

## ORDINANCE 2010-6

### AN ORDINANCE AMENDING THE ZONING CODE OF THE BELLE MEADE MUNICIPAL CODE

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BE IT ORDAINED BY THE CITY OF BELLE MEADE, as follows:

Section 1: On the recommendation of the Board of Commissioners, the City of Belle Meade acts to amend its Zoning Code, and delete Title 14, Chapter 2, Section 3 entitled "Prohibited Uses", section (h) entitled "Towers."

Section 2: On the recommendation of the Board of Commissioners, the City of Belle Meade acts to amend its Zoning Code, and amend Title 14, Chapter 2 of the Belle Meade Municipal Code," Section 1 entitled "Residential Uses", Section (c) entitled "Conditional Uses" by adding (iii), (O), and (P) as follows:

(O) Communication Facilities:

(1) A "Communication Facility" is defined to be any facility that transmits electromagnetic waves for use by persons other than those occupying the structure on which the facility is located, and includes Communication Towers.

(2) At the discretion of the City Manager and/or the Board of Zoning Appeals, an applicant seeking permission to install a Communication Facility may be required to submit:

2.a. Proof that the Communication Facility does not present a safety hazard in compliance with the Telecommunications Act of 1996, as amended; and

2.b. Proof that there is "gap in service" that requires that the applicant submit proof that there are no feasible commercial sites beyond the city limits of the City of Belle Meade.

(3) It is the intent of the Commissioners that this section be interpreted in connection with, and not in violation of, the Telecommunications Act of 1996.

(P) Communication Towers:

(1) A "Communication Tower" is defined as any structure that serves the sole purpose of supporting a communication tower and/or on which the antenna or other transmitting devices of a Communication Facility are visible to persons other than the property owner.

(2) Construction of a Communication Tower: Before the construction of any Communication Tower shall commence:

2.a. The Property Owner shall file for review and approval all technical exhibits required by the Building Inspector and/or the Board of Zoning Appeals; and a duly licensed engineer possessing valid registration to practice professionally in the State of Tennessee must provide the City with a statement in writing demonstrating and

certifying to the reasonable satisfaction of the Board of Zoning Appeals that the Communication Tower is no higher than absolutely necessary to provide services and coverage to the public from the specific location on the Lot.

2.b. If the City Building Official or the Board of Zoning Appeals determines that a review of the engineer's report on the siting of the Communication Tower is warranted, then the Board of Zoning Appeals may employ, at applicant's expense, an additional duly licensed engineer to review applicant's engineer's report and advise the Board of Zoning Appeals thereon.

2.c. The applicant shall provide for review and approval all supplemental technical exhibits required by the Building Inspector and/or Board of Zoning Appeals.

2.d. Any Communication Tower must be located upon the Property in such a manner that in the event of collapse the entire Tower or Antenna shall fall within the Property boundaries. The applicant shall furnish a report from a duly licensed engineer verifying compliance with this requirement.

2.e. A duly licensed engineer possessing valid registration to practice professionally in the State of Tennessee must verify the safety of the Communication Tower itself.

2.f. The Communication Tower shall be located at a minimum of one hundred fifty (150) feet from all property lines, provided, however, that the Board of Zoning Appeals may approve a reduction in this setback requirement for collocation of antennas or other transmitting devices of Communication Facilities on existing Towers or Structures or replacement poles which otherwise meet the safety requirements of this Section.

2.g. All buildings constructed in connection with the Communication Tower must be harmonious with the surrounding landscape, as determined by the Board of Zoning Appeals, by using natural tones and surfaces, and screening shall be required in all Yard areas. Such screening may consist of existing vegetation and landscape features or a combination of new plant materials, berms, and fencing. Screening shall be of solid materials, attractively constructed, and permanently maintained not less than eight (8) feet in height and shall be of plant materials as will provide a permanent evergreen screen. Trees shall be a minimum of six (6) feet in height when planted and shall be located in a minimum of two rows with the plants staggered and spaced ten (10) feet apart. All landscaping and screening requirements shall be set forth on the Development Plan.

2.h. A qualified biologist or wildlife expert shall provide the City with an environmental study demonstrating that the Communication Tower will not be harmful to birds or other wildlife.

2.i. The applicant shall comply with all other provisions of the Zoning Code and such other conditions as

the Board of Zoning Appeals might impose upon the placement, construction and modification of such wireless facilities.

2.j. Towers shall not be artificially lighted.

2.k. No new Communication Tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Board of Zoning Appeals that no existing Tower, Structure or alternative technology that does not require the use of Towers or Structures can accommodate the applicant's proposed Communication Tower. An applicant shall submit information requested by the Board of Zoning Appeals related to the availability of suitable existing Towers, other Structures, or alternative technology. Evidence submitted to demonstrate that no existing Tower, Structure or alternative technology can accommodate the applicant's proposed Antenna may consist of any of the following: (i) No existing Towers or Structures are located within the geographic area that meet the applicant's engineering requirements; (ii) Existing Towers or Structures are of insufficient height to meet applicant's engineering requirements or they have insufficient structural strength to support the applicant's proposed Antenna and related equipment; (iii) the applicant's proposed Communication Tower or Antenna would cause electromagnetic interference with the Antenna on the existing Towers or Structures, or the Antenna on the existing Towers or Structures would cause interference with the applicant's proposed Antenna; (iv) the fees, costs or contractual provisions required by the owner in order to share an existing Tower or Structure, or to adapt an existing Tower or Structure for sharing, are unreasonable; (v) costs exceeding new Tower development costs are presumed to be unreasonable; (vi) the applicant demonstrates that there are other limiting factors that render existing Towers and Structures unsuitable; and (vii) the applicant demonstrates that an alternative technology that does not require the use of Towers or Structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new Communication Tower development shall not be presumed to render the technology unsuitable.

2.l. An applicant for a Communication Tower shall provide an inventory of existing Communication Towers or other sites approved for Communication Facilities that are within the City, and Towers outside of the City that serve areas within the City, as well as within the coverage area of the proposed Communication Tower, whether within the City or outside its jurisdiction, including specific information about the design, height and location of each Tower. The Board of Zoning Appeals may share this information, provided that the Board of Zoning Appeals is not, by sharing such information, in any way representing or warranting that these sites are available or suitable for Communication Tower construction.

2.m. In the event the application is for a colocation of an additional Antenna upon an existing Tower previously approved by the Board of Zoning

Appeals, then the applicant shall comply with the notice and other provisions of the Zoning Code and the application may be limited to a certification as to safety as provided by these provisions of the Zoning Code which shall include among other things a certification that the actual loading (antennas, mounts, lines and appurtenances) will not compromise the design loading requirements approved at the initial installation of the Tower or any other safety features of the Tower submitted to the City prior to initial installation, however, the applicant shall not be required to pay any additional colocation fee or cost reimbursements for these submissions, but prior to construction they shall be received by the City and reviewed and approved by the City Manager an/or the Board of Zoning Appeals, with such investigation and expert advice as they might require in their discretion, to be paid for by the applicant.

3. Communication Towers Generally:

3.a.: In the event any Communication Tower is no longer used to provide services for which it has been constructed for a period of six (6) consecutive months, the Communication Tower shall be dismantled and removed from the Property. The City, acting through the Board of Zoning Appeals, may require a bond to ensure compliance with this provision.

3.b.: Communications Towers are to be built and maintained so as to make the Antenna and related equipment as visually unobtrusive as possible.


3.c.: Communication Towers shall be subject to all other provisions of the Zoning Code and to such other conditions as the Board of Zoning Appeals might impose upon the placement, construction and modification of such wireless facilities.

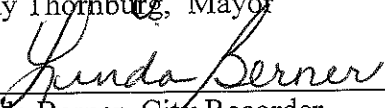
(4) It is the intent of the Commissioners that this section be interpreted in connection with, and not in violation of, the Telecommunications Act of 1996.

Section 3: This Ordinance shall become effective fifteen days after its passage.

Passed on first reading:  
**August 17, 2010**

Passed on Second Reading:  
**September 15, 2010**

  
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Gray Thofnburg, Mayor

  
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Linda Berner, City Recorder