



STAFF REPORT

MORGAN COUNTY PLANNING COMMISSION

PETITION FOR: TEXT AMENDMENT

Applicant: Morgan County Planning & Development
Applicant's Agent: N/A
Zoning Ordinance: Article 7.42 Small Cell Wireless Facilities and Antennas

Summary

Morgan County Planning & Development is proposing to add a new chapter to Article 7 of the Morgan County Zoning Ordinance. Chapter 7.42 will address Small Cell Wireless Facilities and Antennas.

Rural counties are struggling with connectivity. Wireless providers have begun offering smaller facilities on poles, which are located on the right-of-way. This topic has been vigorously debated in the State Legislature, particularly between attorneys for wireless providers and representatives for the Georgia Municipal Association and the Association of County Commissioners. The result was a model ordinance that both sides felt could be acceptable.

We have been told definitively that urban areas will be receiving the attention of wireless providers first. The language breaks down communities into Tiers based on population. Obviously, the goal of wireless providers is to access as many bill-paying consumers possible. Morgan County is in the lowest Tier, meaning we will be lowest priority. In addition to SB 66 regarding small cell facilities, the State Legislature also passed SB 2 which authorizes EMCs to provide broadband services. If our local EMCs choose to provide broadband, this language will also address the pole infrastructure they may use.

Attached is an ACCG summary of the language.

Current and Proposed Language

See attached. This is a model ordinance provided by GMA and ACCG.

CHAPTER 7.42 Small Cell Wireless Facilities and Antennas Ordinance

Section 7.42.1 Purpose and Compliance

O.C.G.A. §32-4-42(6) authorizes the Morgan County, Georgia (the “County”) 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 County. Further, 47 U.S.C. §253(c) provides that the County has authority to manage its public rights of way. Finally, the Georgia Streamlining Wireless Facilities and Antennas Act., O.C.G.A. Title 36, Chapter 66C (the “SWFAA”), addresses the placement of small wireless facilities in the public rights of way of the County.

The County finds it is in the best interest of the County and its residents and businesses to establish requirements, specifications, and reasonable conditions regarding placement of small wireless facilities, poles 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 County and to reasonably manage and protect the public rights of way and its uses in the County.

This Ordinance is to implement the Georgia Streamlining Wireless Facilities and Antennas Act and ensure use of the public rights of way is consistent with the design, appearance and other features of nearby land uses, protects the integrity of historic, cultural and scenic resources and does not harm residents’ quality of life.

Section 7.42.2 Permits

A permit is required to collocate a small wireless facility in the public right of way or to install, modify, or replace a pole or a decorative pole in the public right of way. A permit is not required to perform the activities described in O.C.G.A. § 36-66C-6(e) or (f).

Any person seeking to collocate a small wireless facility in the public right of way or to install, modify, or replace a pole or a decorative pole in the public right of way shall first submit an application for a permit to the Morgan County Planning and Development Department. Applications are available from the Morgan County Planning and Development Department and from the Department webpage. Any material change to the information contained in an application shall be submitted in writing to the Morgan County Planning and Development Department within thirty (30) days after the events necessitating the change.

Any person who intends to submit an application to the County pursuant to this Ordinance shall meet with the Morgan County Planning and Development Department at least thirty (30) days prior to submitting an application for a permit. The purpose of such meeting shall be to inform the County when the applicant expects to commence the deployment of small wireless facilities and poles within the County, the number of small wireless facilities and poles it expects to deploy during the twenty-four (24) months after commencement, and the expected timing of such deployments.

Each application shall be submitted by the applicable wireless provider or its duly authorized representative and shall contain the following:

- The applicant's name, address, telephone number, and email address, including emergency contact information for the applicant;
- The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant with respect to filing the application;
- A general description of the proposed work and the purposes and intent of the proposed facility. The scope and detail of such description shall be appropriate to the nature and character of the physical work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed;
- Detailed construction drawings regarding the proposed use of the right of way;
- To the extent the proposed facility involves collocation on a pole or support structure, a structural report performed by a duly licensed engineer evidencing that the pole or support structure will structurally support the collocation (or that the pole or support structure may and will be modified to meet structural requirements) in accordance with applicable codes;
- For any new aboveground facilities, visual depictions or representations, if not included in the construction drawings;
- Information indicating the horizontal and approximate vertical location, relative to the boundaries of the right of way, of the small wireless facility for which the application is being submitted;
- If the application is for the installation of a pole, a certification that complies with O.C.G.A. §36-66C-6(k);
- If the small wireless facility will be collocated on a pole or support structure owned by a third party, a certification that the wireless provider has permission from the owner to collocate on the pole or support structure; and
- If the applicant is not a wireless services provider, a certification that a wireless services provider has requested in writing that the applicant collocate the small wireless facilities or install, modify or replace the pole or decorative pole at the requested location.

Each application for a permit shall include the maximum application fees permitted under O.C.G.A. §36-66C-5(a)(1), (a)(2) and (a)(3). Such maximum application fees shall automatically increase on January 1 of each year beginning January 1, 2021, as provided under O.C.G.A. §36-66C-5(b).

The Morgan County Planning and Development Department shall review applications for permits according to the timelines and using the procedures identified in O.C.G.A. §36-66C- 7 and §36-66C-13.

Applications for permits shall be approved unless the requested collocation of a small wireless facility or the requested installation, modification, or replacement of a pole or decorative pole:

- Interferes with the operation of traffic control equipment;
- Interferes with sight lines or clear zones for transportation or pedestrians;
- Fails to comply with the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., or similar Laws of general applicability regarding pedestrian access or movement;
- Requests that ground-mounted small wireless facility equipment be located more than seven and a half (7.5) feet in radial circumference from the base of the pole, decorative pole or support structure to which the small wireless facility antenna would be attached, provided that the County shall not deny the application if a greater distance from the base of the pole, decorative pole or support structure is necessary to avoid interfering with sight lines or clear zones for transportation or pedestrians or to otherwise to protect public safety;
- Fails to comply with applicable codes;
- Fails to comply with the maximum limitations set forth in this Chapter of the Ordinance of O.C.G.A. §36-66C-7(h) or (i);
- With respect to an application to install a pole or decorative pole, interferes with the widening, repair, reconstruction, or relocation of a public road or highway by an County or the Department of Transportation that has been advertised for bid and scheduled for completion within six months after the application is filed;
- With respect to an application to install a pole or decorative pole, interferes with a public works construction project governed by Chapter 91 of Title 36 which is advertised for bid and scheduled for completion within six months after the application is filed;
- Fails to comply with O.C.G.A. §36-66C-10, O.C.G.A. §36-66C-11, or O.C.G.A. §36-66C-12;
- Fails to comply with laws of general applicability addressing pedestrian and vehicular traffic and safety requirements; or
- Fails to comply with laws of general applicability that address the occupancy or management of the right of way and that are not otherwise inconsistent with this Ordinance.

For applications for new poles intended to be erected in the public right of way within residentially zoned areas, the Morgan County Planning and Development Department may propose an alternate location in the public right of way within 100 feet of the location set forth in the application. The wireless provider shall use the Morgan County Planning and Development Department's proposed alternate location unless the location imposes technical limits or significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and it shall provide a written summary of the basis for such determination.

A permit issued under this Chapter shall authorize such person to occupy the public rights of way to:

- collocate a small wireless facility on or adjacent to a pole or a support structure that does not exceed the limitations set forth in O.C.G.A. §36-66C-7(h)(3) or on or adjacent to a decorative pole in compliance with O.C.G.A. §36-66C-12; and

- install, modify, or replace a pole or decorative pole for collocation of a small wireless facility that does not exceed the limitations set forth in O.C.G.A. §36-66C-7(h)(1) and (h)(2).

Upon the issuance of a permit under this Ordinance, and on each anniversary of such issuance, every person issued a permit shall submit to the County the maximum annual payments permitted under O.C.G.A. §36-66C-5(a)(4) and (a)(5); provided, however, that if such person removes its small wireless facilities from the public rights of way pursuant to O.C.G.A. §36-66C-5(e), then such person shall be responsible for the pro rata portion of the annual payment based on the number of days of occupation since the last annual payment. Upon making such pro rata payment and removal of the small wireless facilities, the person's annual payment obligations under this section shall cease as of the date of the actual removal. The maximum annual payments shall automatically increase on January 1 of each year beginning January 1, 2021, as provided under O.C.G.A. §36-66C-5(b).

Any person issued a permit shall pay the fees identified in O.C.G.A. §36-66C-5(a)(6) and (a)(7), as applicable.

The County may revoke a permit issued pursuant to this Chapter if the wireless provider or its equipment placed in the public right of way under that permit subsequently is not in compliance with any provision of this Ordinance or the Georgia Streamlining Wireless Facilities and Antennas Act.

If a wireless provider occupies the public rights of way without obtaining a permit required by this Chapter or without complying with the Georgia Streamlining Wireless Facilities and Antennas Act, then the County may, at the sole discretion of the County, restore the right of way, to the extent practicable in the reasonable judgment of the County, to its condition prior to the unpermitted collocation or installation and to charge the responsible wireless provider the reasonable, documented cost of the County in doing so, plus a penalty not to exceed \$1,000.00. The County may suspend the ability of the wireless provider to receive any new permits from the County required under this Chapter until the wireless provider has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the County may not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

All accepted applications for permits shall be publicly available subject to the limitations identified in O.C.G.A. §36-66C-6(c).

An applicant may file a consolidated application related to multiple small wireless facilities, poles or decorative poles so long as such consolidated application meets the requirements of O.C.G.A. §36-66C-13.

Activities authorized under a permit shall be completed within the timelines provided in O.C.G.A. §36-66C-7(k)(2).

Issuance of a permit authorizes the applicant to:

- undertake the collocation, installation, modification or replacement approved by the permit and
- operate and maintain the small wireless facilities and any associated pole covered by the permit for a period of ten (10) years.

Permits shall be renewed following the expiration of the term identified above, upon the terms and conditions identified in O.C.G.A. §36-66C-7(k)(2)(B).

If an application for a permit seeks to collocate small wireless facilities on authority poles in the public rights of way, then the County shall, within 60-days of receipt of the completed application:

- provide a good faith estimate for any make-ready work necessary to enable the authority pole to support the proposed facility; or
- notify the wireless provider that the wireless provider will be required to perform the make-ready work. Any make-ready work performed by the County shall be completed pursuant to and in accordance with the provisions of §36-66C-7(n).

Section 7.42.3 Removal; Relocation; Reconditioning; Replacement; Abandonment

A person may remove its small wireless facilities from the public rights of according to the procedures of O.C.G.A. §36-66C-5(e).

In the event of a removal previously discussed in this Chapter, the right of way shall be, to the extent practicable in the reasonable judgment of the County, restored to its condition prior to the removal. If a person fails to return the right of way, to the extent practicable in the reasonable judgment of the County, to its condition prior to the removal within 90 days of the removal, the County may, at the sole discretion of the County, restore the right of way to such condition and charge the person the County's reasonable, documented cost of removal and restoration, plus a penalty not to exceed \$500.00. The County may suspend the ability of the person to receive any new permits required under this Chapter until the person has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the County will not suspend such ability of any person that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

If, in the reasonable exercise of police powers, the County determines:

- a pole or support structure unreasonably interferes with the widening, repair, reconstruction, or relocation of a public road or highway, or
- relocation of poles, support structures, or small wireless facilities is required as a result of a public project, the wireless provider shall relocate such poles, support structures, or small wireless facilities pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(l). If the wireless provider fails to relocate a pole, support structure or small wireless facility or fails to provide a written good faith estimate of the time needed to relocate the pole, support structure or small wireless within the time period prescribed in O.C.G.A. §36-66C-7(l), the County make take the actions authorized by O.C.G.A. §36-66C- 7(o), in addition to any other powers under applicable law.

The County shall recondition and replace authority poles consistent with the provisions of O.C.G.A. §36-66C-7(m). Wireless providers shall accommodate and cooperate with reconditioning and replacement consistent with the provisions of O.C.G.A. §36-66C-7(m).

A wireless provider must notify the County of its decision to abandon any small wireless facility, support structure or pole pursuant to and in accordance with the provisions of O.C.G.A. §36-66C-7(p)(1). The wireless provider shall perform all acts and duties identified in O.C.G.A. §36-66C-

7(p) regarding abandonment. The County may take all actions and exercise all powers authorized under O.C.G.A. §36-66C-7(p) upon abandonment, in addition to any other powers under applicable law.

Section 7.42.4 Standards

Small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities may be placed in the public right of way as a permitted use:

- upon a receipt of a permit required under this Chapter;
- subject to applicable codes; and
- so long as such small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities comply with the appropriate provisions of O.C.G.A. §36- 66C-7(h).
 - New, modified, or replacement poles installed in the right of way in a historic district and in an area zoned primarily for residential use shall not exceed 50 feet above ground level.
 - Each new, modified, or replacement pole installed in the right of way that is not in a historic district or in an area zoned primarily for residential use shall not exceed the greater of:
 - Fifty feet above ground level; or
 - Ten feet greater in height above ground level than the tallest existing pole in the same public right of way in place as of January 1, 2019, and located within 500 feet of the new proposed pole;
 - New small wireless facilities in the public right of way and collocated on an existing pole or support structure shall not exceed more than ten feet above the existing pole or support structure.
 - New small wireless facilities in the public right of way collocated on a new or replacement pole under Section 5.1(a) or Section 5.1(b) may not extend above the top of such poles.

Unless it is determined that another design is less intrusive, or placement is required under applicable law, small wireless facilities shall be concealed as follows:

- Antennas located at the top of poles and support structures shall be incorporated into the pole or support structure, or placed within shrouds of a size such that the antenna appears to be part of the pole or support structure;
- Antennas placed elsewhere on a pole or support structure shall be integrated into the pole or support structure or be designed and placed to minimize visual impacts.
- Radio units or equipment cabinets holding radio units and mounted on a pole shall be placed as high as possible, to avoid interfering with, or creating any hazard to any other use of the public rights of way and located on one side of the pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the pole on which they are placed.
- Wiring and cabling shall be neat and concealed within or flush to the pole or support structure, ensuring concealment of these components to the greatest extent possible.

Notwithstanding any provision of this Ordinance to the contrary, an applicant may collocate a small wireless facility within a historic district and may place or replace a pole within a historic district, only upon satisfaction of the following:

- issuance of a permit required under this Chapter and
- compliance with applicable codes.

Notwithstanding any provision of this Ordinance to the contrary, an applicant may collocate a small wireless facility on a decorative pole, or may replace a decorative pole with a new decorative pole, in the event the existing decorative pole will not structurally support the attachment, only upon satisfaction of the following:

- issuance of a permit required under this Chapter and
- compliance with applicable codes.

Article 3 Definitions to be added:

Antenna (Small Cell Wireless Facility): (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.

Applicable Codes: Uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the State of Georgia or the County or are otherwise applicable in the County.

Applicant: Any entity (such as an individual, corporation, partnership, association) that applies for a zoning action or permit, and any attorney or other person representing or acting on behalf of that entity. Any person that submits an application.

Application: A written request submitted by an applicant to the County for a permit to: (i) collocate a small wireless facility in a right of way; or (ii) install, modify, or replace a pole or decorative pole in a right of way on which a small wireless facility is or will be collocated.

Authority Pole: A pole owned, managed, or operated by or on behalf of the County. Such term shall not include poles, support structures, electric transmission structures, or equipment of any type owned by an electric supplier.

Collocate or Collocation: To install, mount, modify, or replace a small wireless facility on or adjacent to a pole, decorative pole, or support structure.

Communications Facility: The set of equipment and network components, including wires and cables and associated equipment and network components, used by a communications service provider to provide communications services.

Communications Service Provider: A provider of communications services.

Communications Services: Cable service as defined in 47 U.S.C. § 522(6); telecommunications service as defined in 47 U.S.C. § 153(53); information service as defined in 47 U.S.C. Section 153(24), as each such term existed on January 1, 2019; or wireless services.

Consolidated Application: 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.

Decorative Pole: An authority pole that is specially designed and placed for aesthetic purposes.

Electric Supplier: Any electric light and power company subject to regulation by the Georgia Public Service Commission, any electric membership corporation furnishing retail service in this state, and any municipality which furnishes such service within this state.

Eligible Facilities Request: Eligible facilities request as set forth in 47 C.F.R. § 1.40001(b)(3), as it existed on January 1, 2019.

FCC: The Federal Communications Commission of the United States.

Fee: A one-time, nonrecurring charge based on time and expense.

Historic District: (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 April 26, 2019.

Law: Means and includes any and all federal, state, or local laws, statutes, common laws, codes, rules, regulations, orders, or ordinances.

Micro Wireless Facility: A small wireless facility not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height that has an exterior antenna, if any, no longer than 11 inches.

Permit: A written authorization, in electronic or hard copy format, required to be issued by the County to initiate, continue, or complete the collocation of a small wireless facility or the installation, modification, or replacement of a pole or decorative pole upon which a small wireless facility is collocated.

Person: An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

Pole: 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.

Rate: A recurring charge.

Reconditioning Work: Activities associated with substantially painting, reconditioning, improving, or repairing authority poles.

Replace, Replacement or Replacing: 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.

Replacement Work: The activities associated with replacing an authority pole.

Right of Way (Small Cell Wireless Facility): Generally means, property or any interest therein, whether or not in the form of a strip, which is acquired for or devoted to a public road; provided, however, that such term shall apply only to property or an interest therein that is under the ownership or control of the County and shall not include property or any interest therein acquired for or devoted to an interstate highway or the public rights, structures, sidewalks, facilities, and appurtenances of buildings for public equipment and personnel used for or

engaged in administration, construction, or maintenance of public roads or research pertaining thereto or scenic easements and easements of light, air, view and access.

Small Wireless Facility: 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.

State: The State of Georgia.

Support Structure: 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.

Wireless Infrastructure Provider: 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.

Wireless Provider: A wireless infrastructure provider or a wireless services provider.

Wireless Services: Any services provided to the public using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

Wireless Services Provider: A person that provides wireless services.

Wireline Backhaul Facility: An aboveground or underground wireline facility used to transport communications data from a telecommunications demarcation box associated with small wireless facility to a network.