REFERENCE NO. 20150240
ORDINANCE NO. 7816

AN ORDINANCE

AMENDING, the Comprehensive Development Code of the City of Marietta.

NOW, THEREFORE BE IT HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MARIETTA, GEORGIA, THAT:

Section 1: Division 712.07, Telecommunications towers and infrastructure, is hereby amended as follows:

712.07 Telecommunication towers and infrastructure

Telecommunication towers may be permitted in RRC, CRC, HI, LI, OS, OHR and CBD zoning districts pursuant to those additional restrictions listed herein.

A. *General Requirements*
   1. A Special Land Use Permit granted by City Council shall be required for the construction of all new telecommunications towers within the City limits after the following factors are considered:
      a) The proposed height of the tower;
      b) Proximity to residential structures and residential district boundaries;
      c) Nature of uses on adjacent and nearby properties;
      d) Surrounding topography, tree coverage and foliage;
      e) Design of the tower, with particular reference to design characteristics which have the effect of reducing or eliminating visual obtrusiveness.
   2. All permit applications submitted to the Department of Development Services shall include a complete inventory of the applicant's existing towers and receivers/transmitters located within Cobb County, including each asset's location, height and co-location usage or capabilities. The Department of Development Services shall utilize such information to promote co-location alternatives for other applicants.
   3. All applicants must demonstrate that no existing tower or structure can accommodate the proposed antenna(s). Evidence of an engineering nature shall be documented by the submission of a certification by a qualified engineer. Such evidence may consist of the following:
      a) No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements.
      b) No existing structure is of sufficient height to meet the applicant's engineering requirements.
      c) No existing tower or structure has sufficient structural strength to support applicant's proposed antenna(s) and related equipment.
      d) Applicant's proposed antenna(s) would cause electromagnetic interference with the antenna(s) on the existing tower or structure.

e) The fees or costs required to share the existing tower or structure or to adapt the existing tower or structure for shared use are unreasonable. Costs exceeding new tower development are presumed unreasonable.
f) Such other limiting factor(s) as may be demonstrated by the applicant.

4. At the time of filing the application for a tower, the applicant shall provide a site plan and information regarding tower location, accessory structures, neighboring uses and proposed landscaping. Documentation must be submitted and certified by a qualified engineer delineating coverage and propagation zones, tower design and co-location capabilities. If an application is deemed incomplete, an applicant will be notified by the Department of Development Services within 30 days. Any timeframes of review are delayed or tolled until the applicant resubmits the application materials. The applicant shall be notified by the Department of Development Services within 10 days if the resubmittal is incomplete.
5. In granting a Special Land Use Permit, the City Council may impose additional conditions to the extent determined necessary to minimize adverse effects on adjoining properties, however, no conditions shall be added that:
   a. Require that any collocation to the tower be subject to a review that is more extensive than the current collocation approval process as provided in 712.07(C).
   b. Require that existing wireless infrastructure be removed, unless the infrastructure is abandoned and owned by the applicant.
   c. Require that an antenna or other wireless equipment be placed on publicly owned land as an alternative to the location proposed by the applicant.
6. City Council will make a formal decision in writing to approve or deny an application for a Special Land Use Permit for a new tower within 150 days.

B. *Standards*

1. All towers must be set back a distance of twice (x2) the full height of the tower from any residentially zoned property or structure used for residential purposes. This condition shall not apply in areas zoned Central Business District.
2. All towers shall be separated from each other by a distance of at least 1000 feet.
3. All new self-supporting towers which do not incorporate approved alternative design features must be designed and built in a manner that allows at least two other entities to co-locate on the structure.
4. All towers and their related structures shall maximize the use of building materials, colors, textures, screening and landscaping that effectively blend the tower facilities within the surrounding natural setting and built environment. Towers shall be painted so as to reduce their visual obtrusiveness, subject to any applicable standards of the Federal Aviation Administration (FAA).
5. Any tower which directly abuts a residentially zoned property shall have a minimum 50' landscaped buffer with a solid fence or wall no less than six feet in height.
6. All landscaping plans shall be prepared by a registered landscape architect. For each 30 linear feet of perimeter fencing, no less than 2 trees and 2 shrubs shall be installed. The remainder of the property shall be landscaped in accordance with City standards (see standards set forth in Section 712.08).

7. Towers shall be enclosed by security fencing not less than 6 feet in height and shall be equipped with an appropriate anti-climbing device; provided, however, that such requirements may be waived for alternative design mounting structures.
8. All towers shall be monopole designed except those located in Heavy Industrial districts that are greater than 150 feet in height.
9. All towers must meet or exceed current standards and regulations of the Federal Communications Commission (FCC) and FAA.
10. Subsequent to Council approval, but prior to the issuance of any building permits, compliance with Section 106 of the Natural Historic Preservation Act, shall be demonstrated.
11. Tower heights shall be measured from the existing ground base level to the highest point on the tower or other structure, even if said highest point is an antenna, in accordance with Table C:

TABLE C. MAXIMUM TELECOMMUNICATION TOWER HEIGHTS

Zoning District	**Three Users***	**Four or more Users***
HI	150'	200'
LI	125'	150'
RRC	120'	140'
CRC	100'	120'
CBD	100'	120'
OS	100'	120'

**Refers to the number of separate entities co-locating on the same structure.*

C. *Streamlined approval of additions to existing structures (substantial change) and alternative structures*

An applicant may apply for streamlined approval to modify an existing tower or structure by the addition of transmitting and/or receiving antennas or panels, if such modifications are considered a substantial change(s); or for the construction of an alternative structure. City Council will review all applications and make their decision based upon the information submitted.

1. The applicant shall provide a site plan and information as listed on a city application including:
   a. Location of the structure(s);
   b. Elevations or a rendering of the structure(s);
   c. Any accessory structure(s); and
   d. All proposed landscaping.
2. If an application is deemed incomplete, an applicant will be notified by the Department of Development Services within 30 days. Any timeframes of review are delayed or tolled until the applicant resubmits the application materials. The applicant shall be notified by the Department of Development Services within 10 days if the resubmittal is incomplete.
3. Applicants will be notified of a formal decision in writing to approve or deny an application within 90 days.

4. After submission of an application to the Department of Development Services, City Council may consider streamlined approval of the addition of transmitting and/or receiving whip antennas and panels to an acceptable structure when such modifications are determined to be a substantial change(s). Such acceptable structures include buildings, signs, light poles, water towers, and other free standing nonresidential structures. Antennas attached to existing acceptable structures, along with supporting electrical and mechanical equipment, shall be of a color identical to, or closely compatible with, that of the supporting structure. If the request for a substantial change to modify an existing tower or acceptable structure by the addition of transmitting and/or receiving whip antennas and panels is approved, either as is or as amended by City Council, the proposed antennas and/or panels shall be approved as per the motion; and with the understanding that all necessary building permits must be obtained. Applicants will be notified of a formal decision in writing to approve or deny an application within 90 days. If the request is not approved, it shall be referred back to the Department of Development Services for modification and resubmission by the applicant.
5. After submission of an application to the Department of Development Services, City Council may consider streamlined approval for the construction of an alternative mounting structures such as fake trees, clock towers, bell steeples, light standards, and similar alternative mounting structures, provided such alternative structure is determined to satisfy such factors set forth in subsection A. These structures shall also be exempt from the additional separation and setback requirements pertaining to towers. If the request to approve construction of the alternative structure is approved, either as is or as amended by City Council, the proposed structure shall be approved as per the motion. Applicants will be notified of a formal decision in writing to approve or deny an application within 90 days. If the request is not approved, it shall be referred back to the Department of Development Services for modification and resubmission by the applicant.

D. *Administrative Approval*

For eligible facilities, an applicant may request administrative approval of modifications to an existing tower or base station that is deemed to not be a substantial change, as defined in this code.

1. The applicant shall provide a site plan and information as listed on a city application regarding location of the structure(s); elevations or a rendering of the structure(s) including any proposed changes; any accessory structure(s); and all proposed landscaping. If an application is deemed incomplete, an applicant will be notified by the Department of Development Services within 10 days. Any timeframes of review are delayed or tolled until the applicant resubmits the application materials.
2. After submission of an application to the Department of Development Services, and a determination of eligibility has been made, the Director of Development Services will review all applications and make their decision based upon the information submitted.

3. The Development Services Director may administratively waive district setback requirements by up to 50% to accommodate the placement of such additional buildings or other supporting equipment in order to encourage the shared use of existing infrastructure.
4. The addition of antennas to an existing structure are exempted from all setback requirements which pertain to residentially zoned or used properties.
5. Once the request has been confirmed to not be a substantial change, as defined in this code, a decision shall be made by the Development Services Director within 60 days, subject to Federal law and FCC rule changes.

E. *Removal of Antennas and/or Towers.*

All towers shall be maintained in compliance with standards contained in applicable building and technical codes so as to ensure the structural integrity of such towers. If upon inspection by the Department of Public Works such tower is determined not to comply with the code standards and to constitute a danger to persons or property, then upon written notice by certified mail, return receipt requested, or by personal service being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance. The owner of the tower may appeal the determination by the Department of Public Works by filing a written appeal to the City Manager within 10 days of the receipt of the notice of non-compliance by the owner. The City Manager shall hold a hearing within 5 days of receiving said written appeal. In the event such tower is not brought into compliance within 30 days, the City may petition the municipal court for an order removing such antenna and/or tower and may petition the court for a lien upon the property for the costs of removal.

F. *Exceptions.*

1. Antennas or towers located on publicly owned property or owned by governmental bodies shall be exempt from the requirements of this ordinance, provided a license or lease authorizing such antenna or tower has been approved by the appropriate governing body. Further, subject to State law, any rental or license fee required to renew or extend the term of a lease shall not exceed the fair market value for rental or use of a similarly situated facility.
2. A tower under seventy (70) feet in height owned and operated by a federally-licensed amateur radio station operator shall be exempted from these requirements. However, the owner or operator of such tower shall be required to comply with all applicable local, state and federal codes.
3. Any existing or previously approved tower or antenna shall be considered "grandfathered" and will not be required to meet any additional requirements of this ordinance other than those in place prior.

G. *Definitions:*

- *Base Station.* A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes, without limitation:

i. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

ii. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small-cell networks).

iii. Any structure other than a tower that, at the time the relevant application is filed with the City of Marietta under this section, supports or houses equipment described in paragraphs (i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support. The term does not include any structure that, at the time the relevant application is filed with the City of Marietta under this section, does not support or house equipment described in (i)-(ii) of this section.

- *Collocation*. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

- *Eligible Facilities Request*. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
  i. Collocation of new transmission equipment;
  ii. Removal of transmission equipment; or
  iii. Replacement of transmission equipment.

- *Eligible support structure*. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City of Marietta under this section.
- *Substantial Change*: A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:
  i. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater. For other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater. (Changes in height will be measured from the top of the original support structure or tower);
  ii. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

iii. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

iv. It entails any excavation or deployment outside the current site;

v. It would defeat the concealment elements of the eligible support structure; or

vi. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs (i)-(iv) of this section.

- *Transmission Equipment*. Equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

- *Tower*. Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

Section 2: Division 724, Definitions, is hereby amended by adding the following definitions:

- *Base Station*. A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes, without limitation:

  i. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

  ii. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small-cell networks).

  iii. Any structure other than a tower that, at the time the relevant application is filed with the City of Marietta under this section, supports or houses equipment escribed in paragraphs (i)-(ii) that has been reviewed and approved under the applicable

zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support. The term does not include any structure that, at the time the relevant application is filed with the City of Marietta under this section, does not support or house equipment described in (i)-(ii) of this section.

- *Collocation*. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

- *Eligible Facilities Request*. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
  i. Collocation of new transmission equipment;
  ii. Removal of transmission equipment; or
  iii. Replacement of transmission equipment.

- *Eligible support structure*. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City of Marietta under this section.

- *Substantial Change to wireless tower or wireless transmission equipment*: A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

  i. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater.(Changes in height will be measured from the top of the original support structure or tower);
  ii. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
  iii. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
  iv. It entails any excavation or deployment outside the current site;

v. It would defeat the concealment elements of the eligible support structure; or

vi. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs (i)-(iv) of this section.

- *Transmission Equipment*. Equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

- *Tower*. Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

Section 3: It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses and phrases are severable and if any section, paragraph, sentence, clause or phrase of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance.

Section 4: All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 5: This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

Final Ordinance submitted by:

Brian Binzer, Director
Department of Development Services

Approved as to form:

Douglas R. Haynie, City Attorney

Approved by City Council:

DATE: June 10, 2015

APPROVED:

Steve Tumlin, Mayor

ATTEST:

Stephanie Guy, City Clerk