

ORDINANCE NO. 01-11-00

AN ORDINANCE REGULATING THE INSTALLATION, PLACEMENT, CONSTRUCTION AND MODIFICATION OF TOWER, ANTENNA SUPPORT STRUCTURES AND TELECOMMUNICATIONS FACILITIES IN THE CITY OF COOPER REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; FIXING PENALTIES FOR VIOLATION HEREOF; AND DECLARING AN EMERGENCY.

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WHEREAS, on February 8, 1996, Congress enacted the Telecommunications Act of 1996, P.L. No. 104-104, to deregulate the telecommunications industry, providing a more competitive

environment for wired and wireless telecommunication services in the United States; and

WHEREAS, a concomitant effect of increased competition in the market for wireless telecommunications services is an increased demand for antenna sites on Towers and other Antenna Support Structures necessary for providing wireless service via existing and new technologies; and

WHEREAS, the Telecommunications Act of 1996 preserves the authority of the City to regulate the placement, construction, and modification of Towers, Antenna Support Structures, and Telecommunications Facilities, as hereinafter defined, in order to protect the health, safety, and welfare of the public;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COOPER, TEXAS:

SECTION 1. Findings.

The Communications Act of 1934 as amended by the Telecommunications Act of 1996 ("the Act") grants the Federal Communications Commission (FCC) exclusive jurisdiction over:

(a) The regulation of the environmental effects of radio frequency (RF) emissions from Telecommunications Facilities; and

(b) The regulation of radio signal interference among users of the RF spectrum.

The City's regulation of Towers and Telecommunications Facilities in the City will not have the effect of prohibiting any Person from providing wireless telecommunications services in violation of the Act.

SECTION 2. Purposes.

The general purpose of this Ordinance is to regulate the placement, construction, and modification of Towers and Telecommunications Facilities in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City.

Specifically, the purposes of this Ordinance are:

(a) To regulate the location of Towers and Telecommunications Facilities in the City;

(b) To protect residential areas and land uses from potential adverse impact of Towers and Telecommunications Facilities;

(c) To minimize adverse visual impact of Towers and Telecommunications Facilities through careful design, siting, landscaping, and innovative camouflaging techniques;

(d) To promote and encourage shared use/collocation of Towers and Antenna Support Structures as a primary option rather than construction of additional single-use Towers;

(e) To promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new Tower structures to support antenna and Telecommunications Facilities;

(f) To avoid potential damage to property caused by Towers and Telecommunications Facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound; and

(g) To ensure that Towers and Telecommunications Facilities are compatible with surrounding land uses.

SECTION 3. Definitions.

The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) Antenna Support Structure means any building or structure other than a Tower which can be used for location of Telecommunications Facilities.

(b) Applicant means any Person that applies for a Tower development permit.

(c) Application means the process by which the Owner of a parcel of land within the City submits a request to develop, construct, build, modify, or erect a Tower upon such parcel of land. Application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an Applicant to the City concerning such a request.

(d) Engineer means any engineer licensed by the State of Texas.

(e) Owner means any Person with fee title or a long-term (exceeding ten (10) years) leasehold to any parcel of land within the City who desires to develop, or construct, build, modify, or erect a Tower upon such parcel of land.

(f) Person is any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

(g) Stealth means any Tower or Telecommunications Facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and Towers designed to look other than like a Tower such as light poles, power poles, and trees. The term Stealth does not necessarily exclude the use of uncamouflaged lattice, guyed, or monopole Tower designs.

(h) Telecommunications Facilities means any cables, wires, lines, wave guides, antennas, and any other equipment or facilities associated with the transmission or reception of communications which a Person seeks to locate or has installed upon or near a Tower or Antenna Support Structure. However, Telecommunications Facilities shall not include:

(1) Any satellite earth station antenna two (2) meters in diameter or less which is located in an area zoned industrial or commercial; or

(2) Any satellite earth station antenna one (1) meter or less in diameter, regardless of zoning category.

(i) Tower means a self-supporting lattice, guyed, or monopole structure constructed from grade which supports Telecommunications Facilities. The term Tower shall not include amateur radio operators' equipment, as licensed by the FCC.

SECTION 4. Development of Towers.

(a) A Tower shall be a permitted use of land in zoning districts Light Industrial (LI) and Heavy Industrial (HI). No person shall build, erect, or construct a Tower upon any parcel of land within a zoning district designated for residential use (R-1, R-2, SF-A or R-3) unless approved by City planning and zoning board. Application shall be made to the City planning and zoning board in the manner provided in this chapter.

(b) A Tower shall be a conditional use of land in the following zoning districts:

Heavy Commercial (HC)

Lake Zone (LZ)

No person shall build, erect, or construct a Tower upon any parcel of land within any zoning district set forth above unless approval of the City planning and zoning board is obtained.

(c) Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of one hundred and fifty (150) feet. Towers may be permitted in excess of one hundred and fifty (150) feet in accordance with Section 18 "Criteria for Site Plan Development Modifications."

(d) No new Tower shall be built, constructed, or erected in the City unless the Tower is capable of supporting another Person's operating Telecommunications Facilities comparable in weight, size, and surface area to the Telecommunications Facilities installed by the Applicant on the

Tower within six (6) months of the completion of the Tower construction.

(e) An Application to develop a Tower shall include:

(1) The name, address, and telephone number of the Owner and lessee of the parcel of land upon which the Tower is situated. If the Applicant is not the Owner of the parcel of land upon which the Tower is situated, the written consent of the Owner shall be evidenced in the Application.

(2) The legal description, folio number, and address of the parcel of land upon which the Tower is situated.

(3) The names, addresses, and telephone numbers of all owners of other Towers or usable Antenna Support Structures within a one-half (½) mile radius of the proposed new Tower site, including City-owned property.

(4) A description of the design plan proposed by the Applicant in the City. Applicant must identify its utilization of the most recent technological design, including microcell design, as part of the design plan. The Applicant must demonstrate the need for Towers and why design alternatives, such as the use of microcell, cannot be utilized to accomplish the provision of the Applicant's telecommunications services.

(5) An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to obtain permission to install or collocate the Applicant's Telecommunications Facilities on City-owned Towers or usable Antenna Support Structures located within a one-half (½) mile radius of the proposed Tower site.

(6) An affidavit attesting to the fact that the Applicant made diligent, but unsuccessful, efforts to install or collocate the Applicant's Telecommunications Facilities on Towers or usable Antenna Support Structures owned by other Persons located within a one-half (½) mile radius of the proposed Tower site.

(7) Written technical evidence from an Engineer(s) that the proposed Tower or Telecommunications Facilities cannot be installed or collocated on another person's Tower or usable Antenna Support Structures owned by other Persons located within one-half (½) mile radius of the proposed Tower site.

(8) A written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.

(9) Written, technical evidence from an Engineer(s) that the proposed structure meets the standards set forth in Section 6, "Structural Requirements," of this Ordinance.

(10) Written, technical evidence from a qualified Engineer(s) acceptable to the Fire Marshall and the building official that the proposed site of the Tower or Telecommunications Facilities does not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.

(11) In order to assist City staff and the planning and zoning board in evaluating visual impact, the Applicant shall submit color photo simulations showing the proposed site of the Tower with a photo-realistic representation of the proposed Tower as it would appear viewed from the closest residential property and from adjacent roadways.

(12) The Act gives the FCC sole jurisdiction of the field of regulation of RF emissions and does not allow the City to condition or deny on the basis of RF impacts the approval

of any Telecommunications Facilities (whether mounted on Towers or Antenna Support Structures) which meet FCC standards. In order to provide information to its citizens, the City shall make available upon request copies of ongoing FCC information and RF emission standards for Telecommunications Facilities transmitting from Towers or Antenna Support Structures. Applicants shall be required to submit information on the proposed power density of their proposed Telecommunications Facilities and demonstrate how this meets FCC standards.

(f) The City planning and zoning board may require an Applicant to supplement any information that the committee considers inadequate or that the Applicant has failed to supply. The board may deny an Application on the basis that the Applicant has not satisfactorily supplied the information required in this subsection. Applications shall be reviewed by the City in a prompt manner and all decisions shall be supported in writing setting forth the reasons for approval or denial.

SECTION 5. Setbacks.

(a) All Towers up to one-hundred (100) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of one hundred (100) feet in height shall be set back one (1) additional foot per each foot of Tower height in excess of one hundred (100) feet.

(b) Setback requirements for Towers shall be measured from the base of the Tower to the property line of the parcel of land on which it is located.

(c) Setback requirements may be modified, as provided in Section 18(b)(1), when placement of a Tower in a location which will reduce the visual impact can be accomplished. For example, adjacent to trees which may visually hide the Tower.

SECTION 6. Structural Requirements.

All Towers must be designed and certified by an Engineer to be structurally sound and, at minimum, in conformance with the Building Code, and any other standards outlined in this Ordinance. All Towers in operation shall be fixed to land.

SECTION 7. Separation or Buffer Requirements.

For the purpose of this Section, the separation distances between Towers shall be measured by drawing or following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan of the proposed Tower. Tower separation distances from residentially zoned lands shall be measured from the base of a Tower to the closest point of residentially zoned property. The minimum Tower separation distances from residentially zoned land and from other Towers shall be calculated and applied irrespective of City jurisdictional boundaries.

(a) Towers shall be separated from all residentially zoned lands by a minimum of two hundred (200) feet or two hundred (200) percent of the height of the proposed Tower, whichever is greater.

(b) Proposed Towers must meet the following minimum separation requirements from existing Towers or Towers which have a development permit but are not yet constructed at the time a development permit is granted pursuant to this Code:

(1) Monopole Tower structures shall be separated from all other Towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred and fifty (750) feet.

(2) Self-supporting lattice or guyed Tower structures shall be separated from all other self-supporting or guyed Towers by a minimum of fifteen hundred (1,500) feet.

(3) Self-supporting lattice or guyed Tower structures shall be separated from all

monopole Towers by a minimum of seven hundred and fifty (750) feet.

SECTION 8. Method of Determining Tower Height.

Measurement of Tower height for the purpose of determining compliance with all requirements of this Section shall include the Tower structure itself, the base pad, and any other Telecommunications Facilities attached thereto which extend more than twenty (20) feet over the top of the Tower structure itself. Tower height shall be measured from grade.

SECTION 9. Illumination.

Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA.

SECTION 10. Exterior Finish.

Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, as approved by the appropriate reviewing body.

SECTION 11. Landscaping.

All landscaping on a parcel of land containing Towers, Antenna Support Structures, or Telecommunications Facilities shall be in accordance with the applicable landscaping requirements in the zoning district where the Tower, Antenna Support Structure, or Telecommunications Facilities are located. The City may require landscaping in excess of the requirements in the City Code in order to enhance compatibility with adjacent land uses. Landscaping shall be installed on the outside of any fencing.

SECTION 12. Access.

A parcel of land upon which a Tower is located must provide access to at least one (1) paved vehicular parking space on site.

SECTION 13. Stealth Design.

All Towers which must be approved as a conditional use shall be of Stealth design.

SECTION 14. Telecommunications Facilities on Antenna Support Structures.

Any Telecommunications Facilities which are not attached to a Tower may be permitted on any Antenna Support Structure at least fifty (50) feet tall, regardless of the zoning restrictions applicable to the zoning district where the structure is located. Telecommunications Facilities are prohibited on all other structures. The owner of such structure shall, by written certification to the zoning administrator, establish the following at the time plans are submitted for a building permit:

(a) That the height from grade of the Telecommunications Facilities shall not exceed the height from grade of the Antenna Support Structure by more than twenty (20) feet;

(b) That any Telecommunications Facilities and their appurtenances, located above the primary roof of an Antenna Support Structure, are set back one (1) foot from the edge of the primary roof for each one (1) foot in height above the primary roof of the Telecommunications Facilities. This setback requirement shall not apply to Telecommunications Facilities and their appurtenances, located above the primary roof of an Antenna Support Structure, if such facilities are appropriately screened from view through the use of panels, walls, fences, or other screening techniques approved by the City. Setback requirements shall not apply to Stealth antennas which are mounted to the exterior of Antenna Support Structures below the primary roof, but which do not protrude more than eighteen (18) inches from the side of such an Antenna Support Structure.

SECTION 15. Modification of Towers.

(a) A Tower existing prior to the effective date of this Ordinance, which was in compliance with the City's zoning regulations immediately prior to the effective date of this Ordinance, may continue in existence as a nonconforming structure. Such non-conforming structures may be modified or demolished and rebuilt without complying with any of the additional requirements of this Section, except for Sections 7, "Separation or Buffer Requirements," 16, "Certification and Inspections," and 17, "Maintenance," provided:

(1) The Tower is being modified or demolished and rebuilt for the sole purpose of accommodating, within six (6) months of the completion of the modification or rebuild, additional Telecommunications Facilities comparable in weight, size, and surface area to the discrete operating Telecommunications Facilities of any Person currently installed on the Tower.

(2) An Application for a permit is made to the City planning and zoning board which shall have the authority to issue a permit without further approval. The grant of a permit pursuant to this Section allowing the modification or demolition and rebuild of an existing nonconforming Tower shall not be considered a determination that the modified or demolished and rebuilt Tower is conforming.

(3) The height of the modified or rebuilt Tower and Telecommunications Facilities attached thereto do not exceed the maximum height allowed under this Ordinance.

(b) Except as provided in this Section, a nonconforming structure or use may not be enlarged, increased in size, or discontinued in use for a period of more than one hundred eighty (180) days. This Ordinance shall not be interpreted to legalize any structure or use existing at the time this Ordinance is adopted which structure or use is in violation of the Code prior to enactment of this Ordinance.

SECTION 16. Certifications and Inspections.

(a) All Towers shall be certified by an Engineer to be structurally sound and in conformance with the requirements of the Building Code and all other construction standards set forth by the City's Code and federal and state law. For new monopole Towers, such certification shall be submitted with an Application pursuant to Section 4 of this Ordinance and every five (5) years thereafter. For existing monopole Towers, certification shall be submitted within sixty (60) days of the effective date of this Ordinance and then every five (5) years thereafter. For new lattice or guyed Towers, such certification shall be submitted with an Application pursuant to Section 4 of this Ordinance and every two (2) years thereafter. For existing lattice or guyed Towers, certification shall be submitted within sixty (60) days of the effective date of this Ordinance and then every two (2) years thereafter. The Tower owner may be required by the City to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the Tower is jeopardized.

(b) The City or its agents shall have authority to enter onto the property upon which a Tower is located, between the inspections and certifications required above, to inspect the Tower for the purpose of determining whether it complies with the Building Code and all other construction standards provided by the City Code and federal and state law.

(c) The City reserves the right to conduct such inspections at any time, upon reasonable notice to the Tower owner. All expenses related to such inspections by the City shall be borne by the Tower owner.

SECTION 17. Maintenance.

(a) Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing

failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(b) Tower owners shall install and maintain Towers, Telecommunications Facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.

(c) All Towers, Telecommunications Facilities, and Antenna Support Structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any Person.

(d) All maintenance or construction of Towers, Telecommunications Facilities, or Antenna Support Structures shall be performed by licensed maintenance and construction personnel.

(e) All Towers shall maintain compliance with current RF emission standards of the FCC.

(f) In the event that the use of a Tower is discontinued by the Tower owner, the Tower owner shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued.

SECTION 18. Criteria for Site Plan Development Modifications.

(a) Notwithstanding the Tower requirements provided in this Ordinance, a modification to the requirements may be approved by the planning and zoning board as a conditional use in accordance with the following:

(1) In addition to the requirement for a Tower Application, the Application for modification shall include the following:

(i) A description of how the plan addresses any adverse impact that might occur as a result of approving the modification.

(ii) A description of off-site or on-site factors which mitigate any adverse impacts which might occur as a result of the modification.

(iii) A technical study that documents and supports the criteria submitted by the Applicant upon which the request for modification is based. The technical study shall be certified by an Engineer and shall document the existence of the facts related to the proposed modifications and its relationship to surrounding rights-of-way and properties.

(iv) For a modification of the setback requirement, the Application shall identify all parcels of land where the proposed Tower could be located, attempts by the Applicant to contract and negotiate an agreement for collocation, and the result of such attempts.

(v) The City planning and zoning board may require the Application to be reviewed by an independent Engineer under contract to the City to determine whether the antenna study supports the basis for the modification requested. The cost of review by the City's Engineer shall be reimbursed to the City by the Applicant.

(2) The planning and zoning board shall consider the Application for modification based on the following criteria:

(i) That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.

(ii) Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.

(iii) In addition, the board may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower and mitigate any adverse impacts which arise in

connection with the approval of the modification.

(b) In addition to the requirements of subparagraph (a) of this Section, in the following cases, the Applicant must also demonstrate, with written evidence, the following:

(1) In the case of a requested modification to the setback requirement, Section 5, that the setback requirement cannot be met on the parcel of land upon which the Tower is proposed to be located and the alternative for the Person is to locate the Tower at another site which is closer in proximity to a residentially zoned land.

(2) In the case of a request for modification to the separation and buffer requirements from other Towers of Section 7, "Separation or Buffer Requirements," that the proposed site is zoned "Industrial" or "Heavy Industrial" and the proposed site is at least double the minimum standard for separation from residentially zoned lands as provided for in Section 7.

(3) In the case of a request for modification of the separation and buffer requirements from residentially zoned land of Section 7, if the Person provides written technical evidence from an Engineer(s) that the proposed Tower and Telecommunications Facilities must be located at the proposed site in order to meet the coverage requirements of the Applicant's wireless communications system and if the Person is willing to create approved landscaping and other buffers to screen the Tower from being visible to residentially zoned property.

(4) In the case of a request for modification of the height limit for Towers and Telecommunications Facilities or to the minimum height requirements for Antenna Support Structures, that the modification is necessary to: (i) facilitate collocation of Telecommunications Facilities in order to avoid construction of a new Tower; or (ii) to meet the coverage requirements of the Applicant's wireless communications system, which requirements must be documented with written, technical evidence from an Engineer(s) that demonstrates that the height of the proposed Tower is the minimum height required to function satisfactorily, and no Tower that is taller than such minimum height shall be approved.

SECTION 19. Abandonment.

(a) If any Tower shall cease to be used for a period of 365 consecutive days, the (City Council) shall notify the Owner, with a copy to the Applicant, that the site will be subject to a determination by the (City Council) that such site has been abandoned. The Owner shall have thirty (30) days from receipt of said notice to show, by a preponderance of the evidence, that the Tower has been in use or under repair during the period. If the Owner fails to show that the Tower has been in use or under repair during the period, the (City Council) shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the Owner shall, within seventy-five (75) days, dismantle and remove the Tower.

SECTION 20. Severability.

That if any clause, section, or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 21. Penalty.

Any person violating the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding FIVE HUNDRED AND NO/100 (\$500.00) DOLLARS.

SECTION 22. Conflicts (Repeal of Ordinances).

That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 23. Effective Date.

The importance of this ordinance creates an emergency and an imperative public necessity that the rule requiring ordinances to be read at two meetings be suspended, and this rule is hereby suspended, and the ordinance shall take effect and be in force from and after its adoption.

PASSED AND APPROVED this the 14th day of November, 2000.

Richard Hince
MAYOR

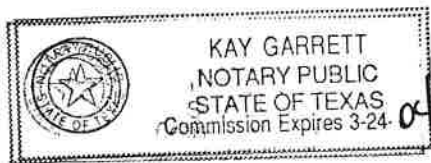
ATTEST:

Margaret Eudy
CITY SECRETARY (seal)

I, MARGARET EUDY, Secretary of the City of Cooper, Texas, do hereby certify that the above is a true and correct copy of an ordinance shown on Page _____, Book _____ of the Minutes of the City of Cooper, Texas, and that the same has not been repealed and is in full force and effect.

Margaret Eudy
MARGARET EUDY, City Secretary
City of Cooper, Texas

SWORN TO AND SUBSCRIBED BEFORE ME, on this the 17th day of November, 2000, to certify which witness my hand and seal of office.



Kay Garrett
Notary Public, State of Texas