

ORDINANCE 05-2020 CELL TOWERS

AN ORDINANCE OF THE CITY OF COMANCHE AMENDING ORDINANCE 03-2007 ZONING ORDINANCE, REPEALING ALL LAWS OR ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; ESTABLISHING STANDARD RULES AND GUIDELINES FOR THE INSTALLATION, PLACEMENT, AND LOCATION OF CELL TOWERS; ESTABLISHING A PERMIT APPLICATION FEE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the Zoning Ordinance set forth policies and goals toward the protection of the residential character of Comanche's residential neighborhoods and the promotion of urban design which is compatible with Comanche's unique character and in context with surrounding development; and

WHEREAS, given the increasing use of telecommunications facilities in society today, the City expects to receive applications for permits for such facilities in increasing number, some of which facilities are significantly larger than most similarly situated existing installations; and

WHEREAS, the City does not intend that this ordinance prohibits or has the effect of prohibiting telecommunications service; rather, the City seeks to limit development of telecommunications facilities in and around residential neighborhoods to the fullest extent allowed by law; and

WHEREAS, the City recognizes its responsibilities under the Federal Telecommunications Act of 1996, and believes that it is exercising its regulatory authority pursuant to the fullest extent under the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare.

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

SECTION 1 - OTHER ORDINANCES AND LAWS

That Ordinance 03-2007 Zoning Ordinance is amended as stated herein and only those parts of said Ordinance or other ordinances that conflict herein are hereby replaced and repealed and declared no further in force or effect. All other terms and conditions remain in full force and effect and are in addition to those hereunder.

SECTION 2 - CONTROLLING ORDINANCE

This ordinance shall control over any conflicting terms of Zoning Ordinance 03-2007 and any other ordinances amending ordinances thereunder, except as may be otherwise stated herein.

SECTION 3 – PURPOSE

Wireless communication facilities purpose. Certain radio equipment used in transmitting and receiving signal energy are essential and are deemed to promote the health, safety, and general welfare of the citizens of the city. Such equipment shall be located so that the health, safety, welfare, and aesthetic quality of the community shall not be compromised. The regulations governing the location of such equipment shall also consider the aesthetic quality of the city as a significant aspect of the health, safety, and general welfare of the community. The antennas, masts, and towers hereinafter enumerated shall be installed, constructed and maintained in accordance with the provisions of this section.

SECTION 4 – DEFINITIONS: The following definitions shall apply:

Antenna. A device used in communications which transmits or receives electromagnetic waves.

Antenna, building attached. Antenna attached to existing structures in two general forms: (1) roof-mounted, in which antennas are placed on the roofs of buildings, or (2) building-mounted, in which antennas are mounted to the sides of buildings. These antennas can also be mounted on structures such as water tanks, billboards, church steeples, electrical transmission towers, etc.

Antenna facility. A building or independent support structure and the antennas mounted thereon, including any associated and necessary equipment building.

Co-location. The act of locating wireless communications equipment from more than one provider on a single antenna facility.

Equipment storage. A small unmanned, single story equipment building less than 500 square feet in size used to house radio transmitters and related equipment.

Monopole. An antenna facility composed of a single spire used to support communications equipment. No guy wires are used or permitted.

Lattice tower. A tower having three or four support steel legs and holding a variety of antennas. These towers range from 60 to 200 feet in height and can accommodate a variety of users.

Satellite receive-only antenna. An antenna that enables the receipt of television signals transmitted directly from satellites to be viewed on a television monitor. Such antennas are commonly known as a satellite dish, television receive-only antenna, dish antenna, parabolic antenna, or satellite earth station antenna.

Stealth facility. An antenna facility that is virtually transparent or invisible to the surrounding neighborhood. Stealth facilities may include totally enclosed antennas, wireless facilities that replicate or duplicate the construction of common structures such as flagpoles, and camouflaged wireless facilities that are constructed to blend into the surrounding environment.

SECTION 4 – RESIDENTIALLY ZONED DISTRICTS (R-1) (R-2) (R-3)

Amateur radio equipment, communications equipment and TV antennas: Amateur radio equipment, including ham radio and CB equipment and personal use TV antennas or Communications antennas, shall be allowed in the residential zoning districts if they comply with the following regulations:

1. In the residential districts, a special exception must be obtained from the board of adjustment for any antenna facility which does not comply with the regulations in this section.
2. Telescoping antenna support poles, i.e. push-up poles, monopoles or lattice towers shall require a building permit when installed in compliance with manufacturer's recommendations.
3. Up to three antenna facilities may be located on a lot of record, co-location is encouraged.
4. With the exception of stealth facilities, an antenna facility, exclusive of the height of any attached antenna, shall not exceed 35 feet in height. Provided, however, that an antenna facility shall be permitted additional height at the ratio of one added foot in height for each additional foot of setback beyond the minimum setback required of an accessory building in the zoning district where the antenna facility is located. Regardless of the above, with the exception of stealth facilities, the maximum height for an antenna facility permitted without a special exception in any residential district shall be 80 feet. An antenna facility, exclusive of the height of any antennas attached shall not exceed 80 feet in height unless a special exception is approved by the board of adjustment. No antenna facility and tower will be approved over a combined height of one hundred ninety feet (190) regardless of setbacks.
5. An antenna not fastened to an antenna facility shall not exceed 80 feet without a special exception approved by the board of adjustment, except for an antenna which does not extend more than eight feet above a building on which it is mounted.
6. An antenna facility shall be limited to having the number and size of antennas attached to it that are allowed by the antenna facility manufacturer's designs and specifications for maximum wind load requirements.

7. Setbacks:
 - a) Antennas and antenna facilities shall not be permitted in the required front or side yards. Guy wires are not permitted in front yards.
 - b) Guy wires are permitted in required side and rear yards.
 - c) Setback for antenna facilities shall be the same as those required for accessory buildings in residential districts.
8. Separation: There shall be no minimum or maximum separation requirements for antenna facilities from other structures on the same lot of record.
9. Prohibited in easements: Antenna facilities shall not be permitted in any easement.
10. Lights: No auxiliary or outdoor lighting shall be allowed on antenna facilities located on residentially zoned property except such lights or lighting as may be required by the Federal Aviation Administration or the Federal Communications Commission; or lights for security purposes.
11. Construction standards: A building permit must be obtained prior to the construction and/or installation of an antenna facility. Antenna facilities must be installed in accordance with the manufacturer's recommendations or under the seal of a registered professional engineer of the State of Texas. Regardless of the above, all such antenna facilities must meet the Electronic Industries Association Standard EIA-222-D, Structural Standards for Steel Antenna Towers and Antenna Supporting Structures and the Building Code; with the exception of non-permanent antenna facilities.
12. Maintenance: Antennas and/or antenna facilities obviously not in use or obviously in need of maintenance as determined by the Code building official, shall be removed or brought into compliance within a reasonable time determined by the Code building official. This shall not preclude immediate action by the city Secretary to safeguard life, limb, health, property, and public welfare.
13. No extension beyond property lines: No part of an antenna facility or any attachment thereto may extend beyond the property lines of the owner of such antenna or antenna facility.
14. Any antenna, the radiating portion of which is accessible from ground level, shall have adequate fencing around it, or shall have signage providing constructive notice of radio frequency exposure/burn hazard.

Commercial radio equipment and commercial TV antennas: Only building attached antennas shall be allowed in residentially zoned districts under the following conditions:

1. Special exception: A special exception must be obtained from the City of Comanche Board of Adjustment and Appeals.
2. Attachment or enclosure: The proposed antenna must be attached to or enclosed in an existing structure currently or last occupied by a nonresidential use as listed in section 1-2, permitted use table, or attached to a power or telephone pole, water storage tower, or other utility structure.
3. Height: The antenna must not exceed fifteen feet above the structure to which it is attached. No antenna facility and tower will be approved over a combined height of one hundred ninety feet (190) regardless of setbacks.

4. Attachment to exterior structure: If attached to the exterior of a structure or a power or telephone pole, water storage tower or other utility structure the antenna must be at least 65 feet above grade and painted to match the structure to which it is attached.
5. Enclosed antennas: The antenna may be placed lower than 75 feet above grade if completely enclosed within existing architectural elements of a building so as not to be visible.
6. Equipment storage buildings: Any associated equipment storage building shall be screened from public view by a decorative wall with landscaping for aesthetic purposes.
7. Driveways: All driveways accessing any antenna facility site or equipment storage site shall be constructed of an all-weather hard surface as approved by the director of public works.
8. Lights: No auxiliary or outdoor lighting shall be allowed on antennas located on residentially zoned property except such lights or lighting as may be required by the Federal Aviation Administration or the Federal Communications Commission or lights for security purposes.
9. Construction standards: A building permit must be obtained prior to the construction and/or installation of a tower, antenna or mast. Towers must be installed according to the manufacturer's recommendations or under the seal of a registered professional engineer of the State of Texas. Regardless of the above, all such towers, antennas or masts must meet the current Electronic Industries Association Standard, Structural Standards for Steel Antenna Towers and Antenna Supporting Structures and the Building Code.
10. Maintenance: Antennas, not in use or in need of maintenance as determined by the administrative official, shall be removed or brought into compliance within a reasonable amount of time determined by the building official. This shall not preclude immediate action by the administrative official to safeguard life, limb, health, property, and public welfare.
11. No extension beyond property lines: No part of an antenna or any attachment thereto may extend beyond the property lines of the owner of such antenna.
12. Property owner's permission required: No permit shall be issued for the installation of an antenna, on a structure or property unless a notarized statement of permission from the owner is presented to the administrative official.

SECTION 5 – NON-RESIDENTIAL DISTRICTS (A-O) (C-1) (C-2) (L-1) (H-1).

Radio, television, microwave broadcast relay, receiving towers, transmission and re-transmission facilities, satellite receiving only earth stations (home dish antenna), and any electronic emission equipment of a commercial nature shall be allowed in the nonresidential zoning districts if it complies with the following regulations:

1. Number of antennas per lot: One antenna facility may be located on a lot of record; co-location is encouraged.
2. Height:
 15. With the exception of stealth facilities, an antenna facility, exclusive of the height of any attached antenna, shall not exceed thirty-five (35) feet in height. Provided, however, that an antenna facility shall be permitted additional height at the ratio of one added foot in height for each additional foot of setback beyond the minimum setback required of an accessory building in the zoning district where the antenna facility is located. Regardless of the above, with the exception of stealth facilities, the maximum height for an antenna facility permitted without a special exception in any nonresidential district shall be eighty (80) feet. No antenna facility and tower will be approved over a combined height of one hundred ninety feet (190) regardless of setbacks.

- a) With the exception of stealth facilities, the height of an antenna, including the height of any antenna facility to which they may be fastened or attached, shall not exceed 65 feet in height without a special exception.
- b) With the exception of stealth facilities, an antenna shall not extend more than fifteen feet above a building on which it is attached.
3. Manufacturer's design and specifications: An antenna facility shall be limited to the number and size of antennas attached to it that are allowed by the antenna facility manufacturer's designs and specifications for maximum wind load requirements.
4. Setbacks: With the exception of stealth facilities, antennas and antenna facilities shall not be permitted in required front or side yards.
5. Prohibited in easements: Antenna facilities shall not be permitted in any easement.
6. Lights: No auxiliary or outdoor lighting shall be allowed on antennas located on residentially zoned property except such lights or lighting as may be required by the Federal Aviation Administration or the Federal Communications Commission.
7. Construction standards: A building permit must be obtained prior to the construction and/or installation of a tower, antenna, or mast. Antenna facilities must be installed according to the manufacturer's recommendations or under the seal of a registered professional engineer of the State of Texas. Regardless of the above, all such antenna facilities and antennas must meet the current Electronic Industries Association Standard, Structural Standards for Steel Antenna Towers and Antenna Supporting Structures and the Building Code.
8. Maintenance: Antenna facilities and antennas obviously not in use or obviously in need of maintenance as determined by the administrative official, shall be removed or brought into compliance within reasonable amount of time determined by the building official. This shall not preclude immediate action by the administrative official to safeguard life, limb, health, property, and public welfare.
9. No extension beyond property lines: No part of an antenna facility and antennas or any attachment thereto may extend beyond the property lines of the owner of such antenna or antenna facility.
10. Special exceptions for noncomplying facilities: A special exception must be obtained from the board of adjustment for any antenna or tower, which is in a nonresidential zoning district and does not comply with the regulations in this section.
11. Stealth facilities: Stealth facilities, as defined in section 6-10, wireless communication facilities definitions shall be exempt from the height and location requirements of this section. In addition, the administrative official shall be the final authority as to whether or not any facility meets the definition of a "stealth facility."
12. Distance from residential properties: No part of an antenna facility and antennas or any attachment thereto may be constructed within five hundred (500) feet of a residential property without a special exception obtained from the Comanche Board of Adjustment and Appeals.

SECTION 6 – SATELLITE RECEIVE-ONLY ANTENNAS.

1. Generally: Satellite receive-only antennas assist individuals in the receipt of satellite transmitted television signals. Satellite receive-only antennas which comply with the regulations in this section shall be permitted. Such regulations are hereby found to be reasonable and clearly defined.
2. Small satellite receive-only antennas: A satellite receive-only antenna shall be allowed if it complies with the following regulations.
 - a. The satellite receive-only antenna is two meters or less in diameter and is located or proposed to be located in any area where commercial or industrial uses are generally permitted by this ordinance or;
 - b. The satellite receive-only antenna is less than one meter in diameter and is located or proposed to be located in any residential zoning district.
3. Large satellite receive-only antennas. Satellite receive-only antennas that are greater than one meter in diameter in residential districts or greater than two meters in diameter in nonresidential districts shall be allowed in any zoning district if they comply with the following regulations:
 - a. A special exception must be obtained from the Comanche Board of Adjustment and Appeals for any satellite receive only antenna which does not comply with the regulations specified below.
 - b. Only one satellite receive-only antenna per lot of record.
 - c. A satellite receive-only antenna shall not exceed ten (10) feet in height.
 - d. Setbacks:
 1. Front and side: Satellite receive-only antennas at ground level shall not be permitted in the required front or side yards.
 2. Rear: Satellite receive-only antennas shall be permitted in rear yards provided they meet the minimum setback as is required for accessory buildings in residential districts and as for all buildings in nonresidential districts.
 - e. Separation: There shall be no minimum or maximum separation requirements for satellite receive-only antennas from other structures on the same lot of record.
 - f. Not permitted in easements: Satellite receive-only antennas shall not be permitted in easements.
 - g. Lights: No auxiliary or outdoor lighting shall be allowed on satellite receive-only antennas except such lights or lighting as may be required by the Federal Aviation Administration or the Federal Communications Commission.
 - h. Construction standards: A building permit must be obtained prior to the construction and/or installation of a satellite receive-only antenna. Satellite receive-only antennas must be installed according to the manufacturer's recommendations or under the seal of a registered professional engineer of the State of Texas.
 - i. Maintenance: Satellite receive-only antennas not in use or in need of maintenance as determined by the administrative official, shall be removed or brought into compliance within 30 days following notice given by the Code administrative official. This shall not preclude immediate action by the Code administrative official to safeguard life, limb, health, property, and public welfare.

- j. No extension beyond property lines: No part of a satellite receive-only antenna or any attachment thereto may extend beyond the property lines of the owner of such satellite receive-only antenna.
- k. Screening: All satellite receive-only antennas at ground level shall be screened from view from adjoining properties by fencing or evergreen plants. A satellite receive-only antenna located within a fence surrounding the yard in which the satellite receive-only antenna is located shall be considered to be screened.

SECTION 7. SPECIAL EXCEPTION RELIEF FROM REGULATIONS.

A special exception must be obtained from the Comanche Board of Adjustments and Appeals for any antenna, tower, and/or satellite receive-only antenna which does not comply with the regulations specified in this section. In considering whether to grant a special exception from the regulations specified above, the board of adjustment shall consider the following factors:

1. The effect on the value of the surrounding property.
2. The potential for interference with the enjoyment of surrounding properties.
3. Aesthetics.
4. The necessity of the special exception for the public health, safety, and welfare of the citizens or for governmental purposes.
5. The zoning district and the adjoining zoning districts of the property for which the special exception is sought.
6. The provisions of 47 C.F.R. § 25.104 which preempt local zoning or other regulations that differentiate between satellite receive-only antennas and other types of antenna facilities unless such regulations:
 - a. Have a clearly defined health, safety or aesthetic objective; and
 - b. Further the stated health, safety, or aesthetic objectives without unnecessarily burdening the federal interest in ensuring access to satellite services and in promoting fair and effective competition among competing communications service providers.
7. To properly evaluate all applications to locate commercial antennas or towers which do not comply with the regulations specified above, the following information must be provided by the applicant:
 - a. Describe the nature of the antenna site. Indicate whether the proposed structure is a monopole or mounted to a self-supporting structure. Indicate the proposed height.
 - b. Provide photos or drawings of all equipment, structures and antenna.
 - c. Describe why the antenna or tower is necessary.
 - d. Address whether or not the applicant has made an effort to co-locate the facilities proposed for this antenna or tower on existing towers or facilities in the same general area and, if so, identify the location of these existing sites. If yes, describe in detail these efforts and explain in detail why these existing sites were not feasible. Attach all studies or tests performed which demonstrate why the existing sites will not provide sufficient signal coverage. Provide written documentation from existing sites' owners and/or operators,

which confirm the statements provided. Indicate whether or not the existing sites allow or promote co-location and, if not, describe why not.

- e. If the requested location is in a residential district the applicant shall address whether or not the applicant has made an effort to locate the facility in a commercial or industrial district and identify the location of these commercial and or industrial district sites. Describe in detail these efforts and explain in detail why these commercial or industrial district sites were not feasible. Attach all studies or tests performed which demonstrate why the commercial or industrial sites will not provide sufficient signal coverage. Provide written documentation from commercial or industrial district sites' owners and/or operators which confirm the statements provided.
 - f. Indicate the proposed provider's current coverage area for the city. Attach maps showing the areas the proposed provider's existing antennas currently cover, the areas the applicant's existing sites and other existing sites would cover, and the areas the applicant's existing sites and the requested site would cover.
 - g. Describe the applicant's master antenna and tower plan for the city. Attach maps and other related documentation. Provide information indicating each phase of the plan.
 - h. Describe the applicant's plan to minimize the number of telecommunications antenna and towers needed to cover the city.
8. Written report upon denial of request: The Code Administrative Official and/or the Comanche Board of Adjustment and Appeals shall document any denial of a request to place, construct, or modify an antenna facility in writing.
 9. City Property: Conditional to requirements of this ordinance, a Cell Tower Site may be installed on City Property. A Cell Tower Site may not be installed on any City Property without first securing a lease for the use of the property in accordance with the Texas Constitution, submission of a Special Use Variance Application, remitting the annual lease fee of two hundred and fifty dollars (\$250.00) and approval by the Comanche City Council.
 10. A non-refundable fee for each Cell Tower Site Application is hereby established and said fee shall be five dollars (\$5.00) per foot height of the Cell Tower.

SECTION 8 – NON-APPLICABILITY FOR GOVERNMENTAL USE

~~This ordinance shall not be applicable to any Cell Tower Site that is:~~

- ~~1. Owned and operated by the City of Comanche.~~
- ~~2. On property owned by any other governmental agency, when the Cell Tower Site is used for a governmental purpose.~~
- ~~3. On property owned by any other governmental agency, subject to the terms of Chapter 791 of the Texas Government Code, as it may be amended.~~

SECTION 9 – NONLIABILITY

The City and its officers, agents and employees shall have no liability of any nature for any actions, omissions, or other matters in any way concerning the subject matter of this ordinance.

SECTION 10 - CONSTITUTIONALITY

If any section, sub-section, sentence, clause, phrase or portion of this ordinance shall held to be held unconstitutional or invalid by a court of competent jurisdiction, such section, sub-section, sentence, clause, phrase or portion shall be a deemed separate, distinct, and independent provision and such invalidity shall not affect the validity of the remaining portions of this ordinance.

SECTION 11 - EFFECTIVE DATE

This ordinance shall be in full force and effect from the date of its passage and adoption by the City Council of the City of Comanche.

PASSED, APPROVED, AND ADOPTED this day of , 2020.

Mary A. Boyd, Mayor

Jacci Stewart, CCD, ICS
Interim City Secretary

Approved as to form

James H. Dudley
City Attorney