

ORDINANCE
UNIFIED DEVELOPMENT CODE
ARTICLE 3 SECTION 343, "WIRELESS TELECOMMUNICATIONS"

WHEREAS, the Mayor and City Council of the City of Duluth, Georgia recognizes the importance of promoting the community's health, safety and welfare by providing clear, correct and consistent zoning regulations and compliance with the goals, objectives and policies identified within the adopted Community Agenda; and

WHEREAS, the Unified Development Code of the City of Duluth, Georgia, specifically authorizes the City Council to amend the text of the City of Duluth Unified Development Code by the City Council; and

WHEREAS, the Unified Development Code of the City of Duluth, Georgia, grants authority to the Planning and Development Director to initiate amendments to the text of the City of Duluth Unified Development Code; and

WHEREAS, the Mayor and City Council recognize the importance of ensuring that the regulations promote the quality of life in the City; and

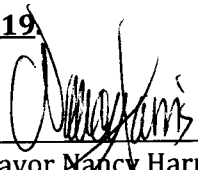
WHEREAS, on January 7, 2019, the City of Duluth Planning Commission held a public hearing duly noticed and voted to recommend approval of the text amendment (TA#2019-001) as set forth in the minutes of said meeting; and

WHEREAS, the Duluth City Council held a public meeting on January 7, 2019, duly noticed as prescribed by law and published in the Gwinnett Daily Post regarding the text amendments as set forth in the minutes of said meeting.

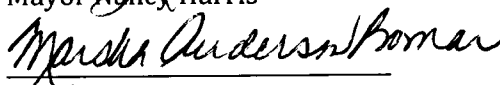
NOW THEREFORE, the City Council of the City of Duluth hereby ordains that the City of Duluth Unified Development Code is hereby amended by incorporating Section 343.14 and associated definitions as set forth in Exhibit "A" attached hereto.

{Signatures on the following page}

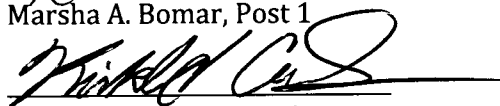
IT IS SO ORDAINED this 7th day of January, 2019



Mayor Nancy Harris



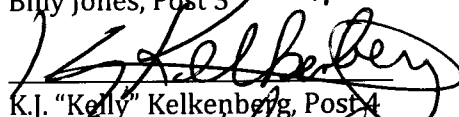
Marsha A. Bomar, Post 1



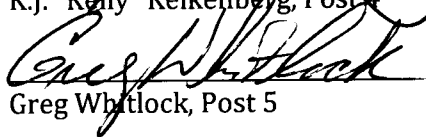
Kirkland Carden, Post 2

Those councilmembers voting in favor:

Billy Jones, Post 3 ^{Absent}

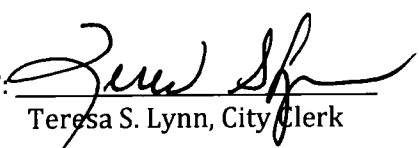


K.J. "Kelly" Kelkenberg, Post 4



Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: 
Teresa S. Lynn, City Clerk

343.14 Small Cell Wireless Facility

(a) Purpose.

In addition to the applicable requirements found in Sections 343.1 through 343.13, the City of Duluth City Council finds that the following standards regulating small cell wireless facilities are necessary 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.

(b) Intent.

1. Prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
2. Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
3. Prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;
4. Protect against environmental damage, including damage to trees;
5. Preserve the character of the neighborhoods in which such facilities are installed; and
6. Facilitate rapid deployment of small cell wireless facilities to provide the benefits of advanced wireless services.

(c) Preferred Installation Sites.

It shall be the policy of the City to discourage the installation of new poles and above-ground cabinets in the City, and to encourage installations on locations in the following order of preference, consistent with all other applicable law, including but not limited to this Article:

1. Co-located with existing small cell wireless facilities on or off the rights-of-way
2. On existing poles located within the rights-of-way; or
3. On replacement poles installed in the rights-of-way.

(d) Conflicts with Other Sections.

In the event of a conflict between this Section 343.14 and other Sections within Article 3, Section 343.14 shall control as applied to small cell wireless facilities, only. Otherwise, this Section shall supplement and be read in conjunction with the terms of Article 3.

(e) Permitted Use, Application and Fees.

1. Permitted Use. Collocation of a small cell wireless facility or a new, modified, or replacement utility pole or wireless support structure for the collocation of a small cell wireless facility shall be a permitted use subject to the restrictions in Section 343.

2. **Permit Required.** No person shall place a small cell wireless facility in the rights-of-way, without first filing a small cell wireless facility application and obtaining a permit therefore, except as otherwise provided in this Article.
3. **Permit Application.** All small cell wireless facility permit applications filed pursuant to this Article shall be on a form provided by the City. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each page of such materials accordingly, but shall undertake all reasonable efforts to minimize the scope and frequency of such designations. The City shall undertake reasonable steps to safeguard that information, to the extent permitted by law, but in no event shall be found liable for alleged harm incurred as the result of a disclosure, particularly if such disclosure is pursuant to a valid open records request or applicable order from a court.
4. **Application Requirements.** The small cell wireless facility permit application shall be made by the wireless provider or its duly authorized representative and shall contain the following:
 - a. The applicant’s name, address, telephone number, and e-mail address;
 - b. The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
 - c. A specific description of the proposed work and the purposes and intent of the small cell wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed, and shall specifically include:
 1. The nature of the installation,
 2. The location of the installation,
 3. Photographs of the surrounding area, and 360-degree photo simulations of the proposed installation,
 4. A description of all planned efforts to camouflage, conceal, blend, or hide the proposed location into the surrounding area;
 5. A statement from an appropriate radio frequency engineer explaining why the installation is being proposed in that location, including if applicable an explanation of why alternative sites that better conform to the City’s priorities are not viable; why any existing poles or support structures are inadequate, and the coverage or additional capacity to be provided by the wireless facility;
 6. A copy of the written notice to proceed from the location owner; and
 7. A list of all small cell facilities located within a 100 foot radius of the proposed facility.
 - d. A small cell wireless facility shall comply with all applicable laws.
 - e. A small cell wireless facility will blend with the character of the surrounding area and shall, to the maximum extent feasible, include such Concealment Elements as to cause the facility to be the least obtrusive to the character of the area as possible.

5. Routine Maintenance and Replacement. An application shall not be required for: (i) routine maintenance; and (ii) the replacement of a small cell wireless facility with another small cell wireless facility that is substantially similar or smaller in size, weight, and height.
6. Information Updates. Any amendment to information contained in a permit application shall be submitted in writing to the City no more than thirty (30) days after the change necessitating the amendment. Should an application require updating pursuant to this section, any applicable shot clock shall be deemed tolled the number of days between the change necessitating the amendment, and notice under this subsection being transmitted to the City.
7. Each proposed location shall require a separate application and a separate application fee as called for in this Section in accordance with the most recent City of Duluth Fee Schedule adopted by the City Council.
8. Application fees due under this Article shall be payable upon submission of the application, and any failure to fully pay application fees at the time of application submission shall absolve the City from any requirement to process the application until those fees are paid, to the extent permissible by law.
9. Any payments due under this Article shall first be paid within thirty (30) days of the completion of permitted construction. Initial annual payments for new facilities shall be prorated based on the number of whole or partial months remaining in the calendar year, counted from the date construction is complete. Subsequent annual payments shall be due the first business day of each calendar year.

(f) Action on Permit Applications.

1. Review of Small Cell Facility Applications. The City shall review the small cell wireless facility permit applications pursuant to the requirements of this Article and all other applicable law, and may issue a permit on nondiscriminatory terms and conditions should it determine in its discretion that the Application meets those requirements.
2. Review of Eligible Facilities Requests. Notwithstanding any other provision of this Article, the City shall process applications appropriately qualifying as "eligible facilities request" as defined in federal law, pursuant to applicable federal requirements. Any Application which an applicant believes to qualify as such a re-quest, shall clearly and conspicuously indicate such in any application materials and communications with the City.

(g) Deployment of Facilities.

Notwithstanding any other provision of this Code, if the Right-of-Way location is adjacent to a property zoned for residential development, the maximum allowed volume of the small cell wireless facility shall be no more than 12 cubic feet in total volume, not including the antenna enclosure.

(h) Small Cell Wireless Facilities in the Right-of-Way; Maximum Height; Other Requirements.

1. Maximum Size of Permitted Use. Small cell wireless facilities, and new, modified, or replacement utility poles and wireless support structures for the collocation of small cell wireless facilities may be placed in the rights-of-way as a permitted use subject to the following requirements:

- a. Small cell wireless facilities installed on existing, modified, or replacement poles in the rights-of-way shall not exceed the greater of:
 1. Ten (10) feet above the existing utility pole or wireless support structure upon which the small cell wireless facility is to be installed; or,
 2. 45 feet in height.
 - b. Each new utility pole or wireless support structure in the rights-of-way shall not exceed 45 feet in height.
 - c. Notwithstanding the foregoing, the provisions of this Section shall not be interpreted to permit aggregation of multiple height increases, such as by seeking to install a new utility pole or wireless support structure, and then attempting to exceed what would have been the maximum permissible height for that new or replacement pole by requesting an increase to attach facilities. Height limits for existing utility poles or wireless support structures shall be assessed based on the height of the structure before the first wireless facility is installed, and applicants shall not be permitted to request additional height increases based on the total height of a pole, including existing wireless facilities above the top of the utility pole or wireless support structure.
2. Zoning. Any wireless provider that seeks to construct or modify a utility pole, wireless support structure or wireless facility that exceeds the height or size limits contained in this section, shall be subject to applicable zoning requirements.
 3. Undergrounding Provisions. Applicant shall comply with nondiscriminatory undergrounding requirements that prohibit electric utilities, telecommunications or cable providers from installing structures in the rights-of-way without prior zoning approval in areas zoned for single family residential use, provided such requirements shall not prohibit the replacement of existing structures with structures whose design the City expressly consents to.
- (i) Effect of Permit.
 1. Authority Granted; No Property Right or Other Interest Created. A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Article, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.
 2. Duration. No permit for construction issued under this Article shall be valid for a period longer than twelve (12) months unless construction has actually begun within that period and is thereafter diligently pursued to completion.
 - (j) Removal, Relocation or Modification of Small Cell Wireless Facilities in the Right-of-Way.
 1. Notice. Within ninety (90) days following written notice from the City, unless a longer period is provided for at the sole discretion of the City, a wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small cell wireless facilities within the rights-of-way whenever the City has determined that such removal, relocation, change or alteration, is reasonably

necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the rights-of-way. To the extent feasible, the City will reasonably cooperate with a wireless provider whose facilities must be removed or relocated to attempt to locate a mutually acceptable replacement location to house the small cell wireless facilities. This provision shall not be interpreted to constitute a commitment on the part of the City that such a location will be found or provided, or that the City is under an obligation to ensure such alternative locations are available.

2. **Emergency Removal or Relocation of Facilities.** The City retains the right and privilege to cut or move any small cell wireless facility located within the rights-of-way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and in any event shall notify the wireless provider as soon as is practicable but in no event more than fifteen (15) days after cutting or removing a small cell wireless facility.
3. **Abandonment of Facilities.** Upon abandonment of a small cell wireless facility within the rights-of-way of the City, the wireless provider shall notify the City within ninety (90) days. Following receipt of such notice the City may direct the wireless provider to remove all or any portion of the small cell wireless facility if the City, or any of its departments, determines that such removal will be in the best interest of the public health, safety and welfare.
4. **Removal and Restoration.** Any small cell wireless facility removed from the rights-of-way shall be removed in accordance with all applicable health and safety requirements. The site upon which the facility was located shall be restored to the condition that existed prior to the installation of the facility, normal wear and tear excepted, or as required by the City Planner. The holder of the original permit for the facility shall be responsible for obtaining all necessary permits and paying all costs associated with the removal of the facility and site restoration.

(k) **Rates for Access to Rights of Way.**

1. **Legislative Findings.** The City Council makes the following findings:
 - a. The right-of-way owned and maintained by the City of Duluth is a limited and valuable resource and asset of the citizens and residents of the City;
 - b. Small cell wireless providers use hard-wired connections between the receiver at the small cell wireless facility and a distribution point for the larger wireless network;
 - c. Georgia law authorizes municipalities to utilize the Georgia Department of Transportation tables and regulations for the cost per mile of use of right-of-way;
 - d. Georgia law also authorizes the City to obtain fair market value and actual cost for the use of right-of-way, including limiting other and further use of the right-of-way, redevelopment costs and expansion of transportation needs (including sidewalks, multi-use paths, and other infrastructure). Said fair market value and actual cost is prescribed in the most recent City of Duluth Fee Schedule adopted by the City Council.

2. Annual Rate for Existing, Replacement or Modified Locations. The annual cost for deployment of a small cell wireless facility shall be in accordance with the most recent City of Duluth Fee Schedule adopted by the City Council. In the event a final judgment is entered finding the "safe harbor" provision established by the FCC unconstitutional, the City reserves the right to charge the fair market value of the use of the right-of-way, and to recover that value retroactively from the deployment of the node to the date of the final judgment, and prospectively.
 3. Annual Rate for New Poles or Structures. In the event a new pole or support structure is placed by the applicant or the City at the applicant's request, or by some other entity with rights or privileges to place structures in the City's right-of-way, the City Council finds that the City's costs are greater than the use of existing structures. The Council further finds that the impediments to the development of the right-of-way, improvements to the rights of way, and the City's changing needs and demands for use of rights of way. Accordingly, the annual compensation to the City for the applicant's use of the right-of-way shall be in accordance with the most recent City of Duluth Fee Schedule adopted by the City Council.
 4. Cease Payment. A wireless provider is authorized to remove its facilities at any time from a pole in the rights-of-way and cease paying the annual rate to the City. A provider who exercises their rights under this section shall be entitled to return of fees paid in advance under this Article, only for those full calendar months after the date at which the wireless provider's facilities had been removed fully and all repair and restoration work had been completed as required by law.
- (l) Attachment to City-Owned Utility Poles in the Right-of-Way.
1. Annual Rate. In addition to paying the required annual rate for access to the right-of-way, a wireless provider who seeks to install a wireless facility on a City-owned pole in the right-of-way or upon any structure owned, leased, or occupied by the City shall pay an attachment fee under this Section. The rate to place a small cell wireless facility on a City-owned pole in the right-of-way shall be in accordance with the most recent City of Duluth Fee Schedule adopted by the City Council.
 2. Cease Payment. A wireless provider is authorized to remove its facilities at any time from a City-owned pole in the rights-of-way and cease paying the annual rate to the City. A provider who exercises their rights under this section shall be entitled to return of fees paid in advance under this Article, only for those full calendar months after the date at which the wireless provider's facilities had been removed fully and all repair and restoration work had been completed as required by law.
 3. Make-Ready. For City-owned utility poles in the rights-of-way, the City shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested small cell wireless facility, including pole replacement if necessary, within 60 days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the wire-less provider. All make-ready work required for a wireless provider to occupy a City-owned pole shall be conducted solely at the wireless provider's expense.
- (m) Development Standards.

In addition to the requirements detailed elsewhere in this Article, the following development standards shall apply to all small cell wireless facilities governed by this Article:

1. Any small cell wireless facility attached to a pole hosting a street light, traffic light, or other public safety purpose shall only be permissible to the extent it does not interfere with the operation of any public safety function or public safety communications. If in the City's sole discretion it is determined that a particular pole or location cannot support a small cell wireless facility without interfering with or otherwise affecting the reliability, performance, safety, or other functional aspects of such a pole, the City may deny a permit to install a wireless facility on such a pole, or to construct a new or replacement utility pole or wireless support structure, at such a location, to the extent permissible under law.
2. All small cell wireless facilities shall incorporate Concealment Elements to the maximum extent feasible and as appropriate to the site and type of facility. Specifically, all small cell wireless facilities shall employ and maintain camouflage design techniques to minimize visual impacts and provide appropriate screening. Such techniques shall be employed so that the installation, operation, and appearance of the small cell wireless facilities will be consistent with the character of the surrounding area or the structure to which the small cell wireless facility is attached.
3. Wireless providers may place new poles or wireless support structures in the rights-of-way, but only where there are existing above-ground utility poles and the poles must be removed if other such poles are removed, unless those poles would meet the requirements of this subsection as permissible new poles. Specifically and furthermore, a new pole is only permitted if the applicant can show that:
 - a. Existing utility poles or other support structures cannot be used to support the small cell wireless facilities, or would require a modification that would make the addition of an additional utility pole or wireless support structure less intrusive or safer;
 - b. The pole or support structure to be installed will be similar in size and design to existing poles, and placed appropriately to minimize intrusiveness and to avoid creating undue hazard to persons or property; and
 - c. The applicant demonstrates that the denial of the application would prohibit or have the effect of prohibiting the provision of personal wireless services, within the meaning of 47 U.S.C. § 332(c)(7) as interpreted by precedent binding in the Eleventh Circuit Court of Appeals.
4. Monopoles. Every new utility pole or wireless support structure shall be a monopole rather than a lattice tower or guy-wire support tower, unless otherwise authorized.
5. Access. No facility shall be built so as to cause the right-of-way in which the facility is located to fail to comply with the Americans with Disabilities Act or otherwise obstruct access.
6. Security. All facilities shall be designed so as to be resistant to and minimize the opportunities for unauthorized access, climbing, vandalism, graffiti, and other

conditions, which would result in hazardous conditions, visual blight, or attractive nuisances.

7. Screening. Any equipment that is not installed underground shall be screened by structures, topography, or vegetation to the maximum extent feasible. Coaxial cables, conduit lines, and electrical boxes for ground-mounted Antennas shall be placed underground or within approved structures to the extent feasible.
8. Public Art, Flagpoles, Artificial Natural Features. Wireless providers shall be encouraged to design small cell wireless facilities to serve as public art, flagpoles, or artificial natural features such as trees or rocks where such designs are appropriate and feasible.
9. Colors & Materials. Unless otherwise required by city, county, state, or federal rules or regulations, small cell wireless facilities shall have a non-reflective finish and shall be a neutral color consistent with the predominant background color.
10. Lighting. Signal lights or illumination shall be prohibited unless required by the FCC or the Federal Aviation Administration.
11. Signage. The facilities shall not bear any signage, other than certification, warning, information, safety, and directional signage, or other non-commercial signage required by law, or expressly permitted by the City.
12. Power Supply. Any facility occupying a City-owned pole is only permissible to the extent the existing function of the pole is not impeded. In particular, street lights and traffic lights' power supplies may not be used by applicants. When attaching to City-owned poles, applicants are responsible for securing separately metered power for their facilities, and are responsible for any and all costs incurred in modifying a pole to support additional power supplies. In all other cases, applicants are responsible for ensuring that their power supply arrangements with electric utilities do not result in any incremental cost increase to the City.

(n) Variance and Appeal Process.

1. Any applicant desiring relief or exemption from any aspect or requirement of this Article may request the Planning and Development Department, in the case of volume of the deployment, or the Public Works Department, in any other case, provided that the relief or exemption is contained in the original application, or in the case of an existing or previously approved application a request for alteration of its proposed facilities. In determining the variance requested, the Department Head shall consider the elements established in subsection (2) below. Any application for a variance, or any appeal of a departmental decision, shall constitute a voluntary agreement to toll any shot clock or deadlines found in Federal or State law, or local ordinance.
2. In the event the applicant is not satisfied with the decision of the Department Head, the applicant may take an appeal to the City Council, if such appeal is filed with the City Clerk within 15 days of the final decision by the Department Head, which filing shall include all grounds to be asserted for the appeal. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the City Council. In exercising its discretion, the Council may consider the following factors: (1) the number of small cell wireless facilities on the same street, (2) the number of small cell wireless facilities within 100 feet of the

proposed node, (3) the volume of the other small cell wireless facilities on the same street, (4) the Character Area of the street on which the new deployment is proposed, (5) the proposed (if any) camouflage efforts to conceal or blend the facility into the surrounding flora and landscape, (6) the need of the node or small cell wireless facilities in the precise location proposed, and (7) the proposed deployment does not adversely affect the health, safety and welfare of the citizens and residents of the City. However, the burden of proving the need for the requested relief or exemption is solely on the applicant to prove to the satisfaction of the Council by clear and convincing evidence. The applicant shall bear all costs of the City Council in considering the request and the relief shall not be transferable to a new or different holder of the Permit or owner of the facilities without the specific written permission of the Council.

{Article 14, "Interpretations and Definitions" Amendments on the following page}

The following definitions shall be incorporated into Article 14 “Interpretations and Definitions” of the Unified Development Code:

“Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

“Concealment Element” means any design feature, including but not limited to painting, landscaping, shielding requirements, and restrictions on location, proportions, or physical dimensions in relation to the surrounding area or the structure which supports a Wireless Facility, that are intended to make a Wireless Facility or any supporting structure less visible to the casual observer.

“Small Cell Wireless Facility” means a wireless facility that meets both of the following qualifications: (i) all antennas shall either be enclosed in a canister with a combined maximum height of 4 feet and a maximum total volume of 15 cubic feet, and (ii) all other wireless equipment shall, to the extent feasible, be contained within the pole or support structure, but if mounted externally, shall not exceed a maximum volume of 23 cubic feet, and must be attached to the pole. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

“Utility Pole” means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control, signage, or a similar function regardless of ownership, including city-owned poles. Such term shall not include structures supporting only Wireless Facilities.

“Wireless Facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small call wireless facilities. The term does not include the structure or improvements on, under, or within which the equipment is collocated.

“Wireless Services” means any services, whether at a fixed location or mobile, provided using wireless facilities.

“Wireless Services Provider” means an entity that is authorized by the Federal Communications Commission to provide personal wireless services as defined at 47 U.S.C. § 332(c)(7).