

ORDINANCE NO. 2002-17

An ORDINANCE AMENDING PORTIONS OF THE ZONING ORDINANCE RELATING TO THE LOCATION OF WIRELESS COMMUNICATION FACILITIES TOWERS AND FOR OTHER PURPOSES.

WHEREAS, the Planning Commission has reviewed the existing zoning ordinance as it relates to Wireless Communication Facilities Towers, and has recommended to the City Council that such Ordinances be amended, and

WHEREAS, the City Council has reviewed such proposed Ordinance and finds that it should be adopted,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HEBER SPRINGS, ARKANSAS, AS FOLLOWS:

Section 1. That the Heber Springs Zoning Code as adopted by Ordinance 90-1 shall be amended to add the following section to Chapter VII , Section 4:

Towers

I. Statement of Purpose

The purposes of these regulations are described as follows:

- A. To establish a system of administering requests for the location of commercial wireless communication towers in accordance with provisions of the Federal Telecommunications Act of 1996.
- B. To minimize the number of new towers needed by encouraging the use of existing towers and existing public and private structures.
- C. To preserve the stability of land values of properties near and adjacent to proposed commercial tower locations.
- D. To protect the public health, safety, and welfare through the use of good engineering and urban design principles.

II. Definitions

Antenna Array means one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include an omni-directional antenna (rod), a directional antenna (panel) and a parabolic antenna (disc). The Antenna Array does not include the support structure defined below.

Attached Wireless Communications Facility (Attached WCF) means an antenna array that is attached to an existing building or structure which shall include, but not

limited to, utility poles, signs, water towers, with any accompanying poles or device which attaches the Antenna Array to the existing building or structure and associated connection cables, and any Equipment Facility which may be located either inside or outside the Attached Structure.

Collocation or Site Sharing means use of a common WCF or common site by two or more wireless license holders or by one wireless license holder for more than one type of communication technology or placement of a WCF on a structure owned or operated by a utility or other public entity.

Derrick Towers means a structure constructed of lattice steel and which is entirely self-supporting.

Equipment Facility means any structure used to contain ancillary equipment for a WCF.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

FTA means the Federal Telecommunications Act of 1996.

Guy-Wired Tower is a structure constructed of lattice steel and which is supported by guy-wires extending at angles from the structure to ground anchors.

Height. When referring to a WCF, Height shall mean the distance measured from the ground level to the highest point on the WCF, including the Antenna Array.

Monopole Tower is a supporting structure composed of a solid pole without any guy-wired support.

Provider refers to an entity providing wireless communication services through one or more antenna arrays located on a wireless communications tower.

Setback means the required distance from the WCF to the property line on which the WCF is located.

Stealth Technology means systems, components, and materials used in the construction of the WCF, which are designed to mask or conceal the WCF to make it compatible with the surrounding property.

Support Structure means a structure designed and constructed specifically to support an Antenna Array, and may include a monopole, guy-wired support tower, or derrick tower. Any device used to fasten an Attached WCF to an existing building or structure shall be excluded from the definition of and regulations applicable Support Structures.

Tower Use Permit (TUP) means a permit issued by the City specifically for the location, construction and use of a WCF subject to an approved site plan and special conditions determined by the Planning Commission to be appropriate under the provisions of this Article.

Wireless Communications means any personal wireless service as defined in the Telecommunications Act of 1996, which includes FCC-licensed commercial wireless communications services including cellular, personal communication 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.

Wireless Communication Facility (WCF) means any un-staffed facility for the transmission or reception of wireless telecommunications services, usually consisting of an Antenna Array, connection cables, an Equipment Facility, and a Support Structure to achieve the necessary elevation.

III. Location and Application

A. Tower Use Permit (TUP) for the following may be processed and approved, with necessary information and agreements, after administrative review by the Code Enforcement Officer, City Attorney, and Planning and Zoning Commission:

1. An Attached Wireless Communication Facility (Attached WCF) to be attached to an existing monopole, tower, or structure.
2. WCF to be located in C-1 or C-2 zoning districts.
3. WCF to be located in parks or other public areas upon approval by the City Council and Property owner(s).
4. This ordinance shall not govern any tower, or the installation of any antenna that is owned and operated solely by a federally licensed amateur radio station operator.

B. The staff may seek additional input in its review such as analysis by structural, electrical, mechanical, or geo-technical engineers. If the City staff does not approve a TUP for any of the above, the Applicant may elect to apply for a Conditional Use Permit.

C. The following applications are subject to acquisition of a Conditional Use Permit:

1. Facilities to be located in any residential use zoning district. All TUP applications for new tower construction in any residential zoning district shall include supporting documentation to the effect that the applicant has exhausted all alternative sites in commercial zoning districts.
2. Facilities to be located in any commercial zoning district.

D. All TUP applications for new tower construction will be considered only after the applicant has demonstrated to the satisfaction of the Code Enforcement Officer and Planning and Zoning Commission that:

1. No existing towers or structures are located within the geographic area that would meet applicants engineering requirements.
2. Existing towers or structures are not of sufficient height to meet applicants engineering requirements.
3. Existing towers or structures do not have sufficient structural strength to support applicants proposed antenna and related equipment.
4. The applicants proposed 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 applicants proposed antenna.
5. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

E. All applicants shall include, in addition to the site plan requirements on page 15 and page 52 of the Heber Springs Planning and Zoning Rules and Regulations, if applicable, a scaled site plan, a scaled elevation view and other supporting drawings. The applicant shall also submit calculations and other documentation showing the location and dimensions of the WCF and all improvements associated therewith, including information concerning specifications, antenna locations, equipment storage facilities, landscaping, parking, access, fencing, and if relevant as determined by staff, topography, adjacent uses, and existing vegetation.

VI. Development Standards

A. Height

1. An attached WCF shall not add more than 20 feet in height to the existing building or structure to which it is attached.
2. WCF with Support Structures shall have a maximum height of 150 feet in commercial or industrial zones, and 100 feet in residential zones. Where collocation can be accommodated, towers may be increased by 10 feet in height for each additional provider to a maximum of 50 additional feet in commercial and industrial zones only.
3. The applicant shall assume all responsibility for ensuring compliance with all local, state and federal codes regarding airport runway protection.

B. Setbacks

1. Attached WCF: Antenna Arrays for Attached WCF are exempt from the setback provisions of the zone in which they are located. An

Attached WCF Antenna Array may extend up to 30 inches horizontally beyond the edge of the Attached Structure so long as the Antenna Array does not encroach upon an adjoining parcel.

2. WCF with Support Structures shall meet the setback requirements for principal structures of the underlying zone in which they are located.
3. WCF with Support Structures located in residential zones or abutting residential uses on any side shall be set back from any adjoining residential property line a distance at least equal to 50 per cent the height of the tower as measured from the base of the tower to the property line of the residential lot or residential use. Guy-wired anchors shall meet the setback requirements of the specific district in which the WCF is located.

C. Landscaping and Aesthetics

1. Existing mature tree growth and natural land form on the site shall be preserved to the extent feasible; provided, however that the vegetation that causes interference with the antenna or inhibits access to the equipment storage may be trimmed. Any trees in excess of six (6) inches in diameter to be cut must be indicated on the site plan.
2. WCF shall be designed so as to be compatible with the existing structures and surroundings to the extent feasible. Such requirements shall not interfere with normal functioning of the WCF and may include the use of compatible or neutral colors, or stealth technology.

D. Lighting

1. WCF shall not be artificially illuminated, directly or indirectly, except as may be required by state or federal law or for security of the equipment building. It shall be the owners' responsibility to meet FAA lighting requirements, if necessary.
2. Any required lighting shall be focused and shielded to the greatest extent possible so as not to project towards adjacent or nearby properties.
3. WCF shall not display any signage or messages of a commercial nature except for an inconspicuous message containing provider identification and emergency telephone numbers.
4. Security Fencing: WCF with Support Structures shall be enclosed by a security fence not less than six (6) feet tall.

V. Collocation

1. All WCF with Supporting Structures shall be designed to accommodate additional operators where technically feasible and visually desirable.

VI. Special Conditions

- A Support Structures for WCF shall be of the Monopole type in all zones.
- B Derrick towers are not permitted in any zones.

VII. Abandonment

A. Agreements accompanying a request for new Supporting Structures or Attached WCF shall include the following to be executed with the City of Heber Springs:

1. Any WCF whose use is discontinued shall be removed by the owner, and shall be removed within six (6) months and the site restored to its original condition, all at the owners' expense.
2. Any discontinued WCF not removed within six (6) months may be removed by the City at the owners' expense.

VIII. Environmental Impact

B. Assessments of environmental impact are required by federal law to be prepared by personal wireless service carriers when one or more of the following environmental impacts occur:

1. WCF are located in officially designated wilderness or wildlife areas.
2. WCF threaten endangered species or critical habitats.
3. WCF affect historic sites or structures.
4. WCF are located in flood plains.
5. WCF will significantly change a surface area involving wetlands, deforestation, or water diversion.

C. Since these assessments are already required by federal law, these provisions are incorporated into this ordinance and certification of compliance with the National Environmental Policy Act (NEPA) (43 U.S.C. Section 4321) must be provided before any permits will be issued.

IX. Review

The City of Heber Springs shall complete final action upon any TUP within 90 Days of the filing of the application unless a request for extension is filed by the Applicant. Any decision to deny a request will be made in writing and will be supported by substantial evidence contained in a written record.

X. Fees

The fee for a Tower Use Permit shall be \$250.00 for the first \$100,000.00 of estimated construction cost and \$1.00 for each additional \$1,000.00 thereafter for the Support Structure plus \$250.00 for each Attached Wireless Facility located on the Support Structure.

Section 2. All portions of the Zoning Ordinance and its amendments thereto not specifically amended or revised by this Ordinance are hereby reaffirmed, remain unaltered and remain in full force.

Section 3. Severability. The provisions of this Ordinance are hereby declared to be separable and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of the Ordinance which can be given effect without the invalid provisions or portions.

Section 4. Emergency. It is declared that an emergency exists and this Ordinance, being necessary for the public health, safety and welfare, shall take effect and be in force from and after its passage.

PASSED AND APPROVED THIS 12th DAY OF Dec., 2002

ATTEST:

Norma Martin
Norma Martin, City Clerk

Edward L. Roper
Edward L. Roper, Mayor