

ORDINANCE NO. 41-1998

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Chapter 23, Subpart E, "Zoning," of the Abilene Municipal Code be amended as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

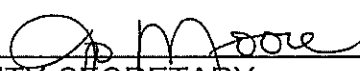
PART 3: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Two Thousand Dollars (\$2,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PASSED ON FIRST READING this 9 day of July A.D. 19 98.

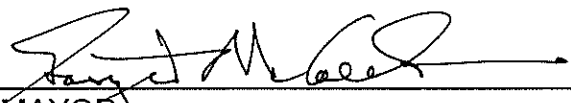
A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 21 day of June, 19 98, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 9:00 a.m., on the 23 day of July, 19 98, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING THIS 13 day of August, A.D. 19 98.

ATTEST:



CITY SECRETARY



MAYOR

APPROVED:



CITY ATTORNEY

ORDINANCE NO. 41-1998

EXHIBIT "A"

Amend Section 23-306.4 PERMITTED USES
Transportation, Communication and Utilities

DELETE: Television Transmitting Stations and Relay Tower/Radio Broadcast Tower permitted as right of use (X) in CU, GC, HC, LI, HI, and non-residential PDD and as Special Exception (SE) in AO.

Radio or Television Studio (with broadcast tower) permitted as right of use (X) in CU, GC, HC, LI, HI, and non-residential PDD and (not allowed at all in AO).

Antenna Tower with conditions (C) in AO, CU, SC, GC, HC, LI, HI, non-residential PDD, MU.

Antenna on an Alternative Tower Structure with conditions (C) in all districts.

ADD: Antenna Tower permitted with conditions (C) in LI, HI, and PDD and with a Special Exception (SE) and conditions (C) in AO, CU, GC, HC and MU.

Amend Section 23-306.5.B CONDITIONAL USE PROVISIONS
Accessory and Incidental Use

- DELETE: (24) Antenna on an Alternative Tower Structure
- (a) Such an antenna may not extend more than twenty (20) feet above the highest point of the structure.
 - (b) In RS, RM, and MH districts such antennas are only permissible if on property that is legally developed with a non-residential use.

DELETE: Section 23-306.5.J. CONDITIONAL USE PROVISIONS
Transportation, Communication and Utilities

- (6) Antenna Tower
- (a) Each applicant for one or more towers shall provide to the Planning Division, an inventory of its existing towers, including the location, height and design of each tower. The Planning Division shall maintain an inventory of towers.

- (b) No new antenna tower shall be permitted unless the tower is designed and constructed to accommodate co-location of antennas. The City of Abilene reserves the right to occupy space on any antenna tower constructed within its jurisdiction. No new antenna tower shall be constructed unless the applicant provides acceptable written evidence to the Planning Division that no existing tower or alternative tower structure can accommodate the applicant's proposed antenna. Such evidence may consist of the following:
 - (1) No existing towers are located within the geographic area required that meet the engineering specifications of the proposed antenna, including, but not limited to, height and/or structural strength.
 - (2) An existing antenna or antenna facility would cause electromagnetic interference with the proposed antenna or the proposed antenna would cause electromagnetic interference with an existing antenna or facilities.
 - (3) The fee costs required to share an existing tower, or adapt an existing tower for sharing would exceed the cost of constructing a new tower.
- (c) All towers shall be separated from residentially zoned property by a minimum distance equal to the height of the tower. Otherwise, towers must meet the minimum setback requirements for the zoning district in which they are located. The tower as well as all structural support devices, including guy wires, shall meet the setback requirement.
- (d) Towers located in SC, GC, or MU districts may not exceed 200 feet in height.
- (e) Towers shall be enclosed by security fencing not less than six (6) feet in height and shall be equipped with an anti-climbing device.
- (f) All towers shall meet or exceed current standards and regulations of the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC), and any other agency of the Federal or State government with authority to regulate towers or antennas.
- (g) Any antenna or tower that is not operated for a continuous period of more than twelve (12) months shall be removed within 90 days of the end of the twelve (12) month period.

ADD: Section 23-306.5.J. CONDITIONAL USE PROVISIONS
Transportation, Communication and Utilities

(6) Antennas and Antenna Towers

- (a) The locations for siting antennas or antenna towers are listed below in order of decreasing preference:
 - (1) Existing or approved towers.
 - (2) Existing alternative tower structures in allowed zones.
 - (3) Approved City-owned or other local government-owned land (list of approved land to be made available through the Planning Division).
 - (4) Heavy Industrial, Light Industrial, and Planned Development districts.
 - (5) Heavy Commercial districts.
 - (6) Other approved zones.
- (b) Each applicant for one or more antennas or antenna towers shall provide to the Planning Division, an inventory of its existing antennas and antenna towers within the Abilene city limits, including the location, height and design of each antenna and antenna tower, and the names and business addresses of all telecommunications providers, including but not limited to cellular providers, long distance providers, and public switched network providers, with access to the applicant's antennas or antenna towers. The Planning Division shall maintain an inventory of antennas and antenna towers.
- (c) In addition to the usual application fee for a site plan review (if required), and any and all applicable construction, permitting, and inspection fees, the applicant shall reimburse the City for the actual cost incurred for the services of a radio or electrical engineer or other qualified consultant should one be required to review the application and provide engineering expertise. However, any information submitted by an applicant that bears the seal of a qualified professional will be presumed to be correct.
- (d) Antennas, antenna towers and equipment buildings shall be located to minimize their number, height and obtrusiveness to minimize visual impacts on the surrounding area, considering the applicant's economic, technological, legal and regulatory requirements for a specific site, and in accordance with the following policies:

- (1) The applicant shall ensure that the height of antennas and antenna towers are no greater than required to achieve service area requirements and potential co-location.
 - (2) The applicant shall demonstrate that the selected site for a new antenna or antenna tower provides minimal visual impact on residential areas and the public right-of-way by analyzing and documenting the potential impacts from other vantage points in the area.
 - (3) The applicant shall make every reasonable effort to design, construct, and locate new antennas or antenna towers to blend into the character and environment of the area in which they are located, including the use of camouflage techniques, side mounted antennas, or any other stealth design unless such use shall create a hazard or it is not technologically feasible to use such design and co-locate other facilities on the antenna tower.
- (e) No lettering, symbols, images, or trademarks large enough to be legible to occupants of vehicular traffic on any adjacent roadway shall be placed on or affixed to any part of an antenna tower, antenna, or equipment building, other than as required by FCC regulations regarding tower registration or other applicable law. No signals or lights or illumination shall be permitted on an antenna tower unless required by the FCC, the FAA, or the City.
- (f) Any antenna or antenna tower that is not operated for a continuous period of more than twelve (12) months shall be removed within 90 days of the end of the twelve (12) month period. The last telecommunications service provider to use an antenna or antenna tower shall notify the Building Official or designee within 30 days of the discontinued use of the antenna or antenna tower.
- (g) New antennas shall be located in the highest-listed preferential siting location as indicated in (a) above as technologically, legally and economically feasible. Applicants will be required to submit in writing technical, legal, and/or economic reasons for not locating in a higher-preference zone.
- (h) A building permit shall be required for all proposed antennas attached to alternative tower structures or co-located on existing towers.

- (i) Antennas attached to alternative tower structures may not extend more than twenty (20) feet above the highest point of the structure in RS, RM and MH and thirty-five (35) feet in other allowed zones.
- (j) In RS, RM, and MH districts, antennas attached to alternative tower structures are only permissible if on property that is legally developed with a non-residential use.
- (k) No new antenna tower exceeding fifty (50) feet in height shall be permitted unless the tower is designed and constructed to accommodate co-location. The owner of the tower and the property on which it is located must provide written documentation to the City that the antenna tower is available for use by another telecommunications provider or user on a reasonable and non-discriminatory basis and cost. If the proposed tower location is to be leased, the applicant shall submit those portions of the lease document that demonstrate compliance with the requirements of this paragraph.
- (l) An application/questionnaire, site plan and building permit shall be required for all proposed towers and related buildings or structures on the site.
- (m) New antenna towers shall be located in the highest-listed preferential siting location as indicated in (a) above as technologically, legally and economically feasible. Applicants will be required to submit in writing the technical, legal, and/or economic reasons for not locating in a higher-preference zone. No new antenna tower shall be constructed unless the applicant has adequately described the efforts and measures taken to pursue location in the higher-preferenced zones and why a higher preference location was not feasible. The supplied documentation should evaluate the following factors:
 - (1) The planned equipment would cause unacceptable interference with the operation of other existing or planned equipment on an existing or approved antenna tower or alternative tower structure as documented by a qualified licensed engineer and that the interference cannot be prevented or eliminated at a reasonable cost as determined by a qualified licensed engineer.

- (2) The planned equipment cannot be accommodated on existing or approved antenna towers or alternative tower structures due to structural deficiencies as documented by a qualified licensed engineer and that such deficiencies cannot be eliminated at a reasonable cost as determined by a qualified licensed engineer.
 - (3) The existing or planned equipment on an existing or approved antenna tower or alternative tower structure would cause unacceptable interference with the equipment proposed by the applicant as documented by a qualified licensed engineer and that the interference cannot be prevented or eliminated at a reasonable cost as determined by a qualified licensed engineer.
 - (4) The fee costs required to share an existing antenna tower or adapt an existing antenna tower for sharing would exceed the cost of constructing a new antenna tower.
- (n) All antenna towers shall be separated from residentially-zoned property by a minimum distance equal to the height of the tower plus 20% of the tower height. Measurements are to be in a straight line in all directions from any part of the antenna tower and its support structures to the nearest property line on any lot in any residentially-zoned district. Otherwise, towers must meet the minimum setback requirements for the zoning district in which they are located.
- (o) Antenna towers located in MU districts may not exceed 100 feet in height including the antenna and all other appurtenances.
- (p) Antenna towers shall be secured to protect against trespass or unauthorized use of the property, antenna tower, or related buildings and structures on site. At minimum, antenna towers shall be equipped with an anti-climbing device and enclosed by security fencing and a locking gate not less than six (6) feet in height.

- (q) All antenna towers shall meet or exceed current standards and regulations of the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC), and any other agency of the Federal or State government with authority to regulate towers or antennas.
- (r) Where a special exception is required, property owner notification will be carried out as required by Section 23-356.2 of this Ordinance. In addition, if the requirements of Section 23-356.2 result in the notification of fewer than twenty-five (25) property owners, the notification area shall be expanded to include the nearest twenty-five (25) property owners up to a 2500 foot radius from the property.

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