

ORDINANCE NO. 16-066
AN ORDINANCE AMENDING THE ZONING ORDINANCE
OF THE CITY OF GREENVILLE, NORTH CAROLINA

WHEREAS, the City Council of the City of Greenville, North Carolina, in accordance with Article 19, Chapter 160A, of the General Statutes of North Carolina, caused a public notice to be given and published once a week for two successive weeks in The Daily Reflector setting forth that the City Council would, on December 8, 2016, at 6:00 p.m., in the City Council Chambers of City Hall in the City of Greenville, NC, conduct a public hearing on the adoption of an ordinance amending the City Code; and

WHEREAS, in accordance with the provisions of North Carolina General Statute 160A-383, the City Council of the City of Greenville does hereby find and determine that the adoption of the ordinance involving the text amendment is consistent with the adopted comprehensive plan and other officially adopted plans that are applicable and that the adoption of the ordinance involving the text amendment is reasonable and in the public interest due to its consistency with the comprehensive plan and other officially adopted plans that are applicable and, as a result, its furtherance of the goals and objectives of the comprehensive plan and other officially adopted plans that are applicable;

WHEREAS, as a further description as to why the action taken is consistent with the comprehensive plan and other officially adopted plans that are applicable in compliance with the provisions of North Carolina General Statute 160A-383, the City Council of the City of Greenville does hereby find and determine that the adoption of this ordinance is consistent with provisions of the comprehensive plan including, but not limited to, Horizons 2026: Greenville's Community Plan, Chapter 4, Growing the Economic Hub, Policy 4.1.4, Support a Positive Business Climate;

WHEREAS, as a further explanation as to why the action taken is reasonable and in the public interest in compliance with the provisions of North Carolina General Statute 160A-383, the City Council of the City of Greenville does hereby find and determine that the adoption of this ordinance will, in addition to the furtherance of other goals and objectives, improve health and safety, and of existing nonconforming uses and to continue to market Greenville's excellent business climate, promote flexibility in development regulations to ensure a business climate that encourages growth and expansion, and support business growth, expansion, and retention through strategic public improvements;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES HEREBY ORDAIN:

Section 1: That Title 9, Chapter 4, Article B, Section 9-4-22 of the City Code is hereby amended by adding the following definition for "Distributed Antenna System":

Distributed Antenna Systems (DAS) equipment. A network of spatially separated antenna sites and supporting equipment connected to a common source that provides wireless service within a geographic area or structure, DAS and supporting DAS equipment are not

considered a public utility or use and as such, are not exempt from placement preference regulations when DAS equipment is proposed on city-owned property, within public rights-of-way and on or adjacent to existing or planned sidewalks as set forth in Section 9-4-103(Q). The equipment and structures to support DAS are free-standing telecommunication towers even if they are intended to replace existing light poles, utility poles, or similar structures.

Section 2: That Title 9, Chapter 4, Article B, Section 9-4-22 of the City Code is hereby amended by replacing the definition for "Public utility building or use" to read as follows:

Public utility building or use. Any above-ground building or use necessary for the delivery of electric, water, sanitary sewer, storm drainage, gas, telephone, cable TV or other utility service system which meets any one of the following conditions. Distributed Antenna Systems (DAS) and supporting DAS equipment are not considered a public utility or use.

- (1) Utilizes structures in excess of 100 square feet;
- (2) Utilizes any structure in excess of 15 feet in height;
- (3) Requires any on-site permanent maintenance or service attendant;
- (4) Requires or utilizes three or more parking spaces; and
- (5) Creates noise, smoke, dust, odor, glare or any other condition which may have an adverse impact on area properties or uses.

Section 3: That Title 9, Chapter 4, Article F, Section 9-4-78 (Appendix A), of the City Code is hereby amended by adding the following new land use:

(8)(y)(4). "Distributed Antenna System (see also 9-4-103(Q)); by allowing as a permitted land use, by right, in the MI, MS, MO, MCG, MR, MCH, MRS, OR, O, CD, CDF, CG, CH, IU, I, PIU, and PI zoning districts.

Section 4: That Title 9, Chapter 4, Article F, Section 9-4-98 of the City Code is hereby amended by rewriting subsection (A) to read as follows:

- (A) The height limits of these regulations shall not apply to a church spire, belfry, cupola or dome; an ornamental tower not intended for human occupancy; a conveyor or a parapet wall not extended more than three feet above the roof line of the building; and other necessary mechanical or communication appurtenances attached to the roof of a building. Height limits of these regulations shall apply to distributed antenna systems (DAS) installed on all types of posts, towers and structures.

Section 5: That Title 9, Chapter 4, Article F, Section 9-4-103 of the City Code is hereby amended by rewriting the title of subsection (Q) to read as follows:

- (Q) Television and radio broadcast, cellular telephone, wireless communication towers and distributed antenna systems (DAS).

Section 6: That Title 9, Chapter 4, Article F, Section 9-4-103 of the City Code is hereby

amended by adding subsection (Q)(4) to read as follows:

- (4) Digital antenna systems (DAS) located within right-of-way, on city owned infrastructure, on Greenville Utilities Commission owned infrastructure and/or on city property shall be subject to all of the following requirements even if they are intended to replace existing light poles, utility poles or similar structures or are proposed as free-standing towers. Only the minimal use of the public right-of-way and/or city owned and Greenville Utilities Commission owned infrastructure is allowed because the space in the right-of-way should be reserved for public utilities and should be free of safety hazards. In addition, telecommunications facilities located in the right-of-way and mounted on city owned and Greenville Utilities Commission owned infrastructure have the potential of being very visible to pedestrians and the traveling public. In order to locate in a public right-of-way, the size and visibility of DAS equipment and their support structures must use be minimized. Application and permitting of DAS equipment are subject to review procedures in Title 6, Chapter 2:

- (a) DAS located within right-of-way, on city owned infrastructure, on Greenville Utility Commission owned infrastructure, replacing existing power or lights poles owned by the City or Greenville Utilities Commission and/or on city owned property within any district and adjacent to a designated major or minor thoroughfare except within the CD District, shall be subject to all of the following requirements:

- (1) The height of DAS equipment, including support poles, whether they are replacing existing light posts, are mounted to existing light posts or are freestanding poles shall not exceed 35 feet above grade, including the top of an antenna.
- (2) Where ground-mounted equipment and support poles are proposed on city owned sidewalks, there must be a minimum of five feet of unobstructed sidewalk remaining for pedestrians to pass by the installation or as determined by the Director of Public Works.
- (3) The location of DAS equipment and support structures must not restrict sight triangles of pedestrians or motorists to roadway intersections and public or private driveways.

- (b) DAS located within right-of-way, on city owned infrastructure, on Greenville Utility Commission owned infrastructure, replacing existing power or lights poles owned by the City or Greenville Utilities Commission and/or on city owned property within the CD District, shall be subject to all of the following requirements:

- (1) The height of DAS equipment, including support poles, whether they are replacing existing light posts, are mounted to existing light posts or are freestanding poles shall not exceed 25 feet above grade, including the


antenna, must not have antennas longer than 6 feet, must be painted to match the color of the poles.

- (2) Ground-mounted DAS accessory equipment is not allowed in the CD district.
- (3) Where DAS support poles are proposed on city owned sidewalks, there must be a minimum of five feet of unobstructed sidewalk remaining for pedestrians to pass by the installation or as determined by the Director of Public Works.
- (4) The location of DAS equipment and support structures must not restrict sight triangles of pedestrians or motorists to roadway intersections and public or private driveways.
- (5) DAS equipment shall be painted to match the poles to which they are affixed or shall match the color of city-owned and Greenville Utilities Commission owned light poles if they are new or are replacing light poles and shall be designed to minimize the visibility of cables and other appurtenances.

Section 7. That any part or provision of this ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the ordinance.

Section 8. That this ordinance shall become effective immediately upon adoption.

Adopted this 8th day of December, 2016.


Allen M. Thomas, Mayor

ATTEST:


Carol L. Barwick, City Clerk



In addition to Ordinance 16-066, Greenville City Council also adopted Ordinance 16-067 which provides a review process of proposed DAS Equipment as follows:

ORDINANCE NO. 16-067

AN ORDINANCE AMENDING CHAPTER 2 OF TITLE 6 OF THE CODE OF ORDINANCES OF THE CITY OF GREENVILLE, NORTH CAROLINA RELATING TO DISTRIBUTED ANTENNA SYSTEM (DAS) EQUIPMENT

WHEREAS, the public health, safety, and welfare is promoted by ensuring that residents and businesses within the City of Greenville have reliable access to telecommunication services while ensuring that this objective is accomplished according to appropriate public safety, land development, and zoning issues including aesthetics; and

WHEREAS, North Carolina General Statute 160A-296 authorizes the City of Greenville to regulate the placement within street rights-of-way of any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the surface and Part 3E of Article 19 of Chapter 160A of the North Carolina General Statutes authorizes the City of Greenville to regulate the placement of wireless communications facilities within its planning and land use jurisdiction;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES HEREBY ORDAIN:

Section 1: That Chapter 2 of Title 6, of the Code of Ordinances of the City of Greenville, North Carolina, is hereby amended by adding an Article G which article reads as follows:

Article G. USE OF RIGHT-OF-WAY FOR DISTRIBUTED ANTENNA SYSTEMS.

SEC. 6-2-90 PURPOSE.

The purpose of this article is to establish a policy for use of city right-of-way to enable the city to manage the public right-of-way to protect the public health, safety, and welfare by minimizing the congestion, inconvenience, cost, visual impacts, deterioration, safety hazards and other adverse effects on the public right-of-way which could result from the construction, operation, and maintenance of additional structures.

SEC. 6-2-91 DEFINITIONS.

For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Applicant means a person who applies to use city right-of-way to install Distributed Antenna System (DAS) Equipment.

City right-of-way means areas dedicated for public use as streets that have been accepted for permanent maintenance by the City of Greenville.

Distributed Antenna System (DAS) Equipment means antenna and supporting equipment connected to a common source that provides wireless service within a geographic area or structure, including the pole or similar structure upon which the antenna and supporting equipment is attached.

Distributed Antenna System (DAS) Equipment permit means the permit for a person to install or maintain Distributed Antenna System (DAS) Equipment on or in city right-of-way pursuant to a permit issued under this article.

Director means the Director of the Greenville Public Works Department or, unless the context indicates otherwise, the Director's designee.

User means a person who has been granted the right to install or maintain Distributed Antenna System (DAS) Equipment under this article.

SEC. 6-2-92 RESTRICTIONS ON USE OF CITY RIGHT-OF-WAY.

(A) *The right to use city right-of-way.* The eligibility of a person to apply for or use city right-of-way to install Distributed Antenna System (DAS) Equipment is governed by this article.

(B) *Authority of the Director.* The Director shall control the installation and maintenance of Distributed Antenna System (DAS) Equipment on city right-of-way and administer this article. The Director shall develop non-discriminatory policies and regulations to implement, administer, and enforce this article.

(C) *Priority of usage.* The city has priority of use of city right-of-way.

(D) *Reservation and restrictions.* The use of a city right-of-way is controlled by the city. The city retains complete discretion as to use of city right-of-way as to both current and subsequent requests, including requests for co-location or modification.

(E) *Unauthorized use prohibited.* An applicant, user, or other party does not have the right to install Distributed Antenna System (DAS) Equipment on city right-of-way except as authorized by the Director. If unauthorized Distributed Antenna System (DAS) Equipment is discovered, the Director may remove the unauthorized Distributed Antenna System (DAS) Equipment from city right-of-way without incurring liability to the owner, and at the owner's sole expense, if the owner of the unauthorized Distributed Antenna System (DAS) Equipment does not:

- (1) Remove the unauthorized Distributed Antenna System (DAS) Equipment within three (3) business days; or
- (2) Apply for permission to have the Distributed Antenna System (DAS) Equipment on city right-of-way within three (3) business days, including payment of applicable charges or penalties.

A Distributed Antenna System (DAS) Equipment can be removed immediately if necessary to protect public safety or prevent imminent damage to city right-of-way

SEC. 6-2-93 APPLICATION TO USE CITY RIGHT-OF-WAY.

(A) *Authorized user.* Unless otherwise required by law, only a person who holds a valid permit, franchise, license, or other authority, to use a city right-of-way will be granted a Distributed Antenna System (DAS) Equipment permit. An applicant's use of city right-of-way is limited to the purposes specified in the applicant's franchise, permit, license, or

other authority. Distributed Antenna System (DAS) Equipment used for a purpose not authorized by an applicant's permit, franchise, license, or other authority, is unauthorized Distributed Antenna System (DAS) Equipment. A person who applies to use city right-of-way for a private purpose will not be granted a Distributed Antenna System (DAS) Equipment permit.

(B) *Application process.* An applicant must file an application with the city to use city right-of-way on a form as prescribed by the Director. The Director shall consider each application on a first come, first served basis. If an application cannot be approved as presented, the Director may approve a conditional application.

(C) *Denial of an application.*

- (1) The Director may deny an application for a Distributed Antenna System (DAS) Equipment permit if:
 - a. The applicant fails to submit a complete application;
 - b. The applicant fails to supplement its application with additional information or otherwise cooperate with the city as requested in the evaluation of the application;
 - c. The applicant fails to submit a structural engineering analysis by a North Carolina registered professional engineer certifying that the pole or other structure that is proposed to support the Distributed Antenna System (DAS) Equipment can reasonably support the proposed Distributed Antenna System (DAS) Equipment considering the conditions of the street and the anticipated hazards from traffic to be encountered at the location;
 - d. The Director determines, in the Director's judgment, that the proposed Distributed Antenna System (DAS) Equipment would present a safety hazard;
 - e. The Director determines, in the Director's judgment, that the proposed Distributed Antenna System (DAS) Equipment is not adequately shrouded or camouflaged and, as a result, would, in the opinion of the Director, create adverse visual impact;
 - f. The Director determines, in the Director's judgment, that the proposed Distributed Antenna System (DAS) Equipment is located in a location which would, in the opinion of the Director, have a substantial adverse impact on a single property;
 - g. The Director determines, in the Director's judgment, that the proposed Distributed Antenna System (DAS) Equipment is located too near other structures within the city right-of-way which would, in the opinion of the Director, create adverse visual impact;
 - h. The Director determines, in the Director's judgment, that the proposed Distributed Antenna System (DAS) Equipment would impair the city's

ability to operate or maintain the city right-of-way in a reasonable manner;

- i. The Director determines, in the Director's judgment, that the proposed Distributed Antenna System (DAS) Equipment and its placement would violate the city's standard design criteria;
- j. The Director determines, in the Director's judgment, that the proposed Distributed Antenna System (DAS) Equipment would violate the provisions of the Zoning Ordinance;
- k. The applicant is not in compliance with any provision of this article; or
- l. The applicant fails or refuses to sign a written agreement presented by the Director to the applicant intended to assist with the implementation of the provisions of this article or intended to assist with the implementation of the policies and regulations developed by the Director that are intended to preserve the city's right to control of the city right-of-way.

- (2) If an application is denied, the Director shall notify the applicant in writing of the reason for the denial. If an application is denied, an applicant may file a new application that corrects the reason for the denial. If an application is denied, the applicant may appeal the denial to the Director of Public Works for reconsideration no later than the thirtieth day after the date of the denial.

(D) *Additional costs.* The applicant or user is responsible for all costs as determined by the city to replace, enlarge, or upgrade city right-of-way to accommodate the applicant's proposed Distributed Antenna System (DAS) Equipment.

(E) *Permit requirements.* A user may not change the number, kind, or location of Distributed Antenna System (DAS) Equipment, the method of construction or installation, or the use of the Distributed Antenna System (DAS) Equipment authorized under a Distributed Antenna System (DAS) Equipment permit without the prior written consent of the Director.

SEC. 6-2-94 USER'S DUTIES AND RESPONSIBILITIES.

(A) *Compliance with law.* Distributed Antenna System (DAS) Equipment shall comply with all applicable federal, state, and local laws, rules, and regulations, city policies, applicable codes and industry standards.

(B) *Operational and maintenance requirements.*

- (1) A user shall install, and continuously maintain approved Distributed Antenna System (DAS) Equipment to prevent interference with the city's facilities, the city's use of city right-of-way, or the facilities or operations of other users.
- (2) A user may not construe a contract, permit, correspondence, or other communication as affecting a right, privilege or duty previously conferred or

imposed by the city to or on another person. The city reserves the right to continue or extend a right, privilege, or duty or to contract with additional users without regard to resulting economic competition.

- (3) A user is solely responsible for the risk and expense of installation, operation, and maintenance of the user's Distributed Antenna System (DAS) Equipment. The city does not warrant or represent that the city right-of-way is suitable for placement of a user's Distributed Antenna System (DAS) Equipment. A user shall submit a structural engineering analysis by a North Carolina registered professional engineer certifying that the pole or other structure that is proposed to support the Distributed Antenna System (DAS) Equipment can reasonably support the proposed Distributed Antenna System (DAS) Equipment considering the conditions of the street and the anticipated hazards from traffic to be encountered at the location. A user shall inspect the city right-of-way on which the user's Distributed Antenna System (DAS) Equipment will be placed and shall base its determination of the suitability of the city right-of-way for user's purposes on such inspection, on a structural engineering analysis by a North Carolina registered professional engineer certifying that the pole or other structure that is proposed to support the Distributed Antenna System (DAS) Equipment can reasonably support the proposed Distributed Antenna System (DAS) Equipment considering the conditions of the street and the anticipated hazards from traffic to be encountered at the location. A user accepts the city right-of-way "as is" and "where is" and assumes all risks related to the use. The city is not liable for any damage to Distributed Antenna System (DAS) Equipment due to an event causing damage to the Distributed Antenna System (DAS) Equipment.
- (4) If the Director determines that a user's Distributed Antenna System (DAS) Equipment impairs safety, the Director may require the user, at user's sole expense and risk, to change, move, remove, or rearrange the Distributed Antenna System (DAS) Equipment. The Director may also require a user to move or rearrange its Distributed Antenna System (DAS) Equipment to maximize the available useable infrastructure and accommodate the Distributed Antenna System (DAS) Equipment of an additional user, unless the movement or rearrangement of Distributed Antenna System (DAS) Equipment materially impairs the use or function of the existing user's system. An existing user is only required to comply with this subsection if the additional user agrees to compensate the existing user for its actual costs to move or rearrange Distributed Antenna System (DAS) Equipment. If a user fails or refuses to comply with the Director's request to change, move, remove or rearrange any of its Distributed Antenna System (DAS) Equipment, the Distributed Antenna System (DAS) Equipment becomes unauthorized. The city may change, move, remove, or rearrange an unauthorized Distributed Antenna System (DAS) Equipment without liability to user and at user's sole cost.

- (5) The Director may inspect, at any time, the construction or installation of a user's Distributed Antenna System (DAS) Equipment on city right-of-way. If the Director determines that a user's installation or construction may violate this article, applicable electrical codes, the city's standards for the city right-of-way involved, or the conditions of the user's application or permit, the Director may immediately suspend the user's construction or installation activities. The Director shall send written notice to the user not later than the third business day after a suspension identifying the alleged violation. A suspension under this subsection is effective until the user corrects the alleged violation, at the user's sole expense. A user may appeal a suspension under this subsection to the Director of Public Works.
- (6) As a condition of the user having its facilities in city right-of-way, the user agrees to and shall, to the extent permitted by law, defend, indemnify and hold harmless the city, its employees, officers, agents and contractors against any claim of liability or loss of any kind, including administrative orders and regulations, and specifically including, without limitation, any claim of liability or loss from personal injury or property damage resulting from or arising out of the presence of user's equipment in city right-of-way and also as to any willful misconduct of the user, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the willful misconduct of the city, or its employees, officers, contractors or agents.
- (7) The city shall not be liable to the user, or any of its respective agents, representatives, or employees for any lost revenue, lost profits, loss of technology, use of rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if the city has been advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise that is related to, arises out of, flows from or is, in some part, caused by user's Distributed Antenna System (DAS) Equipment to or use of city right-of-way.

(C) *Termination.*

- (1) The city may immediately suspend the permission of a user to install new or additional Distributed Antenna System (DAS) Equipment if the user materially fails to comply with the terms of its permit, or if the city provides written notice to the user for cause. If the user fails to cure the default on or before the sixtieth day after receipt of the notice, the city may terminate the user's Distributed Antenna System (DAS) Equipment permit.
- (2) A user shall immediately begin removal of its Distributed Antenna System (DAS) Equipment after termination of a user's Distributed Antenna System (DAS) Equipment permit for violations of the terms of a franchise, permit, license or other authority, a voluntary termination by a user, or a termination by the city for cause. Unless the Director grants an extension of time, a user

must remove all Distributed Antenna System (DAS) Equipment not later than the sixtieth day after the effective date of termination.

- (3) After termination of a user's Distributed Antenna System (DAS) Equipment permit, the user must comply with the terms of this article, the user's franchise, permit, license, or other authority until all Distributed Antenna System (DAS) Equipment are removed.

SEC. 6-2-95 UNAUTHORIZED DISTRIBUTED ANTENNA SYSTEM (DAS) EQUIPMENT PROHIBITED.

(A) No person shall knowingly install or maintain or fail to remove an unauthorized Distributed Antenna System (DAS) Equipment on city right-of- on demand by the city or any authorized representative thereof.

(B) No person shall use a Distributed Antenna System (DAS) Equipment on city right-of-way to provide a service not authorized by a franchise, permit, license, or other authority.

(C) Each unauthorized Distributed Antenna System (DAS) Equipment or use is a separate offense. Each day a violation of this article continues is a separate offense.

SEC. 6-2-96. PENALTIES.

(A) Any violation of the provisions of this article or a failure to comply with any of its requirements shall subject the offender to a civil penalty in the amount of two hundred and fifty dollars (\$250.00) for each offense.

(B) Violators shall be issued a written citation which must be paid within seventy-two (72) hours. If a person fails to pay the civil penalty within seventy-two (72) hours, the city may recover the penalty, together with all costs and reasonable attorneys' fees, by filing a civil action in the general court of justice in the nature of a suit to collect a debt.

(C) This article may also be enforced by any appropriate equitable action.

(D) Each day that any violation continues shall be considered a separate offense for purposes of the penalties and remedies specified in this section.

(E) Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this chapter.

(F) Any violations of the provisions of this article shall be deemed a non-criminal violation and shall not be a misdemeanor or infraction pursuant to North Carolina General Statute 14-4.

Section 2. That the Manual of Fees of the City of Greenville, North Carolina, be and is hereby amended by adding to the list contained in the Public Works Fees - Engineering section a provision relating to the fee for Application for a Distributed Antenna System (DAS) Equipment Permit which addition reads as follows:

PUBLIC WORKS FEES

ENGINEERING

Account Number	Code	Service	Fee
010-01-55-00-000-000-477003	ER	Fee for Application for a Distributed Antenna System (DAS) Equipment Permit	\$500.00


Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Any part or provision of this ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the ordinance.

Section 5. This ordinance shall become effective immediately upon its adoption.

This the 8th day of December, 2016.




Allen M. Thomas, Mayor

ATTEST:


Carol L. Barwick, City Clerk