

**PICKENS COUNTY CELL TOWER ORDINANCE
SEPTEMBER, 2008 VERSION**

Sec. **-1. Purpose and Legislative Intent.

The Telecommunications Act of 1996 affirmed Pickens County's authority concerning the placement, construction and modification of wireless telecommunications facilities. Pickens County finds that wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, character, and environment of the County and its inhabitants. The County also recognizes that the development of wireless service technology can be an asset to the economic development of the County as well as providing significant benefits to the County and its residents. In order to insure that the placement, construction, and/or modification of wireless telecommunications facilities is consistent with the County's land use policies, the County shall adopt a single and comprehensive application and permit process for the placement, construction, and modification of wireless telecommunications facilities .

The intent and purpose of this Ordinance is to regulate the placement, construction, and/or modification of wireless telecommunications facilities in a manner which:

- a. Accommodates the communication, radio, television, and electric generation needs of wireless telecommunication facilities while protecting the health, safety, and welfare of Pickens County and its inhabitants;
- b. Minimizes the adverse environmental and visual impacts of wireless communication facilities;
- c. Maximizes the use of existing and approved towers, buildings, or structures to accommodate new wireless telecommunication facilities;
- d. Avoids potential damage to adjacent properties;
- e. Minimizes the hazards these facilities pose to birds.

The above shall be accomplished through location, structural, and construction standards accompanied by a comprehensive review of the site location, the design and engineering principles described in the application, as well as the implementation of those design and engineering principles in the placement, construction, and/or modification of wireless telecommunications facilities in Pickens County.

Sec. **-2. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable and the remaining provisions of this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

Any permit issued under this Ordinance shall be comprehensive and not severable. If part of a permit is found to be invalid or unenforceable in any material respect by a competent authority the permit shall be void in total.

Sec. **-3. Definitions.

For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- a. Applicant. Any entity desiring to place a wireless telecommunications facility within Pickens County.
- b. Co-location. The location of the equipment required to meet an Applicant's needs upon an existing wireless telecommunications facility. No additional permit is required to co-locate equipment on a facility which has already been permitted by the County. However, notification and fees are required by Pickens County prior to the commencement of work required for the co-location.
- c. FAA. The Federal Aviation Administration, or its duly designated and authorized successor agency.
- d. FCC. The Federal Communications Commission, or its duly designated and authorized successor agency.
- e. Formal Party of Record. Formal Parties of Record shall consist of the Pickens County Planning and Development Office, the Applicant, and persons making a filing as proscribed in Sec. **-8, below.

- f. Modification. The addition, removal or change of any of the physical and visually discernable components or aspects of a wireless telecommunications facility which either increases the overall height of the facility or which modifies the facility outside of the fenced boundaries of the facility as originally permitted.

The replacement of any components of a wireless telecommunications facility with identical components and normal repair and maintenance of a wireless telecommunications facility shall not be considered a modification.

- g. Stealth Design Technology. A wireless telecommunications facility which appropriately models or mimics in size, shape, scale, and color something which exists in the immediate landscape or which could be legally placed there. Examples include silos in a farm setting, trees in forested lands, church steeples, water towers, or other existing tall structures in the vicinity of the proposed wireless telecommunications facility.
- h. Wireless Telecommunications Facility. Any structure designed for the purposes of promoting wireless telecommunications as contemplated by the Federal Telecommunications Act. Also referred to herein as “facility”.

Sec. **-4. Applicability.

Any and all placement, construction, and/or modification of wireless telecommunications facilities subsequent to the adoption of this Ordinance must receive a permit from the Pickens County Commissioner before any work can commence on the facility. No permit shall be transferrable between applicants or properties. Permits expire six months from issuance.

Sec. **-5. Permit Requirements.

To obtain a permit for the placement, construction, and/or modification of wireless telecommunications facilities, the Applicant must present to the Pickens County Planning and Development Office a survey, plans and specifications of the facility, title certificate, and statement as described below. In addition to the following documentation, the Applicant will also be required to submit an application fee in an amount sufficient to pay advertising costs as well as staff employees, independent engineers, and other related experts and consultants to be hired by Pickens County to review the documentation submitted and to inspect the site during the construction or modification of the wireless telecommunications facility. Said fee shall be as published in the Pickens County Planning and Development Office.

Once the documents have been filed and the application fee paid, the Pickens County Planning and Development Office shall issue a written notification to the Applicant that the application has been received. The County shall post a notice of the filing upon the property and upon the property's access point to the public road in a manner consistent with notices for land use re-classification hearings. The County shall deliver notice of the filing to contiguous land owners in a manner consistent with notices for land use re-classification hearings. The County shall advertise the filing for two weeks in the local legal organ in a manner consistent with notices for land use re-classification hearings. The County shall post the notice together with the application on its web site in a format which will enable the documents to be downloaded by the public. The notices shall state that any person wishing to classify themselves as a Formal Party of Record should make the appropriate filing with the Pickens County Planning and Development Office within thirty (30) days.

Should the County determine that the Applicant's information fails to meet the requirements outlined below, or should the Applicant fail to provide additional information as required by the County, the permit will be denied. If the construction or modification of the wireless telecommunications facility deviates from the submitted documentation, the permit will be revoked.

- a. Survey. At a minimum, the survey shall have the following information. Additional information may be required. All surveys shall bear the signature and seal of a Georgia registered surveyor and shall otherwise comply with the requirements to be recorded in the Pickens County Superior Court Clerk's office.
 1. Boundaries of the parcel of property upon which the wireless telecommunications facility is to be located.
 2. Contour lines showing the elevation of the property.
 3. Identification of all contiguous landowners.
 4. Identification of all parties in possession of the surveyed property.
 5. A site location of the wireless telecommunications facility (including fencing) as it is to appear on the parcel showing it to be at least two hundred (200) feet from the boundary line of the property.
 6. Access from the wireless telecommunications facility to a public road.

7. A description of all utility easements as they exist on the property together with a statement that the wireless telecommunications facility shall not be placed within said easement.
 8. A description of all public and private right of ways as they exist on the property together with a statement that the wireless telecommunications facility shall not be placed within said right of way.
- b. Plans and Specifications. At a minimum, the plans and specifications shall meet the following requirements. Additional information may be required. All plans and specifications shall bear the signature and seal of a Georgia registered engineer.
1. Professional qualifications of the engineer preparing the plans and specifications for the placement, construction, and/or modification of the wireless telecommunications facility.
 2. A list of each wireless telecommunications facility or similar structure which the engineer has designed. Said list shall include at a minimum a description of the structure, the location of the structure, and the local governing authority who issued the permit for the placement, construction, and/or modification of the structure.
 3. A list of at least five sites where the proposed wireless telecommunications facility is currently in use.
 4. A description of the wireless telecommunications facility to be constructed or the modifications to the existing structure.
 5. All plans and specifications shall provide for a monopole design of the wireless telecommunications facility which shall not be more than one hundred ninety-five (195) feet in height as measured from ground level prior to construction.
 6. A construction schedule for the proposed wireless telecommunications facility. The use of temporary mobile wireless telecommunications facilities shall be limited to twenty-four (24) hours. All construction shall be completed within six (6) months of the issuance date of the permit.
 7. Copies of applications, permits, and licenses from the FCC and FAA for the facility owner and tenants, as applicable.

8. A statement that the proposed design complies with all manufacturer's specifications for the equipment used with the wireless telecommunications facility.
 9. A statement that the proposed design complies with all state and local building and electrical codes.
- c. Title Certificate. At a minimum, the title certificate shall have the following information. Additional information may be required. All title certificates shall be issued by an attorney licensed to practice law in the State of Georgia.
1. The attorney shall certify the title to Pickens County, Georgia.
 2. The certificate shall be based on a search of the public record for the preceding fifty years.
 3. The property certified to shall be the exact same property as shown in the Applicant's survey.
 4. The certificate shall set forth all matters pertaining to the marketability of said title, including but not limited to all utility easements, any covenants and restrictions running with the land, and liens against any party with an ownership interest.
- d. Statement of Applicant. At a minimum, the statement of Applicant shall have the following information. Additional information may be required. All statements of Applicant shall be signed under oath by the Applicant.
1. An explanation as to why a new wireless telecommunications facility is needed. This explanation shall include but not be limited to:
 - A. A feasibility study on co-location with existing wireless telecommunications facilities within a one-mile radius.
 - B. The feasibility of other entities co-locating wireless telecommunications facilities upon the facility to be permitted.
 - C. A feasibility study on locating the proposed wireless telecommunications facility a distance outside of a one-mile radius of existing wireless telecommunications facilities.

2. A description of the visual impact to be caused by the proposed wireless telecommunications facility. This description shall include but not be limited to:
 - A. A detailed plan to screen the wireless telecommunications facility with landscaping and other efforts including but not limited to the use of stealth technology.
 - B. A detailed plan to use building materials, colors, textures, screening, as well as landscaping efforts to blend the wireless telecommunications facility with the existing environment to the greatest extent possible.
 - C. Detailed description of applicability and compliance of Section 106 of the National Historic Preservation Act of 1966.
3. A statement agreeing not to place lighting, signage, or other messaging upon the facility unless required by federal, state, or local authorities (for example, addressing requirements of 911 services, FCC licensing requirements). However, an unlighted, four foot square sign shall be affixed at each of the cardinal points of the compass on the fence surrounding the wireless telecommunications facility. This sign shall contain a statement identifying the site as a wireless telecommunications facility and prohibiting unauthorized access to the site. Said notice shall also contain the 911 address of the facility together with the name and emergency contact information of the Applicant or its agent.
4. Evidence of insurance for premises liability including but not limited to adequate coverage for wrongful death, personal injury, and property damage. Coverage shall be a minimum of \$1,000,000.00 per occurrence with a \$2,000,000.00 aggregate.
5. A statement agreeing to maintain security on the premises which reasonably prohibits unauthorized access. At a minimum, this shall include an eight (8) foot high locked chain link fence with three strands of barbed wire across its top. The first twelve (12) feet of the tower shall be designed to prevent climbing.

6. A statement agreeing to remove the wireless telecommunications facility if it remains unused for a period of twelve (12) months once construction has been completed.
7. A copy of all required state and federal licenses for the wireless telecommunications facility to be built.
8. A written statement from all persons or entities holding an interest in the property consenting to the location of a wireless telecommunications facility upon the property.
9. A description of the ownership interest of the Applicant which gives it the legal ability to place a wireless telecommunications facility upon the property (a copy of a lease or vesting deed will suffice).
10. A statement that all county ad valorem taxes levied against the property that can be paid have been paid, together with a copy of the most recent property tax bill.
11. Names, addresses, and tax parcel identification numbers of all contiguous landowners.
12. Names, addresses, and phone numbers of Applicant.
13. A maintenance and safety plan which insures the continued safety of the wireless telecommunications facility for the life of the facility.

Sec. **-6. Variances.

If an Applicant requests in writing to the Pickens County Planning and Development Office a variance to the enforcement of any of the requirements of this Ordinance, the County Commissioner is authorized to grant a variance if the Pickens County Planning and Development Office finds that one or more of the following considerations are present:

- a. The placement, construction, and/or modification of wireless telecommunications facilities is undertaken by a State or local governmental entity;
- b. The enforcement of the provisions described in the variance request would unreasonably discriminate among providers of functionally equivalent services;

- c. The enforcement of the provisions described in the variance request would prohibit or have the effect of prohibiting the provision of personal wireless services;
- d. There are unusual, exceptional, or extraordinary circumstances or conditions applying to the property upon which the placement, construction, and/or modification of wireless telecommunications facilities is proposed that do not generally apply to other property in the same vicinity or use district, and such conditions are not the result of the property owner's or Applicant's own actions. Such conditions may include topography, unique natural conditions, surroundings of the subject property, or the size or particular shape of the property being considered; AND as a result of such unusual circumstance or condition, there is an unnecessary hardship or practical consideration which renders the compliance with this ordinance unfairly difficult;

The written request for a variance to the enforcement of any of the requirements of this Ordinance shall state with particularity:

- a. Which provision of this Ordinance cannot be complied with;
- b. Which of the four considerations referenced above are applicable; and
- c. How the purpose and intent of this Ordinance are not in conflict with the variance should it be granted.

The authorization of any variance shall not conflict with the purpose and intent of this Ordinance. In granting a variance, the County Commissioner may impose such requirements and conditions with respect to the placement, construction, and/or modification of the wireless telecommunications facilities as may be deemed necessary to further the purpose and intent of this Ordinance. All requests for variances shall be made with the initial application and shall be considered as part of the application.

Sec. **-7. Filings.

Except as otherwise provided in this Ordinance, all filings required or permitted by this Ordinance shall be made with and directed to the Pickens County Planning and Development Office. All filings shall be date stamped by the Pickens County Planning and Development Office.

Each filing required or permitted by this Ordinance shall have one original, ten copies, and an electronic version of the filing in "pdf" format on compact disc. Any person making a filing which does not possess the technical ability to file an electronic version shall certify this inability

contemporaneously with the filing of the original hard copy and shall be assessed an additional filing fee which shall reflect the extra staff time needed in making this electronic filing for the person. In the event that a textual, substantive, or other type discrepancy exists between the original hard copy of the document and the electronic version filed, the contents of the original hard copy filed shall control.

Each filing made pursuant to this Ordinance shall be served on each Formal Party of Record as listed on the Pickens County web site at the time the filing is made. Pickens County shall list on its web site any person who has filed to become a Formal Party of Record as said filing is made with the Pickens County Planning and Development Office. Service shall be made by delivering a copy of the filing to the party or by mailing a copy of the filing to the party's last known address as it appears on the web site. For purposes of this Ordinance, "delivering a copy" means handing it to the party or his authorized representative, or leaving it at the party's place of business with the party's clerk or other person in charge thereof, or leaving it at the party's usual place of abode with some person of suitable age and discretion residing therein. Service by mail is complete upon depositing the filing properly addressed with adequate postage in the U. S. Mail or similar carrier. A proof of service shall be made to the Pickens County Planning and Development Office with the filing.

Each filing shall:

- a. Identify the person on whose behalf it is being filed;
- b. Identify that person's address;
- c. Include a sworn verification by the appropriate persons of any facts contained therein.

In computing the time periods referenced in this Ordinance, the first day shall not be counted, but the last day shall be counted. Each calendar day shall be included in the computation of time, regardless of whether that day is a Saturday, Sunday, or legal holiday; however, if the last day of the time period falls on a Saturday, Sunday, or some other day that the Pickens County Planning and Development Office is closed for business, then the time period shall be extended to the next business day.

Sec. **-8. Formal Parties of Record; Rebuttal.

Formal Parties of Record shall consist of the Pickens County Planning and Development Office, the Applicant, and persons making a filing as described below.

Any person desiring to become a Formal Party of Record shall file the following information with the Pickens County Planning and Development Office within thirty (30) days from the date of filing the application:

- a. The person's name, mailing address, and residence address;
- b. The grounds for objecting or supporting the application and/or variance request;
- c. Verified expert testimony substantiating the grounds for said objection or support;
- d. The name, address, and qualifications of each person giving verified expert testimony;
- e. Any further information deemed necessary and relevant by the Pickens County Planning and Development Office to investigate the assertions made in the filing.

In addition, all persons making said filing shall submit a filing fee in an amount sufficient to pay staff employees, independent engineers, and other related experts and consultants to be hired by Pickens County to review the documentation submitted. Said fee shall be determined on a case by case basis.

The Applicant shall have forty-five (45) days from the date of filing of the application to file any written rebuttal to the assertions made by a Formal Party of Record. Said rebuttal testimony shall contain at a minimum the following information:

- a. Verified expert testimony substantiating the grounds for said rebuttal;
- b. The name, address, and qualifications of each person giving verified expert testimony;
- c. Any further information deemed necessary or relevant by the Pickens County Planning and Development Office to investigate the assertions made in the filing.

All Formal Parties of Record shall be entitled to participate in the public hearing as described in Section 12. However, no Formal Party of Record may assign, transfer, or otherwise delegate their speaking time to any other person or participant.

Sec. **-9. Limited Appearances by Members of the Public.

Any person who is not a Formal Party of Record may nonetheless participate in the public hearing before the Planning Commission as described in Section 12. Any statements made in the public hearing shall be added to the record; however, any person making said statements pursuant to this Section shall not be entitled to service of filings or other documents.

Any person who participates in the public hearing pursuant to this Section shall be required to declare said intention prior to the public hearing by signing an attendance form supplied by the Pickens County Planning and Development Office on the day of the hearing. At a minimum, said attendance form shall be available for signature at the place designated for the public hearing thirty minutes prior to its call to order. The attendance form shall not be available for signature once the public hearing is called to order. During that portion of the public hearing set aside for Limited Appearances, all persons who have signed the attendance form shall be called to speak in their order of signing. No person may assign, transfer, or otherwise delegate their speaking time to any other person or participant. If a person who has signed the attendance form is not in attendance at the public hearing when their name is called, they shall be deemed to have abandoned their right to participate in the public hearing pursuant to this Section, provided that persons who have left the hearing room temporarily with the prior approval of the Chairman of the Planning Commission and who return to the hearing room prior to the expiration of that portion of the public hearing set aside for Limited Appearances shall be allowed to participate pursuant to this Section at the end of that portion of the public hearing set aside for Limited Appearances.

Sec. **-10. Requests for Information.

For purposes of preparing for rebuttal, all Formal Parties of Record shall have access to the same information. Upon written request, a Formal Party of Record shall be entitled to information which:

- a. Is relevant to a filing already made;
- b. Is not subject to a rule of privilege recognized by Georgia or Federal law;
- c. Does not pertain to a trade secret or other non-public, proprietary information;

The request for information shall be filed with the Pickens County Planning and Development Office no later than seventy-five (75) days from the filing date of the application and shall provide for inspection or production of the information within five (5) days from the service date of the request. If inspection or production is not permitted, the party submitting the request shall note the objection in its presentation to the Planning Commission.

Except for requests made by the Pickens County Planning and Development Office, all costs for the reproduction of documents obtained pursuant to this Section shall be born by the party making the request. Costs for copies of any documents requested shall be twenty-five cents (\$0.25) per page plus the hourly wage of the lowest paid employee of the record holder qualified to retrieve the requested information multiplied by the time necessary to retrieve the information, less the first fifteen minutes required to retrieve the information. An estimate of the costs shall be provided to the requesting party within three days of its receipt of the request. Payment for copies shall be a prerequisite for obtaining said copies.

**Sec. **-11. Recommendation by Pickens County Planning and Development Office;
Rebuttal.**

Within sixty (60) days from the date of the filing of the application, the Pickens County Planning and Development Office shall issue a written recommendation to the Planning Commission describing its reasons for or against issuing a permit for the placement, construction, and/or modification of wireless telecommunications facilities, or a variance to the enforcement of any of the requirements of this Ordinance. This decision shall be served on each member of the Planning Commission, the Applicant, and all other Formal Parties of Record.

The Applicant and any other Formal Party of Record may file a written rebuttal to the reasons and recommendation of the Pickens County Planning and Development Office for consideration by members of the Planning Commission by filing said written rebuttal with the Pickens County Planning and Development Office within ninety (90) days from the date of the filing of the application.

Sec. ** -12. Public Hearing.

Within one hundred twenty (120) days from the date of the filing of the application, the Planning Commission shall hold a public hearing on the recommendation of the Pickens County Planning and Development Office. The County shall post a notice of the hearing upon the property and upon the property's access point to the public road in a manner consistent with notices for land use re-classification hearings. The County shall also advertise the filing for two (2) weeks in the local legal organ in a manner consistent with notices for land use re-classification hearings. The County shall also post the notice together with the application on its web site in a format which will enable the documents to be downloaded by the public.

At any time during the public hearing, the Planning Commission shall have the authority to request and receive additional information from the Applicant or any other party of interest. Said information shall include but is not limited to balloon tests and feasibility studies for the

application of stealth design technology. The Planning Commission shall have the authority to continue the public hearing pending the results of any such information.

The format of the hearing shall be as follows:

Ten minutes: Presentation by Pickens County Planning and Development Office describing its reasons for or against issuing a permit for the placement, construction, and/or modification of wireless telecommunications facilities, or a variance to the enforcement of any of the requirements of this Ordinance

Ten minutes: Presentation by Applicant

Ten minutes: Presentation by other Formal Parties of Record. Each Formal Party of Record shall be entitled to ten minutes; each Formal Party of Record shall make its presentation in the order of filing, with the first person to make a filing as a Formal Party of Record going first.

Two minutes: Presentation by members of the public wishing to make a Limited Appearance. Each member of the public wishing to make a Limited Appearance shall be entitled to two minutes; this time shall not be transferrable; presentations shall be made in the order of signing on the attendance sheet, with the first person signing going first.

Five minutes: Rebuttal by Pickens County Planning and Development Office.

Five minutes: Rebuttal by Applicant.

Within fifteen (15) days from the date of the adjournment of the public hearing, any Formal Party of Record may file a written rebuttal with the Pickens County Planning and Development Office to any presentation made at the public hearing.

Within thirty (30) days from the date of the adjournment of the public hearing, the Planning Commission shall issue a written recommendation to the County Commissioner describing its reasons for or against issuing a permit for the placement, construction, and/or modification of wireless telecommunications facilities, or a variance to the enforcement of any of the requirements of this Ordinance. This decision shall be served on the County Commissioner, Pickens County Planning and Development Office, the Applicant, and all other Formal Parties of Record.

Sec. **-13. Decision from County Commissioner.

Within thirty (30) days from the date of service of the Planning Commission's recommendation, the County Commissioner shall issue a written recommendation supported by substantial evidence contained in the written record describing its reasons for or against issuing a permit for the placement, construction, and/or modification of wireless telecommunications facilities, or a variance to the enforcement of any of the requirements of this Ordinance. This decision shall be served on the Planning Commission, the Pickens County Planning and Development Office, the Applicant, and all other Formal Parties of Record. Any appeal of the County Commissioner's decision shall be filed in the Superior Court of Pickens County within thirty (30) days from the date of the decision.

Sec. **-14. Process and Procedure.

For purposes of this Ordinance, and where not inconsistent with the context of a particular section, all applications requesting a permit for the placement, construction, and/or modification of wireless telecommunications facilities shall be processed as shown on the time line below.

Should no Formal Party of Record filings be made prior to Day 30, the time line shall be modified by the Pickens County Planning and Development Office with the consent of the Applicant to decrease the total time required from date of filing application to final approval of application to greatest extent possible.

Day 1	Written notification from Pickens County Planning and Development Office to Applicant that application has been received.
Day 30	Formal Party of Record filings due.
Day 45	Rebuttal filings by Applicant due.
Day 60	Recommendation of Pickens County Planning and Development Office served on members of the Planning Commission, Applicant, and all other Formal Parties of Record.
Day 75	All Requests for Information due.
Day 90	Written rebuttal testimony due.
Day 120	Planning Commission hearing.
15 days from adjournment of hearing	Post-hearing written rebuttal testimony due.
30 days from adjournment of hearing	Recommendation of Planning Commission served on County Commissioner, Applicant, and all other Formal Parties of Record.
30 days from service of Planning Comm. decision.	Decision from County Commissioner.
30 days from County Comm. decision.	Appeal to Pickens County Superior Court