

CITY OF LOOKOUT MOUNTAIN, GEORGIA

ORDINANCE NO. 183

AN ORDINANCE to adopt an immediate moratorium on the establishment, location and permitting of wireless communications facilities ("WCFs") within the City of Lookout Mountain, Georgia (the "City") and the acceptance of applications for building permits and use permits for WCFs for a period of four months, providing for a public hearing on the moratorium should one become necessary or desirable, declaring an emergency, and for other purposes.

WHEREAS, the Telecommunications Act of 1996 ("TCA") was designed to remove regulatory barriers and promote competition in all sectors of the telecommunication industry; and,

WHEREAS, the TCA preserves local zoning authority to reasonably regulate WCFs; provided, however, that the regulations imposed by localities may not unreasonably discriminate against the providers of functionally equivalent services, nor may they prohibit or have the effect of prohibiting the provision of personal wireless services; and

WHEREAS, the TCA allows the Federal Communications Commission ("FCC") to preempt any local governmental regulation which prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services; and

WHEREAS, the City is almost exclusively a residential community with little business or industrial activity and the proliferation of WCFs therein will endanger the public welfare and safety due to the proximity that will necessarily exist between WCF sites and residential properties; and

WHEREAS, the multiplication of WCFs is incompatible with the predominantly residential nature and character of the City and will have a deleterious impact on the aesthetics of the City, the value of residential property therein, and the quality of life of the City's residents; and

WHEREAS, the City needs to conduct a comprehensive review of its codes and ordinances to determine whether its present regulations are consistent with the TCA and to adopt new regulations where necessary; and

WHEREAS, the City should impose a moratorium barring the establishment, location and permitting of WCFs within the City and the acceptance of applications relating to building permits for WCFs to safeguard the public safety and welfare of the City and its residents and to provide adequate time to ensure that all relevant code provisions are consistent with the TCA;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LOOKOUT MOUNTAIN, GEORGIA, AND IT IS HEREBY ORDAINED:

Section 1. Definitions. For purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the following meanings set forth in this Ordinance, unless the context

Section 1.2. "Equipment Facility" means any structure used to contain ancillary equipment for WCFs which include cabinets, shelters, a build-out of an existing structure, pedestals, and other similar structures.

Section 1.3. "Support Structure" means a structure designed and constructed specifically to support an antenna array, and may include a monopole, self-supporting (lattice) tower, guy-wire support tower and other similar structures.

Section 1.4. "Wireless Communications Facility" means any unstaffed facility for the transmission and or reception of wireless communication services, usually consisting of an antenna array, transmission cables, an equipment facility, and a support structure to achieve the necessary elevation.

Section 1.5. "Wireless Communications" means any personal wireless services as defined in the TCA which includes FCC licensed commercial wireless telecommunications services including cellular, personal communications services ("PCS") specialized mobile radio ("SMR"), enhanced specialized mobile radio ("ESMR"), paging, and similar services that currently exist or that may in the future be developed.

Section 2. Purpose. The purpose of this moratorium is to safeguard the public safety and welfare and aesthetic interests of the City, to study the TCA to determine whether the City's existing ordinances and codes are consistent with the TCA, and to develop new ordinances to amend any inconsistencies which may exist between existing regulations and the TCA and/or cover situations not addressed by existing regulations.

Section 3. Moratorium Imposed. The Council of the City of Lookout Mountain, Georgia hereby imposes a moratorium on the establishment, location and permitting of WCFs within the City. During the term of this moratorium (unless earlier terminated by the City Council by ordinance), the City will not accept any building permit applications for the location, establishment or siting of any WCF in the City.

Section 4. Duration of Moratorium. The moratorium imposed by this ordinance shall be in effect for a period of four months, beginning on the date of the adoption of this Ordinance. During this period, the City's Municipal Planning Commission will develop a work plan to study the public safety and welfare and aesthetic issues related to the siting of WCFs in the City. The Municipal Planning Commission shall develop recommendations for the City's future action to address the TCA, which may include proposed regulations for WCFs in the City. The Municipal Planning Commission shall return its work plan to the City Council at least two (2) weeks prior to the date of any public hearing scheduled pursuant to Section 5 of this Ordinance. In addition, the Municipal Planning Commission shall return their final recommendations within one hundred and twenty (120) days of the effective date of this Ordinance.

Section 5. Public Hearing on Moratorium. The City may hold a public hearing on this moratorium within 100 days of its adoption. Immediately after the hearing, the City may adopt findings of fact on the subject of this moratorium, and either



such applications by the City could occur under regulations that are inconsistent with the TCA and regulations that could possibly be preempted by the FCC. Therefore, the City's moratorium must be imposed immediately to prevent any development rights from vesting, to permit the adequate safeguarding of the public safety and welfare and aesthetics of the City, and to preserve the City's ability to process applications under valid code provisions.

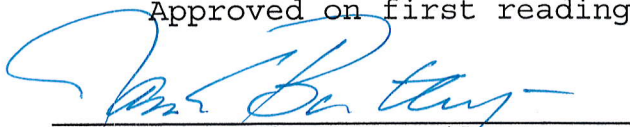
Section 7. Savings Clause. If any of the sections, subsections, sentences, clauses or phrases of this Ordinance are for any reason held to be unconstitutional or invalid, the validity of the remaining portions of this Ordinance shall not be thereby affected since it is the express intent of the Council of the City to pass each section, phrase, paragraph and word separately.

Section 8. Part of Code of Ordinances. It is the intention of the Council of the City that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City, and the Sections of this Ordinance may be renumbered to accomplish such intention.

Section 9. Repealer. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 10. Effective Date. This Ordinance shall be effective upon its adoption and approval by at least four (4) members of the City Council on two (2) readings on successive days.

Approved on first reading on March 23, 1998.

  
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Member of City Council

  
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Member of City Council

  
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Mayor of Lookout Mountain,  
Georgia

Approved and adopted on Second Reading on March 24,  
1998.

*Tom E. Bentley*  
Member of City Council

*James L. Ensign*  
Member of City Council

*Paul R. Gardner*  
Member of City Council

*Paul L. Chandler*  
Member of City Council

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Member of City Council

*D. N. West*  
Mayor of Lookout Mountain,  
Georgia

ATTEST:

*Don West*  
City Clerk

