

ORDINANCE NO. 2007-03-285  
AN ORDINANCE ESTABLISHING CRITERIA TO ASSESS  
AND REDUCE VISUAL AND LAND USE IMPACTS ASSOCIATED  
WITH THE DEVELOPMENT OF WIRELESS COMMUNICATIONS  
FACILITIES IN THE CITY OF TONTITOWN, ARKANSAS

WHEREAS, the City of Tontitown desires to provide a range of locations for wireless communications facilities in all zones unless prevented by law; and,

WHEREAS, the City of Tontitown wishes to minimize the adverse visual impacts of towers and antennas by encouraging antenna location on existing structures, including utility poles, signs, water towers, buildings, and other wireless communications facilities where feasible; and

WHEREAS, the City of Tontitown encourages co-location and site sharing of new and existing wireless communications facilities; and,

WHEREAS, the City of Tontitown wishes to facilitate the use of public property and structures for wireless communications facilities; and,

WHEREAS, the City of Tontitown desires to enhance the ability of providers of telecommunication services to provide such services to the community quickly, effectively and

WHEREAS, the City of Tontitown wishes to maintain FCC compliance (in the event there is a conflict between these regulations and FCC or FAA regulations, the latter regulations shall govern).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TONTITOWN, ARKANSAS:

Section 1. Purpose.

The purpose of this Ordinance is to protect the health, safety and welfare of the community by establishing criteria to assess and reduce visual and land use impacts associated with the development of wireless communications facilities.

Section 2. Use Approval Required in All Zoning Districts

That Chapter 115 of Tontitown's Code of Ordinances is created regulating the business of wireless communication facilities in the City of Tontitown.

A. Ordinance 2005-12-240, the same being the zoning ordinance for the City of Tontitown, Arkansas, set forth in Chapter 153, Zoning Regulations, governs application of conditional uses and procedures and shall apply in addition to the specific requirements set forth in this Ordinance.

### Section 3. Definitions.

**Act:** The Communications Act of 1934, as it has been amended from time to time, including the Telecommunications Act of 1996, and shall include any future amendments, thereto.

**Alternative Tower Structure:** Man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers and are built for the express purpose of serving as a tower or for locating antennas.

**Antenna:** Any structure or device used to collect or radiate electromagnetic waves, including both directional antennas, such as panels, microwave dishes and satellite dishes and omnidirectional antennas, such as whips but not including satellite earth stations.

**Co-Location:** Locating wireless communications equipment for more than one provider at a single communications facility, on a building, or on an alternative tower structure.

**FAA:** The Federal Aviation Administration.

**Fall Zone:** The area within which a Tower or Antenna might cause damage to persons or property should the tower or antenna be knocked down, blown over or fall on its own. Specifically described as the minimum distance from the base of any tower to any residential dwelling unit shall be the tower height or required setback, whichever is greater, unless all persons owning said residences or the land on which said residences are located consent in a signed writing to the construction of said tower. This setback is considered a "fall zone".

**FCC:** The Federal Communications Commission.

**Guyed Towers:** A communication tower that is supported, in whole or in part, by guy wires and ground anchors.

**Height:** The vertical distance measured from the mean elevation of the finished grade to the highest point on the tower or other structure, even if said highest point is an antenna or antenna array.

**Lattice Tower:** A guyed or self-supporting three or four sided, open, steel frame structure used to support telecommunications equipment.

**Monopole Tower:** A communication tower constructed without the use of guy wires and ground anchors and consisting of only a single pole.

**Original Tower Height:** Height of a tower on the date of the passage of this ordinance.

**Personal Use:** "Personal Use" refers to a non-commercial use by a resident of the subject property. If any revenues are generated from the operation of the tower, it will not be for personal use as such

term is used.

**Stealth Technology:** Systems, components and materials used in the construction of wireless communications facilities to make it compatible with the surrounding property.

**Telecommunications:** The transmission, between or among points as specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received.

**Tower or Communications Tower:** Any structure that is designed and constructed for the primary purpose of supporting one or more antennas, including lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. This term is not intended to describe buildings or other structures that have been constructed primarily for a purpose other than supporting one or more antennas, despite the fact that such structure may currently, or in the future, actually support one or more antennas.

#### Section 4. Requirements for Wireless Communications Facilities.

A. The following general requirements shall apply to all new wireless communications facilities.

1. **Noise Requirements.** Equipment used in connection with a tower or antenna array shall not generate noise that can be heard beyond the site. This prohibition does not apply to air conditioning units no noisier than ordinary residential units or generator used in emergency situations where regular power supply for a facility is temporarily interrupted; provided that any permanently installed generator shall be equipped with a functional residential muffler.

**Compliance With Federal Regulations.** Applicant shall comply with all applicable federal regulations. Proof of compliance shall be provided upon request of the City Planning Commission.

#### 2. Lighting and Signage

a. Wireless communications facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Security lighting or motion-activated lighting may be used around the base of a tower and within the wireless communication facility, provided that the lighting is shielded in such a way that no light is directed towards adjacent properties or rights-of-way.

b. Signs shall be limited to those needed to identify the property and the owner and warn of any danger. No signs, symbols, identifying emblems, flags, or banners shall be allowed on towers.

#### 3. Types of Towers allowed.

a. New towers shall be limited to monopole type structures or alternative tower structures.

b. **Tower and Antenna Height Limitations.** Towers or alternative tower structures are permitted to a maximum height of one hundred and ninety five (195') feet.

c. In the event that an existing structure is proposed as a mount for a wireless communication facility, a fall zone shall not be required.

4. **Camouflaging or Stealth Technology for New Towers.** If the applicant demonstrates that it is not feasible to locate on an existing structure, towers shall be designed to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping and placement within trees.

5. **Color of Towers.** To the extent that any antenna extend above the height of the vegetation immediately surrounding it, they shall be a neutral color, painted or unpainted, unless the FAA requires otherwise.

6. **Information Required To Process New Tower Requests.**

a. Provide a map of the geographic area that your project will serve.

b. Provide a map that shows other existing or planned facilities that will be used by the wireless communication service provider who is making the application.

c. Provide a map that shows other potential stand-alone locations for your facility that have been explored.

d. Provide a scaled site plan containing information showing the property boundaries, proposed tower, existing land use, surrounding land uses and zoning, access road(s) location and surface material, existing and proposed structures and topography. The plan shall indicate proposed landscaping, fencing, parking areas, location of any signage and specifications on proposed lighting of the facility.

e. Describe why the proposed location is superior, from a community perspective, to other potential locations. Factors to consider in the community perspective should include; visual aspects, setbacks and proximity to single family residences.

f. Describe your efforts to co-locate your facility on one of the poles or towers that currently exists, or is under construction. The applicant should demonstrate a good faith effort to co-locate with other carriers. The Planning Commission may deny a permit to an applicant that has not demonstrated a good faith effort to provide for co-location. Such good faith effort includes:

(1). A survey of all existing structures that may be feasible sites for co-locating wireless communications facilities;

(2). Contact with all the other wireless communications licensed carriers operating in the City and Washington County; and

(3). Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.

(4). Letter from tower owner stating why co-location is not feasible.

g. Describe how you will accommodate other antenna arrays that could co-locate on your facility. Describe how this accommodation will impact both your pole or tower, and your ground mounted facilities. Provide documentation of your provider's willingness to accommodate other providers who may be able to co-locate on your facility.

7. Required (after condition) and Balloon Test or Crane Test Photographs. The proposed tower shall be photographed from four locations taken 900' apart and 300' from the center of the tower. The proposed tower shall be superimposed on the photographs. A balloon or crane test shall be performed to illustrate the height of the tower and photographed from the same four locations. The time period, not to exceed one week, within which the test will be performed, shall be advertised in a newspaper of general circulation in the City at least 14 days, but not more than 21 days prior to the test. The four locations shall be approved by the Planning Commission.

8. Structural Integrity and Inspections of Towers.

a. The applicant shall provide a certification letter that states the tower meets or exceeds design criteria and all local, state, and federal requirements regarding the construction, maintenance, and operation of the tower.

b. If a tower fails to comply with the requirements and criteria above and constitutes a danger to persons or property, then upon written notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such requirements and criteria. If the owner fails to bring such tower into compliance within thirty (30) days, the City may terminate that owner's conditional use permit and/or cause the removal of such tower (at the owner's expense).

c. By making an application hereunder, the applicant agrees to regularly maintain and keep in a reasonably safe and workmanlike manner all towers, antenna arrays, fences and out buildings owned by applicant which are located in the City. The applicant further agrees to conduct inspections of all such facilities not less frequently than every 12 months. The applicant agrees that said inspections shall be conducted by one or more designated persons holding a combination of education and experience so that they are reasonably capable of identifying functional problems with the facilities.

9. Security Fencing and Anti-climbing Device. Through the use of security fencing, towers and equipment shall be enclosed by wood board fencing not less than six (6) feet in height. The tower shall also be equipped with an appropriate anti-climbing device. The facility shall place signs

indicating "No Trespassing", "High Voltage" or other pertinent information on the outside of the fence, unless it is decided that the goals of this ordinance would be better served by waiving this provision in a particular instance. Barbed wire fencing or razor wire shall be prohibited.

10. Vegetative Screening Requirements. Wireless communications facilities shall be surrounded by buffers of dense tree growth and under story vegetation in all directions to create an effective year-round visual buffer. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both.

11. Setbacks from property lines. Wireless communications facilities shall meet current setbacks as required by zoning.

C. Co-location. Applicants for co-location shall meet the following requirements:

1. Administrative Approval for Antenna Co-locations and Locations on Other Structures. The Planning Commission, following an administrative review without requiring the issuance of a Conditional Use Permit, may approve the following antenna installation.

a. Locating on Existing Structures. Installation of an antenna on an existing structure other than a tower (such as a building, sign, light pole, electric transmission tower and similarly scaled public utilities /facilities, water tower, or other free-standing non-residential structure), provided that the addition of the antenna does not add more than twenty (20') feet to the height of the original structure.

b. Locating on Existing Towers. Installation of an antenna on an existing tower of any height, and the placement of additional buildings or other supporting equipment used in connection with such additional antenna, so long as the proposed additions would add no more than twenty feet (20') of height to the original height of the tower. The addition or modification, to the extent possible, should be designed to minimize visibility.

c. For the purposes of co-location, the applicant must submit information from a licensed professional engineer certifying the capacity of the tower for additional providers and a letter of intent from the applicant indicating their intent to share space.

D. Other requirements.

1. Wireless Communications Facilities Placed on Top of Buildings. When a wireless communications facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the buildings's silhouette.

2. Wireless Communications Facilities Placed on Sides of Buildings. Antenna which are



side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them.

E. Exemptions.

1. Personal Use. Towers for personal use which, including the height of all antenna arrays, do not extend more than 80' from the ground and shall meet the current setbacks as required by zoning.
2. Temporary Structures. Temporary structures designed to be used for not more than 14 days in connection with a special event or for any reasonable period of time in and immediately following an emergency, including without limitation those towers which are identified as "C.O.W.s." or "Cellular on Wheels."
3. Existing Towers. All existing towers may be replaced with the same type and height of tower structure as currently exists.
4. Emergency and Utility Towers and Antennas. Towers and antennas under thirty five (35') in height used for 9-1-1 services and utility monitoring (gas, water, sewer, traffic lights, etc.)

F. Municipal Profits from Towers. The City of Tontitown should actively market its own property and existing structures as suitable co-location sites. As noted above the review process is shortened and simplified when co-location on city property is submitted by applicant. An annual lease amount should be charged according to the fair-market value of the location. The revenues can be earmarked to improve the public area within which the tower is located. In cases where the company no longer needs the tower, the City may require it to be removed. Applicants can provide co-location space for city-owned antenna.

G. Abandoned Antennas or Towers. At such time that a licensed carrier abandons or discontinues operation of a wireless communications facility, such carrier will notify the City of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations. In the event that licensed carrier fails to give such notice, the wireless communications facility shall be considered abandoned upon such discontinuation of operations. If the operator of the tower believes its tower remains a viable tower it can request a 90 day extension for the existence of the tower, in an attempt to locate a new carrier. If a new carrier is not located within 90 days the tower will be considered abandoned. Upon abandonment or discontinuation of use, the carrier shall physically remove the wireless communications facility within 90 days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

1. Removal of antenna, mount, equipment shelters and security barriers from the subject property.
2. Proper disposal of the waste materials from the site in accordance with local and state solid

waste disposal regulations.

3. Restoring the location of the wireless communications facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.

H. Notification of Change of Ownership/Operator. Upon assignment or transfer of a Conditional Use Permit or any of the rights thereunder to a new wireless telecommunications operator, the owner or operator shall provide written notice within thirty (30) days to the Planning Commission.

#### Section 5. Public Notification.


Applicants requesting permits for new towers shall notify property owners within a 500' radius from the center of the tower; applicants requesting permits for co-location shall not require notification. Notification shall be certified mail for adjoining property owners, including across streets and regular mail for the remaining property owners within the notification area.



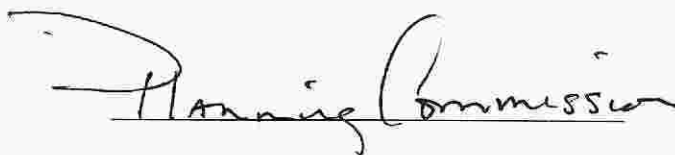
PASSED AND APPROVED this 6th day of March, 2007.

  
Mayor

ATTEST:

  
City Recorder/Treasurer

SPONSOR:

  
Planning Commission

## ROLL CALL

### SHALL THE ORDINANCE PASS:

	Yea	Nay
Ward 1, Position 1 - Alderman Sunny Hinshaw	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ward 1, Position 2 - Alderman Henry Piazza	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ward 2, Position 1 - Alderman Arthur Penzo	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ward 2, Position 2 - Alderman David Sbanotto	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ward 3, Position 1 - Alderman Becky Alston	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ward 3, Position 2 - Alderman Scott McNair	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mayor - Joseph Edgmon	<input type="checkbox"/>	<input type="checkbox"/>

TOTALS:

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## ROLL CALL

### SHALL THE ORDINANCE BECOME EFFECTIVE IMMEDIATELY:

Ward 1, Position 1 - Alderman Sunny Hinshaw	<input type="checkbox"/>	<input type="checkbox"/>
Ward 1, Position 2 - Alderman Henry Piazza	<input type="checkbox"/>	<input type="checkbox"/>
Ward 2, Position 1 - Alderman Arthur Penzo	<input type="checkbox"/>	<input type="checkbox"/>
Ward 2, Position 2 - Alderman David Sbanotto	<input type="checkbox"/>	<input type="checkbox"/>
Ward 3, Position 1 - Alderman Becky Alston	<input type="checkbox"/>	<input type="checkbox"/>
Ward 3, Position 2 - Alderman Scott McNair	<input type="checkbox"/>	<input type="checkbox"/>
Mayor - Joseph Edgmon	<input type="checkbox"/>	<input type="checkbox"/>

TOTALS:

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