#4

13- R -0277
(Do Not Write Above This Line)

A RESOLUTION BY COUNCIL MEMBER FELICIA MOORE

A RESOLUTION TO OPPOSE HOUSE BILL 176 AMENDING THE ADVANCED BROADBAND COLLOCATION ACT, O.C.G.A § 36-66B-1 ON THE BASIS THAT SUCH ACT USURPS THE CITY OF ATLANTA'S EXCLUSIVE CONSTITUTIONAL ZONING POWER TO REGULATE THE PLACEMENT, MODIFICATION AND COLLOCATION OF CELL TOWERS AND ANTENNA IN FURTHERANCE OF THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE; AND FOR OTHER PURPOSES.

ADOPTED BY
FEB 1 8 2013

☐ CONSENT REFER COUNCIL
☐ REGULAR REPORT REFER
☐ ADVERTISE & REFER
☐ 1ST ADOPT 2ND READ & REFER
☑ PERSONAL PAPER REFER

Date Referred 2/4/13
Referred To: Finance/Exec
Date Referred
Referred To:
Date Referred
Referred To:

First Reading
Committee
Date
Chair
Referred To

Committee	Committee
Fin./Exec	
Date 2-13-13	Date
Chair	Chair
Action (Fav, Adv, Hold (See rev.side))	Action Fav, Adv, Hold (See rev.side)
Other	Other
Members	Members
Refer To	Refer To

Committee	Committee
Date	Date
Chair	Chair
Action Fav, Adv, Hold (See rev.side)	Action Fav, Adv, Hold (See rev.side)
Other	Other
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION
☐ 2ND ☐ 1ST & 2ND ☐ 3RD
Readings
☑ Consent ☐ V Vote ☑ RC Vote

CERTIFIED
CERTIFIED
FEB 1 8 2013
ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED
FEB 1 8 2013
MUNICIPAL CLERK

MAYOR'S ACTION
APPROVED
FEB 2 5 2013
WITHOUT SIGNATURE
BY OPERATION OF LAW

470187-1

CITY COUNCIL
ATLANTA, GEORGIA

13-R-0277

A RESOLUTION
BY COUNCIL MEMBER FELICIA MOORE

A RESOLUTION TO OPPOSE HOUSE BILL 176 AMENDING THE ADVANCED BROADBAND COLLOCATION ACT, O.C.G.A § 36-66B-1 ON THE BASIS THAT SUCH ACT USURPS THE CITY OF ATLANTA'S EXCLUSIVE CONSTITUTIONAL ZONING POWER TO REGULATE THE PLACEMENT, MODIFICATION AND COLLOCATION OF CELL TOWERS AND ANTENNA IN FURTHERANCE OF THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE; AND FOR OTHER PURPOSES.

WHEREAS, Article 9, Section 2, Paragraph IV of the Georgia Constitution gives exclusive zoning power to counties and municipalities within their respective political boundaries; and

WHEREAS, the State may only regulate the procedural exercise of this zoning power constitutionally reserved to counties and municipalities; and

WHEREAS, the General Assembly has enacted certain procedural limitation on such exercise, known as the Zoning Procedures Law (ZPL), O.C.G.A. § 36-66-1 *et seq.*

WHEREAS, in 2010 the Georgia General Assembly passed the Advanced Broadband Collocation Act ("Act"), codified at O.C.G.A. § 36-66B-1 *et seq.*, citing its purported "procedural" nature; and

WHEREAS, currently, the Act precludes additional zoning review of proposals to add additional antennas or base equipment to existing approved wireless support structures (hereafter "cell towers") so long as the proposal would <u>not</u> increase the overall height or width of the cell tower; and

WHEREAS, HB 176 would amend the Act to preclude additional zoning review, and would require approval, of applications to increase the height, width, or footprint of an existing cell tower; and

WHEREAS, the limitation of such zoning review by the City Council for some cell towers and by the Office of Planning and the Office of Buildings for other cell towers would in turn limit the review role that the NPU's play in the City of Atlanta; and

WHEREAS, HB 176, which purports to recognize the aforementioned constitutional zoning power, would in fact go well beyond procedure and would usurp a counties and municipalities exercise of their constitutionally granted zoning authority to regulate the 1) placement of new cell towers, 2) the modification (i.e. expansion) of existing cell towers; and 3) the collocation of new antenna onto existing cell towers in furtherance of the public health, safety and general welfare.

WHEREAS, HB 176 would amend the definition of cell towers to include electrical utility pole as a type of structure upon which cell tower antenna might be placed; and

WHEREAS, HB 176 provides that if a local governing authority fails to make a final decision to approve or disapprove an application for modification or collocation of an existing cell tower, then such application shall be deemed approved as submitted; and

WHEREAS, HB 176 would preclude a local governing authority from placing certain zoning conditions on the approval of a cell tower, a zoning practice long recognized in Georgia; and

WHEREAS, HB 176 would preclude a local governing authority from evaluating an application based on the availability of other potential locations for the placement of the proposed cell tower and/or antenna, a current criteria in the City's zoning ordinance; and

WHEREAS, HB 176 would preclude a local governing authority from requiring the removal of an existing cell tower and/or antenna as a condition to approval of an application for a new cell tower and/or antenna unless the existing cell tower is abandoned and owned by the applicant; said term "abandonment" not being defined for purposes of giving guidance to local zoning official as to its meaning; and

WHEREAS, HB 176 would preclude a local governing authority from imposing surety requirements, to ensure that abandoned or unused cell towers can be removed, unless the local government requires such sureties from other commercial developments or land uses; and

WHEREAS, HB 176 would preclude a local government from requiring placement of a cell tower on publicly owned land or on a publicly owned water tank, building or electrical tower as an alternative to the location desired by the applicant; and

WHEREAS, HB 176 would require a local governing authority to approve or disapprove, in writing, a new cell tower within 150 day of application, unless another date is mutually agreed upon

WHEREAS, HB 176 would require a local governing authority to notify an applicant within 30 days of application submittal of any application deficiencies, in which case the time it takes the applicant to complete the application shall not be counted in the 150 day review period; and

WHEREAS, HB 176 provides that if the local governing authority does not make a decision within the 150 review period, then the application <u>is deemed approved</u>; and

WHEREAS, HB 176 would limit the review fees a local government may assess in its review for zoning, permitting and other code compliance; and

WHEREAS, HB 176 would place limitations on the ability of local government to charge the applicant for fees incurred in retention of a consultant to review the accuracy of applicant's application for a new cell tower, including but not limited, radio frequency claims; and

WHEREAS, HB 176 would set limits on the ability of the local government to charge a rental, license, or other fee to locate a cell tower on the local government's property in excess of the current market rate for rental or use of similarly situated property and in the event the local government and the applicant do not agree on the applicable market rate, that rate shall be determined by mediation and such mediation must be concluded within 150 days from the date the applicant first tenders its proposed lease rate to the government; and

WHEREAS, if passed, HB 176 would afford cell tower applicants certain rights in excess of federal law and regulations with respect to a local governments review of cell tower location, modification, and collocation applications; and

WHEREAS, existing federal law and regulations already severely limits a local government's zoning power to review cell tower location, modification, and collocation applications in the best interest of the public health, safety and welfare; and

WHEREAS, if passed, HB 176 would preclude the City of Atlanta from moving forward with many important aspects of a proposed re-write of the Zoning Ordinance's regulation of cell towers.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES TO OPPOSE HOUSE BILL 176 IN ITS ENTIRETY AS VIOLATIVE OF THE GEORGIA CONSTITUTION'S EXCLUSIVE GRANT OF ZONING AUTHORITY TO MUNICIPALITIES AND COUNTIES.

BE IT FURTHER RESOLVED, that the Municipal Clerk immediately send this Resolution to each member of the Georgia General Assembly, the Georgia Municipal Association, and the Association County Commissioners of Georgia.

BE IT FINALLY RESOLVED, that all resolutions or parts thereof are herbey waived to the extent to the conflict.

A true copy,

Deputy Clerk

ADOPTED by the Atlanta City Council FEB 18, 2013
APPROVED as per City Charter Section 2-403 FEB 27, 2013

RCS# 2559
2/18/13
2:03 PM

Atlanta City Council

CONSENT I

CONSENT AGENDA SECTION I; 2/18/2013
ALL ITEMS
ADOPT

YEAS:	12
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	4
EXCUSED:	0
ABSENT	0

Y Smith	Y Archibong	Y Moore	NV Bond
Y Hall	Y Wan	Y Martin	NV Watson
Y Young	Y Shook	Y Bottoms	NV Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

		02-18-13
ITEMS ADOPTED ON CONSENT	**ITEMS ADOPDED ON CONSENT**	**ITEMS ADVERSED ON CONSENT**
1. 13-O-0126	35. 13-R-0189	67. 13-R-0241
2. 13-O-0129	36. 13-R-0210	68. 13-R-0242
3. 13-O-0175	37. 13-R-0211	69. 13-R-0243
4. 12-O-1314	38. 13-R-0212	70. 13-R-0244
5. 13-O-0132	39. 13-R-0213	71. 13-R-0245
6. 13-O-0276	40. 13-R-0214	72. 13-R-0246
7. 13-O-0279	41. 13-R-0215	73. 13-R-0247
8. 13-O-0283	42. 13-R-0216	74. 13-R-0248
9. 13-R-0193	43. 13-R-0217	75. 13-R-0249
10. 13-R-0201	44. 13-R-0218	76. 13-R-0250
11. 13-R-0202	45. 13-R-0219	77. 13-R-0251
12. 13-R-0203	46. 13-R-0220	78. 13-R-0252
13. 13-R-0207	**ITEMS ADVERSED ON CONSENT**	79. 13-R-0253
14. 13-R-0286	47. 13-R-0221	80. 13-R-0254
15. 13-R-0007	48. 13-R-0222	81. 13-R-0255
16. 13-R-0011	49. 13-R-0223	82. 13-R-0256
17. 13-R-0013	50. 13-R-0224	83. 13-R-0257
18. 13-R-0204	51. 13-R-0225	84. 13-R-0258
19. 13-R-0205	52. 13-R-0226	85. 13-R-0259
20. 13-R-0208	53. 13-R-0227	86. 13-R-0260
21. 13-R-0209	54. 13-R-0228	87. 13-R-0261
22. 13-R-0195	55. 13-R-0229	88. 13-R-0262
23. 13-R-0196	56. 13-R-0230	89. 13-R-0263
24. 13-R-0197	57. 13-R-0231	90. 13-R-0264
25. 13-R-0198	58. 13-R-0232	91. 13-R-0265
26. 13-R-0277	59. 13-R-0233	92. 13-R-0266
27. 13-R-0181	60. 13-R-0234	93. 13-R-0267
28. 13-R-0182	61. 13-R-0235	94. 13-R-0268
29. 13-R-0183	62. 13-R-0236	95. 13-R-0269
30. 13-R-0184	63. 13-R-0237	96. 13-R-0270
31. 13-R-0185	64. 13-R-0238	97. 13-R-0271
32. 13-R-0186	65. 13-R-0239	98. 13-R-0272
33. 13-R-0187	66. 13-R-0240	
34. 13-R-0188		