the need for a new tower in place of an existing structure.
2. A map indicating all existing tower and antennae sites located within the City and within two (2) miles of the City boundaries.
 3. The applicant must provide any other information which may be requested by the Director, City Council, or ZBA to fully evaluate and review the application and the potential impact of a proposed telecommunications facility.

C. Grant or Denial of Permit:

1. The Director shall review the completed application for a Building Permit or Special Use Permit and shall issue a grant or denial of a Building Permit or forward the application for consideration for a Special Use Permit pursuant to Article 19 of the Zoning Ordinance of the City of Duluth within a reasonable time.
2. Any decision to deny a building permit or Special Use Permit pursuant to Article 19 of the Zoning Ordinance of the City of Duluth shall be supported by substantial evidence in a written record.

SECTION 1158. CO-LOCATION. Application and owner shall allow other future wireless communications companies including public and quasi-public agencies using similar technology to collocate antenna equipment and facilities on the tower unless

specific technical constraints prohibit said co-location. Applicant may negotiate any type of agreement for co-location but shall not charge fees, which are so unreasonable as to prohibit co-location.

SECTION 1159. APPEALS. Appeals from any decision of the Director shall be to the Zoning Board of Appeals pursuant to Article 18 of the Zoning Ordinance of City of Duluth. Any decision on a request to build a tower or for a Special Use Permit for a tower shall be in writing, and any denial of any such request or Special Use Permit shall be supported by substantial evidence and a written record.

SECTION 1160. NUISANCES. Telecommunications facilities, including, without limitation, power source, ventilation and cooling, shall be operated at all times within the limits of the City of Duluth Noise Ordinance, shall not be operated so as to cause the generation of heat that adversely affects a building occupant and shall not be maintained or operated in such a manner as to be a nuisance.

SECTION 1161. REMOVAL OF ANTENNAE AND TOWERS. All telecommunications facilities shall be maintained in compliance with standards contained in applicable building and technical codes so as to ensure the structural integrity of such facilities. If upon inspection by the Director or his designee any such telecommunications facility is determined not to comply with the minimum Standard Building Code or to constitute a danger to persons or property, then upon notice being provided to the owner of the facility and the owner of the property if such owner is different, such owners shall have thirty (30) days to bring such facility into compliance. In the event such telecommunications facility is not brought into compliance within thirty (30) days, the City may provide notice to the owners requiring the telecommunications facility to be removed. In the event such telecommunications facility is not removed within thirty (30) days of receipt of such notice, the City may remove such facility and place a lien upon the property for the costs of removal or seek costs incurred through court action. Delay by the City in taking action shall not in any way waive the City's right to take action. The City may pursue all legal remedies available to it to insure that telecommunications facilities not in compliance with the minimum Standard Building Code standards or which constitute a danger to persons or property are brought into compliance or removed. The City may seek to have the telecommunications facility removed regardless of the owners' or operator's intent to operate the tower or antenna and regardless of any permits, federal, state or otherwise, which may have been granted.

SECTION 1162. ABANDONED TOWERS.

- A. Any telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned, whether or not the owner or operator intends to make use of it or any part of it. The owner of a telecommunications facility and the owner of the property where the facility is located shall be under a duty to remove the abandoned telecommunications facility. If such antenna and/or tower is not removed within sixty (60) days of receipt of notice from the City notifying the owner(s) of such abandonment, the City may remove such tower and/or antenna and place a lien upon the property for the costs of removal or seek costs incurred through court action. The City may pursue all legal remedies available to it to insure that abandoned telecommunications facilities are removed. Delay by the City in taking action shall not in any way waive the City's right to take action. The City may seek to

have the telecommunications facility removed regardless of the owners' or operator's intent to operate the tower or antenna and regardless of any permits, federal, state or otherwise, which may have been granted.

- B. If the owner of an abandoned tower or antenna wishes to use such abandoned tower or antenna, the owner first must apply for and receive all applicable permits and meet all of the conditions of this ordinance as if such tower or antenna were a new tower or antenna.

SECTION 1163. PRE-EXISTING TOWERS/NON-CONFORMING USE.

- A. All telecommunications facilities operative on the effective date of this ordinance shall be allowed to continue their present usage as a non-conforming use and shall be treated as a non-conforming use in accordance with Article 7 of the Zoning Ordinance of the City of Duluth. Routine maintenance, including replacement with a new tower or antenna of like construction and height, shall be permitted on such existing telecommunications facilities. New construction other than routine maintenance shall comply with the requirements of this ordinance. The Director may approve the addition of twenty (20) feet to any existing tower whereby it can be shown that this would provide for co-location and eliminate the need for a new tower and it is determined that adequate site area exists for the location of any equipment buildings. Approval of an additional twenty (20) feet applies to all zoning districts, however, additions greater than twenty (20) feet shall require a Special Use Permit.
- B. A telecommunications facility that has received City approval in the form of either a building permit or special use exception, but has not yet been constructed or placed in operation shall be considered an existing telecommunications facility so long as such approval is current and not expired.
- C. Placement of an antenna on a non-conforming structure shall not be considered an expansion of the non-conforming structure.

SECTION 1164. COORDINATION WITH FEDERAL LAW. Whenever the Governing Authority finds that the application of this ordinance would unreasonably discriminate among providers of functionally equivalent services or prohibit or have the effect of prohibiting the provision of personal wireless services, a Special Use Permit waiving any or all of the provisions of this ordinance may be granted.