

ORDINANCE NO. 1331

AN ORDINANCE AMENDING THE HOPE LAND DEVELOPMENT CODE BY
ADDING A NEW PART A, CHAPTER X, ENTITLED "WIRELESS
COMMUNICATIONS FACILITIES;" AND FOR OTHER PURPOSES.

WHEREAS, the Federal Government through the Federal Communications Commission (FCC), has issued wireless communications licenses for cellular, personal communication services (PSC), paging and other providers of wireless antenna services;

WHEREAS, the demand by citizens for new wireless communications services has produced an increased need for installation of wireless antennas and wireless communications facilities to serve the public, including the citizens in Hope;

WHEREAS, the FCC has required license holders to provide coverage to areas where wireless communications licenses have been acquired and this may require such facilities to be conducted in specified locations and manners, determined by engineering standards to achieve such coverage, and thus, there may be limited ability to choose alternative locations;

WHEREAS, the Federal Telecommunications Act of 1996 (FTA) preserves local zoning authority to regulate WCF; provided, however, that localities may not unreasonably discriminate between FCC license holders and that localities cannot prohibit or effectively prohibit the provision of wireless services, and the FTA gives the FCC sole jurisdiction over radio frequency emissions, provided the WCF meet FCC standards therefor;

WHEREAS, additional WCF are required to provide quality communication services to meet the growing needs of the public and businesses for wireless communications and should be accommodated in the City;

WHEREAS, WCF should be reasonably regulated to minimize potential adverse aesthetic impacts on the surrounding area; and

WHEREAS, the Planning and Zoning Commission has reviewed and has recommended the adoption of the regulations for wireless communications facilities,

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the City of Hope, Arkansas

SECTION 1. The Hope Land Development Code is hereby amended by adding a new Part A, Chapter X, entitled "Wireless Communications Facilities" as follows:

CHAPTER X. WIRELESS COMMUNICATIONS FACILITIES.

Article 10-1. Purpose and goals.

- (a) Purpose. The purpose of this Chapter is to establish general guidelines for the siting of Wireless Communications Facilities (WCF) and granting of Tower Use Permits (TUP).
- (b) Goals. The goals of this Chapter are to:
 - (1) provide a range of locations for WCF in all residential, commercial and industrial zones unless otherwise prevented;
 - (2) provide clear locations standards addressing the siting of WCF within each zoning district;
 - (3) encourage the location of WCF on existing structures, including utility poles, signs, water towers, buildings and other WCF where feasible;

- (4) encourage Collocation and Site Sharing of new and existing WCF;
- (5) facilitate the use of public property and structures for WCF;
- (6) streamline and expedite permitting procedures to effect compliance with the Federal Telecommunications Act of 1996;
- (7) enhance the ability of providers of telecommunications services to provide such service to the community quickly, effectively, and efficiently; and
- (8) protect residential and historic areas from the uncontrolled development of WCF by requiring reasonable siting conditions.

Article 10-2. 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 Antenna Array attached to an existing building or structure which shall include, but not be limited to, utility poles, signs, water towers, with any accompanying pole or device that attaches the Antenna Array to the existing located either inside or outside the Attachment 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 communications technology or placement of a WCF on a structure owned or operated by a utility or other public entity.

Department means the Code Enforcement Department.

Department Standards, as used in this Chapter shall mean those standards set forth in Article 10-4 hereof.

Equipment Facility means any structure used to contain ancillary equipment for a WCF that includes cabinets, shelters, an extension or addition onto an existing structure, pedestals, and other similar structures.

FAA means the Federal Aviation Administration.

FCC means the Federal Communication Commission.

FTA means the Federal Telecommunications Act of 1996.

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

Review Process. As used in this Chapter, Review Process shall mean those processes set forth in Article 10-5 herof.

Setback means the required distance from the foundation of WCF land based elements, including guy-wires, to the property lines of the parcel on which the WCF is located.

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

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

Temporary Wireless Communications Facility (Temporary WCF) means a WCF to be placed in service for ninety (90) or fewer consecutive days at the same location.

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 any special conditions determined by the Code Enforcement Officer or Planning and Zoning Commission to be appropriate under the provisions of this Chapter.

Wireless Communications means any personal wireless service as defined in the Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications 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 unstaffed 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. This definition may also include an attachment to an existing structure.

Article 10-3. Applicability.

- (a) Permit Required. No person, firm or corporation shall install or construct any WCF unless and until a Tower User Permit (TUP) has been issued pursuant to the requirements of this Chapter.
- (b) Pre-existing WCF. WCF for which a permit has been issued prior to the effective date of this Chapter shall not be required to meet the requirements of this Chapter as further specified in Article 10-9 hereof.
- (c) Amateur Radio Exclusion. This Chapter shall not govern the installation of any amateur radio facility that is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas.
- (d) Relationship to Other Ordinances. This Chapter shall supersede all conflicting requirements of other code provisions and ordinances regarding the locating and permitting of WCF.
- (e) Building Codes. Construction of all WCF's shall comply with the requirements of the City of Hope Building Codes and permitting process in addition to the requirements of this Chapter.

Article 10-4. Development standards.

- (a) Height Standards. The following height standards shall apply to all WCF facility installations.
 - (1) Attached WCF. Attached WCF shall not add more than twenty (20) feet in height to the existing building or structure to which it is attached (Attachment Structure).
 - (2) WCF with Support Structures. WCF with Support Structures shall have a maximum height of 150 feet in

all zones except residential zones wherein the maximum height shall be 100 feet.

- (b) Setback Standards. The following setback standards shall apply to all WCF installations.
- (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 Attachment Structure so long as the Antenna Array does not encroach upon an adjoining parcel.
 - (2) *WCF with Support Structures*. WCF with Support Structures shall meet the setback requirements for principle structures of the applicable zone in which they are located.
 - (3) *WCF with Support Structures abutting or located in residential zones*. WCF with Support Structures which abuts property zoned residential on any side or which is located within any residential zone, shall be set back a distance at least the height of the tower measured from the base of the tower to the property line of the residential lot.
- (c) Landscaping and Screening. The following landscaping and screening requirements shall apply to all WCF facility installations.
- (1) *New Construction*. New WCF With Support Structures and Attached WCF with new building construction shall be landscaped in accordance with the applicable provisions of the landscape ordinance which may now or hereafter be adopted.
 - (2) *Land Form Preservation*. Existing mature tree growth and natural Land Form on the site shall be preserved to the extent feasible; provided, however, that vegetation causing interference with the antenna's performance or inhibiting access to the Equipment Facility may be trimmed.
 - (3) *Existing Vegetation*. Existing vegetation on a WCF site may be used in lieu of required landscaping where approved by the Planning and Zoning Commission.
- (d) Aesthetics, Placement, Materials and Colors. WCF shall be designed so as to be compatible with the existing structures and surroundings to the extent feasible, including placement in a location which is consistent with proper functioning of the WCF, the use of compatible or neutral colors, or stealth technology.
- (e) Lighting and Signage. The following lighting and signage requirements shall apply to all WCF facility installations.
- (1) *Artificial Illumination*. WCF shall not be artificially illuminated, directly or indirectly, except for:
 - a. security and safety lighting of equipment buildings if such lighting is appropriately down shielded to keep light within the boundaries of the site; and
 - b. such illumination of the WCF as may be required by the FAA or other applicable authority installed in a manner to minimize visual impacts on adjacent residences.
 - (2) *Signage*. WCF shall not display any signage, logos, decals, symbols or any messages of a commercial or noncommercial nature, except for a small message containing provider identification and emergency telephone numbers. Such sign shall not exceed 2 square

feet in area.

- (f) Security Fencing. WCF with Support Structures shall be enclosed by a security fence not less than 6 feet in height. Security features may be incorporated into the buffer, landscaping and screening requirements for the site. Nothing herein shall prevent security fencing which is necessary to meet requirements of State or Federal agencies.
- (g) Radio Frequency Emissions The following radio frequency emissions standards shall apply to all WCF facility installations.
 - (1) *RF Impact*. The FTA gives the FCC sole jurisdiction of the regulation of Radio Frequency (RF) emissions, and WCF which meet the FCC standards shall not be conditioned or denied on the basis of RF impact.
 - (2) *FCC Compliance*. In order to provide information to its citizens, copies of ongoing FCC information concerning WCF and RF emission standards may be requested. Applicants for WCF shall be required to provide information with the application on the measurement of the effective radiated power of the facility and how this meets the FCC standards.
 - (3) *Sound Prohibited*. No sound emissions such as alarms, bells, buzzers or the like are permitted.
- (h) Structural Integrity. WCF with Support Structures shall be constructed to the Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision F Standard entitled "Structural Standards for Steel Antennas Towers and Antenna Supporting Structures" (or equivalent), as it may be updated or amended. Each Support Structure shall be capable of structurally and functionally supporting at least three antenna arrays.
- (i) Collocation agreement. All applicants for WCF are required to submit a statement with their application agreeing to allow collocation of other WCF providers. The statement shall include the applicant's policy regarding collocation of other providers and the methodology to be used by the applicant in determining reasonable rates to be charged other providers. The Collocation Agreement shall be considered a condition for issuance of a TUP.

Article 10-5. Review process.

- (a) General. The applicable Development Standards referred to herein are those set forth in Article 10-4 of this Chapter.
- (b) Permitting Procedures. Attached WCF with or without new building construction and WCF with monopole Support Structures that meet the Development Standards may be permitted by Administrative Review except as hereinafter specified. All other WCF with Support Structures, regardless of type, to be sited in or abutting any residential zone shall be subject to the Planning and Zoning Commission review process and may not be approved solely by the Administrative Review process. All WCF applications that do not conform with the Development Standards or are otherwise not eligible for Administrative Review shall be subject to the Planning and Zoning Commission review process.
- (c) WCF As Part of Coordinated Development Approval. WCF as part of a proposed residential or nonresidential subdivision, Planned Unit Development (PUD), site plan, conditional rezoning, or other coordinated development approval shall be reviewed and approved through those processes.
- (d) WCF for Temporary Term. Temporary WCF for a term not to

exceed 90 days are permitted by Administrative Review and, in case of emergency, shall be given expedited review.

Article 10-6. Approval procedures.

- (a) Application Submission. All requests for a Tower Use Permit, regardless of WCF type shall submit an application in accordance with the requirements of this section.
- (1) Application Contents. Each applicant requesting a TUP under this Chapter shall submit a scaled site plan containing a scaled elevation view and other supporting drawings, calculations and other documentation showing the location and dimensions of the WCF and all improvements associated therewith, including information concerning specifications, antenna locations, equipment facility and shelters, landscaping, parking, access, fencing and, if relevant as determined by staff, topography, adjacent uses and existing vegetation. Applicants proposing to collocate on an existing WCF shall include a Radio Frequency Intermodulation Study with their application.
 - (2) Submission Requirements. Application for a TUP shall be submitted to the Code Enforcement Officer on forms prescribed by the Department. The application shall be accompanied by a site plan containing the information described above. If Planning and Zoning Commission review is required, the application and site plan shall be placed on the next available Commission agenda in accordance with the agenda deadlines established by the Department.
 - (3) Application Fees. Each application shall be accompanied by a plan review fee of \$500 and a Radio Frequency Intermodulation Study review fee of \$500 (collocation applications only). These fees shall be used to engage an engineer(s) or other qualified consultant(s) to review the technical aspects of the application and Radio Frequency Intermodulation Study (if required).
 - (4) Technical Assistance. In course of its consideration of an application, the Code Enforcement Officer, the Planning and Zoning Commission or the Board of Directors may deem it necessary to employ an engineer(s) or other consultant(s) qualified in the design and installation of WCF to assist the Code Enforcement Officer, Commission, or Board in the technical aspects of the application. In such cases, any reasonable costs incurred by the City, not to exceed fifteen hundred dollars (\$1,500) for the technical review and recommendation, shall be reimbursed by the applicant prior to the final City hearing on the TUP.
- (b) Administrative Review. The following administrative review process shall apply to all WCF applications eligible for administrative review.
- (1) Review Authority. Review of WCF under this Section shall be conducted by the Code Enforcement Officer or his designee upon the filing of a WCF application.
 - (2) Review Criteria. The Code Enforcement Officer shall review the application for compliance with the Development Standards.
 - (3) Timing of Decision. The Code Enforcement Officer shall render a decision on the WCF application by written response to the applicant within ten (10) business days after receipt of the complete application, except that an extension may be agreed upon by the applicant.
 - (4) Deferral. The Code Enforcement Officer may defer

administrative approval of WCF for any reason. Deferral of administrative approval shall require submission to the Planning and Zoning Commission for review.

- (5) *Application Denial.* If administrative approval is not obtained due to noncompliance with the Development Standards, the applicant may appeal the denial by applying for Planning and Zoning Commission review.
 - (6) *Application Approval.* If the TUP application is in compliance with the Development Standards and otherwise meets the requirements of this section, the Code Enforcement Officer shall issue a Tower Use Permit (TUP).
- (c) Planning and Zoning Commission Review. The following shall apply to all Tower User Permit applications requiring submission to the Planning and Zoning Commission:
- (1) *Review Authority.* The Planning and Zoning Commission shall be the review authority for TUP applications not eligible for Administrative Review or otherwise referred to the Commission.
 - (2) *Notice.* Notice of the application and the public hearing by Planning and Zoning Commission shall be accomplished in the same manner as a conditional use permit under the Land Development Code.
 - (3) *Hearing.* The Planning and Zoning Commission shall review and consider the TUP application at a public hearing. At the hearing, interested persons may appear and offer information in support of or opposition to the proposed application. The Planning and Zoning Commission shall consider the following in reaching a decision.
 - a. *Development Standards Variance.* The TUP application shall be reviewed for compliance with the Development Standards set forth in Article 10-4; provided that the applicable Development Standards may be reduced or waived so long as the approval of the WCF meets the goals and purposes of Article 10-1 hereof. The Planning and Zoning Commission may authorize a variance from the Development Standards by specific inclusion in a motion for approval. No such variance authorized by the Planning and Zoning Commission shall be the basis for subsequent variance requests to the Board of Zoning Adjustment.
 - b. *Tower Siting Conditions.* The Planning and Zoning Commission may impose conditions and restrictions on the application or on the premises benefitted by the TUP as it deems necessary to reduce or minimize any adverse effects and to enhance the compatibility of the WCF with the surrounding property, in accordance with the purposes and intent of this Chapter. The violation of any condition shall be grounds for revocation of the TUP. The Planning and Zoning Commission may impose such conditions in addition to the Development Standards upon the following findings:
 1. The WCF would result in significant adverse visual impact on nearby residences
 2. The conditions are based upon the purpose and goals of this Chapter as set forth in Article 10-1
 3. The conditions are reasonable and capable of being accomplished.

c. Action. Following the public hearing and presentation of all evidence, the Planning and Zoning Commission shall take one of the following actions:

1. approve the application as submitted;
2. approve the application with conditions or modifications;
3. defer the application for additional information or neighborhood input; or
4. deny the application.

(6) *Findings.* All decisions rendered by the Planning and Zoning Commission concerning a Tower Use Permit shall be supported by written findings of fact and conclusions of law based upon substantial evidence in the record.

(7) *Timing of Decision.* The Planning and Zoning Commission shall render its decision within 60 days or less of the final submission of all required application documents and technical evaluations.

(8) *Appeals.* The decision of the Planning and Zoning Commission may be appealed to the Board of Directors of the City under the following circumstances:

- a. Only the applicant and those who registered an objection to the TUP in the record of the Planning and Zoning Commission shall have standing to appeal.
- b. Only such evidence or testimony in support of or opposition to the issuance of the TUP which was provided to the Planning and Zoning Commission may be presented to the Board of Directors unless the Board, by majority vote, decides to hear new information.
- c. Notice of appeal shall be accomplished by the appellant in the same manner as a conditional use permit under the Land Development Code.
- d. Appeal of decisions of the Board of Directors shall be filed in Chancery Court within thirty (30) days of the final decision on the TUP.

Article 10-7. Shared facilities and collocation policy; Facilitating location on public property.

(a) Collocation. All WCF shall be construed to be capable of sharing the facility with other providers, to collocate with other existing WCF and to accommodate the future collocation of other WCF. Applicants proposing a new WCF shall demonstrate that it has made a reasonably good faith attempt to find a collocation site. Competitive conflict and financial burden are not deemed to be adequate reasons against collocation.

(b) Location On Public Property. The City will work with telecommunication providers to facilitate the siting of WCF on suitable City owned or controlled property, by identifying existing facilities, the appropriate contact persons, and the appropriate procedures in accordance with this Chapter.

Article 10-8. Removal of abandoned WCF.

Any WCF that is not operated for a continuous period of twelve (12) months, or such lesser time if the City is so advised by the provider

or landowner, shall be considered abandoned, and the owner of such WCF may be required to remove same within ninety (90) days of notice to the City that the WCF is abandoned. If the WCF is not removed within ninety (90) days, the City may remove it and recover its costs from the owner of the WCF or from the landowner. If there are two or more users of a single WCF, this provision shall not become effective until all providers cease to use the WCF.

Article 10-9. Nonconforming WCF.

WCF in existence on the date of the adoption of this Chapter, which do not comply with the requirements of this Chapter (nonconforming WCF) are subject to the following provisions:

- (a) Expansion. Nonconforming WCF may continue in use for the purpose now used, but may not be expanded without complying with this Chapter, except as further provided in this Section.
- (b) Additions. Nonconforming WCF may add additional antennas (belonging to the same provider or other providers) subject to Administrative Review under Article 10-6 of this Chapter.
- (c) Repairs. Nonconforming WCF which becomes damaged or destroyed due to any reason or cause, may be repaired and restored to its former use, location, and physical dimensions subject to the provisions of this Chapter. Such repairs must be commenced within one year after said damage or destruction, or said WCF shall be deemed abandoned.

Article 10-10. Revocation of Tower Use Permits.

Any Tower Use Permit issued pursuant to this Chapter may be revoked by the Planning and Zoning Commission after a hearing as provided hereinafter. If the Commission finds that any permit holder has violated any provision of this Chapter, or has violated any federal, state, or local law or ordinance, or has failed to make good faith reasonable efforts to provide or seek collocation, the Commission may revoke the Tower Use Permit (TUP) upon such terms or conditions, if any, that the Commission may determine. Prior to initiation of revocation proceedings, the Code Enforcement Officer shall notice the permit holder, in writing, of the specific areas of non-compliance and specify the date by which such deficiencies must be corrected. The time for correction of deficiencies shall not exceed sixty (60) days. The permit holder shall provide the Code Enforcement Officer with evidence that the required corrective action has been taken. Should the permit holder fail to correct any deficiencies in the time required, the Planning and Zoning Commission shall convene a public hearing to consider revocation of the Tower Use Permit. The hearing shall be conducted pursuant to notice by publication in a newspaper with general circulation in the city not less than 10 days prior to the hearing and by written notice to the permit holder. At any such hearing, the permit holder may be represented by an attorney and may cross examine opposing witnesses. Other interested persons may comment. The Planning and Zoning Commission may impose reasonable restrictions with respect to time and procedure and may, but is not required to, provide for stenographic or other recording of the hearing or portions thereof.

Article 10-11. Penalty.

The fine or penalty for violating any provisions of this Chapter shall, upon conviction in the municipal court, not exceed five hundred dollars (\$500.00) for any one specified offense or violation, or double that sum for each repetition of such offence or violation; provided, further, that if a thing prohibited or rendered unlawful is, in its nature, continuous in respect to time, the fine or penalty for allowing the continuance thereof in the violation of this Chapter shall not exceed two hundred fifty dollars (\$250.00) for each day that it may be unlawfully continued.

SECTION 2. The Hope Land Development Code is hereby amended by adding the following sentence:

The provisions of this section shall not apply to Wireless Communication Facility installations and applications which shall be governed by Chapter X hereof.

SECTION 3. The various parts, sections and clauses of this ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

SECTION 4. This ordinance shall be codified in the Code of Ordinances and the sections may be renumbered or relettered to accomplish such intention.

SECTION 5. This action being necessary to the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, and this ordinance shall take effect and be in full force from and after its passage and approval.

PASSED AND APPROVED on the 2nd day of November, 1999.

MAYOR

CITY CLERK