

**AN ORDINANCE TO AMEND THE CITY CODE OF THE CITY OF WINDER, GEORGIA TO PROVIDE FOR AESTHETIC STANDARDS FOR THE USE OF PUBLIC RIGHT OF WAYS, DEFINITIONS, INSTALLATION AND MODIFICATION STANDARDS AND FOR OTHER PURPOSES.**

It is hereby ordained by the City Council of the City of Winder, Georgia, that the Code of Ordinances, City of Winder, Georgia is hereby amended by adding new Sections 27-104.1 through 27-104.10 to read as follows:

**Section 27-104.1 Aesthetic Standards; Authority and Scope.**

(a) O.C.G.A. § 32-4-92(a)(10) authorizes the City to establish reasonable regulations for the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, facilities, or appliances in, on, along, over, or under the public roads of the City. Further, 47 U.S.C. § 253(c) provides that the City has authority to manage its public rights of way.

(b) The City finds it is in the best interest of the City and its residents and businesses to establish aesthetic requirements and other specifications and reasonable conditions regarding placement of facilities in the public rights of way. These requirements, specifications and conditions are adopted in order to protect the public health, safety and welfare of the residents and businesses of the City and to reasonably manage and protect the public rights of way and its uses in the City.

(c) The objective of this Article is to ensure use of the public rights of way: (i) is consistent with the design, appearance and other features of nearby land uses; (ii) protects the integrity of historic, cultural and scenic resources; and (iii) does not harm residents' quality of life.<sup>1</sup>

(d) This Article applies to all requests to locate facilities in the public rights of way and ongoing use of the public rights of way for such facilities. This Article is established pursuant to City Charter and applicable law. This Article is administered by the Utilities Department.

(e) Placement or modification of facilities in the public right of way shall comply with this Article at the time the permit for installation or modification is approved and as amended from time to time. Permittees are required to comply with City Code and applicable law and regulations.

**Section 27-104.2 Definitions.** Unless otherwise defined in Section 27.77, terms used in this Article shall have the meanings given them in O.C.G.A. § 36-66C-2.

Definitions. Unless otherwise defined in Section 1.3, the following terms have the following meanings for purposes of this Article :

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(f) “Antenna” means: (i) communications equipment that transmits, receives, or transmits and receives electromagnetic radio frequency signals used in the provision of wireless services or other wireless communications; or (ii) Communications equipment similar to equipment described in part (i) used for the transmission, reception, or transmission and reception of surface waves. Such term shall not include television broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.

(g) “Collocate” or “Collocation” means to install, mount, modify, or replace a small wireless facility on or adjacent to a pole, decorative pole, or support structure.

(h) “Consolidated Application” means an application for the collocation of multiple small wireless facilities on existing poles or support structures or for the installation, modification, or replacement of multiple poles and the collocation of associated small wireless facilities.

(i) “Decorative Pole” means an authority pole that is specially designed and placed for aesthetic purposes.

(j) “FCC” means the Federal Communications Commission of the United States.

(k) “Historic District” means: (i) any district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the secretary of the interior of the United States in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified by 47 C.F.R. Part 1; (ii) any area designated as a historic district under Article 2 of Chapter 10 of Title 44, the Georgia Historic Preservation Act; or (iii) any area designated as a historic district or property by law prior to October 2 2019.

(l) “Pole” means a vertical pole such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal, or other material that is lawfully located or to be located within a right of way, including without limitation a replacement pole and an authority pole. Such term shall not include a support structure, decorative pole, or electric transmission structure.

(m) “Replace,” “Replacement” or “Replacing” means to replace a pole or decorative pole with a new pole or a new decorative pole, similar in design, size, and scale to the existing pole or decorative pole consistent with 47 C.F.R. § 1.40001(b)(7) as it existed on January 1, 2019, in order to address limitations of, or change requirements applicable to, the existing pole to structurally support the collocation of a small wireless facility.

(n) “Small Wireless Facility” means radio transceivers; surface wave couplers; antennas; coaxial, fiber optic, or other cabling; power supply; backup batteries; and comparable and associated equipment, regardless of technological configuration, at a fixed location or fixed locations that enable communication or surface wave communication between user equipment and a communications network and that meet

both of the following qualifications: (i) each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume, measured based upon the exterior dimensions of height by width by depth of any enclosure that may be used. The following types of associated ancillary equipment are not included in the calculation of the volume of all other wireless equipment associated with any such facility: electric meters; concealment elements; telecommunications demarcation boxes; grounding equipment; power transfer switches; cut-off switches; and vertical cable runs for connection of power and other services. Such term shall not include a pole, decorative pole, or support structure on, under, or within which the equipment is located or collocated or to which the equipment is attached and shall not include any wireline backhaul facilities or coaxial, fiber optic, or other cabling that is between small wireless facilities, poles, decorative poles, or support structures or that is not otherwise immediately adjacent to or directly associated with a particular antenna.

(o) "Support Structure" means a building, billboard, water tank, or any other structure to which a small wireless facility is or may be attached. Such term shall not include a decorative pole, electric transmission structure, or pole.

(p) "Wireless Infrastructure Provider" means any person, including a person authorized to provide telecommunications services in this state, that builds, installs, or operates small wireless facilities, poles, decorative poles, or support structures on which small wireless facilities are or are intended to be used for collocation but that is not a wireless services provider.

(q) "Wireless Provider" means a wireless infrastructure provider or a wireless services provider.

(r) "Wireless Services" means any services provided to the public using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

(s) "Wireless Services Provider" means a person that provides wireless services.

(t) "Wireline Backhaul Facility" means an aboveground or underground wireline facility used to transport communications data from a telecommunications demarcation box associated with small wireless facility to a network.

**Section 27-104.2 Cross References.** Definitions in this Article include references and citations to applicable federal and state laws. In the event that any referenced section is amended, the definition in the referenced section, as amended, shall control.

**Section 27-104.3 Facilities Standards.**

(u) Facilities must be compatible in size, mass, and color to similar facilities in the same zoning area, with a goal of minimizing the physical and visual impact on the area.

(v) Facilities shall be visually and architecturally integrated with the surrounding areas.

(w) Facilities must be located in alignment with existing trees and/or facilities.

(x) Facilities must maintain the integrity and character of the neighborhoods and corridors in which the facilities are located.

**Section 27-104.4 Undergrounding.** Except as provided in Section 9.1(y) and Section 9.1(z), facilities shall be installed underground so long as placement underground will not materially impact the provision of service. Any individual requesting to locate facilities above ground has the burden to demonstrate by clear and convincing evidence that undergrounding will effectively prohibit the provision of the service in question.

(y) Light poles and small wireless facilities collocated thereon may be located above ground in areas of the City where facilities are primarily located underground.

(z) The City may: (i) allow collocated small wireless facilities placed aboveground prior to the effective date of this Ordinance and subject to any applicable pole attachment agreement to remain above ground; or (ii) allow the wireless provider to replace the pole associated with previously collocated small wireless facilities at the same location or propose an alternate location within 50 feet of the prior location, which the wireless provider shall use unless such alternate location imposes technical limits or significant additional costs.

**Section 27-104.5 Historic District.** Facilities installed in the historic district of the City shall conform to the provisions of Section 19-46 et. seq.

**Section 27-104.6 Camouflaging.** Facilities must be designed using camouflaging techniques that make them as unobtrusive as possible.

(aa) It is not possible or desirable to match the design and color of facilities with the similar facilities in the same zoning area, as required under Section 9.1(u); or

(bb) Existing facilities in the area are out of character with a streetscape plan or other aesthetic plan that has been adopted by the City.

**Section 27-104.7 Concealment.** Facilities shall incorporate specific concealment elements to minimize visual impacts.

**Section 27-104.8 Installation and Modification Standards.** Installation of new facilities in, on, along, over, or under the public rights of way or modification of existing facilities in, on, along, over, or under the public rights of way shall:

(cc) Minimize risks to public safety;

(dd) Ensure that placement of facilities on existing structures is within the tolerance of those structures;

(ee) Ensure that installations and modifications are subject to periodic review to minimize the intrusion on the right of way;

(ff) Ensure that the City bears no risk or liability as a result of the installations or modifications; and

(gg) Ensure that use of the public rights of way does not inconvenience the public, interfere with the primary uses of the public rights of way, or hinder the ability of the City or other government entities to improve, modify, relocate, abandon, or vacate the right of way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the right of way.

**Section 27-104.9 Plans for Use.** No facilities shall be placed in, on, along, over, or under the public rights of way unless: (i) there are immediate plans to use the proposed facility; or (ii) there is a contract with another party that has immediate plans to use the proposed facility.

**Section 27-104.10 Contact Information.** Every facility placed in the public rights of way shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.

This Ordinance shall take effect immediately upon its adoption, the public health, safety and welfare requiring same.

IT IS SO ORDAINED this \_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF WINDER

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_ [Seal]  
City Clerk