

ORDINANCE NO. 18-769

AN ORDINANCE ESTABLISHING POLICIES, PROCEDURES AND REGULATIONS REGARDING THE PLACEMENT OR ERECTION OF CELLULAR COMMUNICATION TOWERS WITHIN THE CITY OF GENTRY, ARKANSAS; AND FOR OTHER PURPOSES.

WHEREAS, it has come to the attention of the City of Gentry that a need exists to establish policies, procedures and regulations addressing the placement or erection of cellular communication towers within the City and for related purposes.

These regulations are intended to not unreasonably discriminate among providers of functionally equivalent services; and are not intended to prohibit or have the effect of prohibiting the provision of personal wireless services.

NOW THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GENTRY, ARKANSAS:

Section 1: Purposes. The purposes of these regulations are:

- (1) To provide for the safest and most efficient integration of cellular antenna towers for cellular telecommunications services or personal communications services within the community;
- (2) To provide for such facilities in coordination development of the City's Comprehensive Plan; and
- (3) To allow for such facilities with the intention for furthering the public health; safety and general welfare.

Section 2: Preapplication Conference. Applicants are required to advise the Planning Commission in regular or special session of proposed tower construction, in order to discuss proposals, to allow for early coordination, and to identify those items that are in conformance/nonconformance with the Comprehensive Plan, Zoning Ordinance, and the provisions of these regulations.

Section 3: Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alternative cellular antenna tower.

- (1) The term "alternative cellular antenna tower" means manmade trees,

clock towers, bell towers, steeples, light poles and similar alternative-design mounting structures that accommodate, camouflage, minimize or conceal the presence of cellular antennas or cellular antenna towers that are constructed primarily for the purpose of accommodating cellular antennas or cellular antenna towers or are reconstructed for the purpose of accommodating cellular antennas or cellular antenna towers.

- (2) The term "alternative cellular antenna tower" does not include existing structures erected for another primary purpose, but which subsequently have cellular antennas attached to or located within them, without any reconstruction of the original structure.

For the provisions of these regulations, an alternative cellular antenna tower is considered a cellular antenna tower.

- (3) *Antennas or related equipment* means transmitting, receiving, or other equipment used to support cellular telecommunications service or personal communications service. This definition does not include towers.
- (4) *Cellular antenna tower* means a tower constructed for, or an existing facility that has been adapted for, the location of transmission or related equipment to be used in the provision of cellular telecommunications services or personal communications services.
- (5) *Cellular telecommunications service* means a retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations.
- (6) *Co-location* means locating two or more transmission antennas or related equipment on the same cellular antenna tower.
- (7) *Guyed cellular antenna tower* means a type of wireless transmission tower that is supported by thin guy wires.
- (8) *Lattice cellular antenna tower* means a self-supporting tower with multiple legs and cross bracing of structural steel.
- (9) *Monopole cellular antenna tower* means a slender self-supporting tower on which

wireless antennas can be placed.

(10) *Personal communications service* has the meaning as defined in 47 USC 332(c).

(11) *Uniform application* means an application to construct a cellular antenna tower submitted to the Gentry Planning Commission in conformity with the requirements of this article.

Section 3: General Application Requirements.

Cellular antenna towers for cellular telecommunications services or personal communications services may be allowed in any Zoning District within the City, but only after application to the Planning Commission for a conditional use permit; Planning Commission review; and approval by the Planning Commission of a conditional use permit. The following regulations shall apply:

- (1) *Applicability.* Every entity or individual that is engaged in the business of providing the required infrastructure to said entity, that proposes to construct a cellular antenna tower shall submit a completed application to the Planning Commission. Where the Planning Commission finds that circumstances or conditions relating to the application of an alternative cellular antenna tower are such that one or more of the requirements of the uniform application listed below are not necessary or desirable for the protection of surrounding property or the public health, safety, and general welfare, and that such special conditions or circumstances make one or more said requirements unreasonable, the Planning Commission may modify or waive such requirement of the uniform application, either permanently or on a temporary basis. Any such modification or waiver shall be requested by the applicant, and the applicant shall submit a written justification for each requested modification or waiver. The Planning Commission shall not regulate the placement of antennas or related equipment on an existing structure. However, every entity choosing to locate an antenna or related equipment on an existing structure shall file with the Planning Commission the name and address of the entity, the structure upon which the entity plans to place antennas or related equipment and the information set forth in subsections (2) e, f, and t of this section.

- (2) *Application requirements.* Applications for the construction of personal communications services shall include the following:
- a. The full name and address of the applicant.
 - b. The applicant's articles of incorporation, if applicable.
 - c. A geotechnical investigation report signed and sealed by a professional engineer registered in the state that includes boring logs and foundation design recommendations.
 - d. A written report prepared by a professional engineer or land surveyor of findings as to the proximity of the proposed site to flood hazard areas.
 - e. Latitude/longitude coordinates with associated reference datum, and clear directions to the proposed site, including highway numbers and street names, if applicable, with the telephone number of the person who prepared the directions.
 - f. A copy of the lease or sale agreement for the property on which the tower is proposed to be located, including the portion of the agreement that specifies, in the case of abandonment, a method that the entity will follow in dismantling and removing the proposed cellular antenna tower, including a timetable for removal.
 - g. The identity and qualifications of each person directly responsible for the design and construction of the proposed tower.
 - h. A site development plan, signed and sealed by a professional engineer licensed in the state, that shows the proposed location of the tower and all easements and existing structures within 500 feet of the proposed site on the property on which the tower will be located, and all easements and existing structures within 200 feet of the access drive, including the intersection with the public street system. Additionally, the development plan shall show a survey, prepared by a surveyor licensed in the state.
 - i. A vertical profile sketch of the tower, signed and sealed by a professional engineer registered in the state, indicating the height of the tower and the placement of all antennas. The tower is exempt from other City planning or zoning regulations regarding structure height.
 - j. The tower and foundation design plans and a description of the standard

according to which the tower was designed, signed and sealed by a professional engineer registered in the state.

- k. A map, drawn to a scale no less than one inch equals 200 feet, that identifies every structure and every owner of real estate within 500 feet of the proposed tower.
- l. A statement that every person who, according to the records of the county circuit clerk, owns property within 500 feet of the proposed tower or property contiguous to the site upon which the tower is proposed to be constructed, has been:
 - 1. Notified by certified mail, return receipt requested, of the proposed construction which notice shall include a map of the location of the proposed construction;
 - 2. Given the telephone number and address of the city planning department;
 - 3. Informed of his right to participate in the Planning Commission's proceedings of the application.
- m. A list of the property owners who received the notice, together with copies of the certified letters sent to the listed property owners.
- n. A statement that the mayor has been notified, in writing, of the proposed construction and a copy of the notification.
- o. A statement that a written notice of durable material at least two feet by four feet in size, stating that the applicant proposes to construct a telecommunications tower on this site and including the addresses and telephone numbers of the applicant and the Planning Commission, has been posted in a visible location on the proposed site.
- p. A statement that notice of the location of the proposed construction has been published in at least one daily circulation local newspaper with circulation in the city and county.
- q. A legal description and layman's description of the area in which the tower is proposed to be constructed, which includes the existing land use for the specific property involved.
- r. A statement that the applicant has considered the likely effects of the installation on nearby land uses and values and has concluded that there

is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to locate its antennas and related facilities on an existing structure, including documentation of attempts to locate its antennas and related facilities on an existing structure, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the applicant attempted to locate its antennas and related facilities on a tower designed to host multiple wireless service providers' facilities or on an existing structure, such as a telecommunications tower or other suitable structure capable of supporting the applicant's antennas and related facilities.

- s. A map of the area in which the tower is proposed to be located, that is drawn to scale, and that clearly depicts the necessary search area within which an antenna tower should, pursuant to radio frequency requirements, be located.
 - t. A grid map that shows the location of all existing cellular antenna towers and that indicates the general position of proposed construction sites for new cellular antenna towers within an area that includes:
 - 1. All of the area within the city's then-existing city limit boundaries; and
 - 2. A one-mile area outside the boundaries of the City's then-existing boundaries if that area contains either existing or proposed construction sites for cellular antenna towers.
- (3) *Application fee.* An applicant for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall pay an application fee as currently established or as hereafter adopted by resolution of the city council from time to time.
- (4) *Processing of application.* Applications for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall be processed as follows:
- a. The Planning Commission shall review the uniform application to determine whether it is in agreement with the comprehensive plan and locally adopted zoning regulations.
 - b. At least one public hearing on the proposal shall be held, at which hearing

interested parties and citizens shall have the opportunity to be heard.

Notice of the time and place of such hearing shall be published at least once in a daily circulation local newspaper with circulation in the city and county, provided that one publication occurs at least 15 days before the occurrence of such hearing.

- c. Notice of the hearing shall be posted on the site at least 15 days in advance of the hearing. The notice shall consist of a written notice, of durable material at least two feet by four feet in size, stating that the applicant proposes to construct a telecommunications tower on this site and including the addresses and telephone numbers of the applicant and the planning department. Notice of the proposal shall also be posted on the property nearest to the public road. This notice shall consist of a written notice, of durable material at least two feet by four feet in size, stating that the applicant proposes to construct a telecommunications tower near this site and including the addresses and telephone numbers of the applicant and the planning department.
- d. Notice of the hearing shall be given at least 15 days in advance of the hearing, by certified mail, return receipt requested, to the owner of every parcel of property within 500 feet of the proposed tower or property contiguous to the site upon which the tower is proposed to be constructed. The notice shall include a map of the location of the proposed construction and the telephone number and address of the planning department and shall inform the addressee of his right to participate in the Planning Commission proceedings on the application. Records maintained by the county circuit clerk may be relied upon conclusively to determine the identity and address of said owner. In the event a property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group that administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two or more co-owners of an adjoining property who are listed in the property valuation administrator's records as having the same address.
- e. Upon holding the hearing, the Planning Commission shall, within 75 days commencing from the date the application is received by the Planning

Commission, or within a date specified in a written agreement between the Planning Commission and the applicant, make its final decision to approve or disapprove the uniform application. If the Planning Commission fails to issue a final decision within 75 days, and if there is no written agreement between the Planning Commission and the applicant regarding a specific date by which the Planning Commission will issue a decision, it shall be presumed that the Planning Commission has approved the applicant's uniform application.

- f. If the Planning Commission disapproves of the proposed application, it shall state the reasons for disapproval on the record during the Planning Commission meeting and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted zoning regulations. No permit for construction of a cellular or personal communications services antenna tower shall be issued until the Planning Commission approves the uniform application or the 75-day time period has expired, whichever occurs first.

Section 3. Design standards. The applicant shall provide information demonstrating compliance with the requirements contained herein. Potential sites that should be considered (in order from most preferred to least preferred) include existing utility towers, industrial zones, agricultural zones, government buildings and properties, commercial zones and residential zones. Where the Planning Commission finds that circumstances or conditions relating to the particular application are such that one or more of the requirements listed below are not necessary or desirable for the protection of the surrounding property or the public health, safety, and general welfare, and that such special conditions or circumstances make one or more of the requirements unreasonable, the Planning Commission, or its duly authorized representative, may modify or waive such requirement, either permanently or on a temporary basis. Any such modification or waiver shall be requested by the applicant, and the applicant shall submit a written justification for each requested modification or waiver.

- (1) *Monopole, lattice and guyed towers.* Monopole, lattice, and guyed cellular antenna towers shall be permitted by special use permit.
- (2) *Minimum lot size.* Regardless of the minimum lot sizes listed in the specific zoning districts, or the city subdivision ordinances, the lot size may be the

minimum necessary to comply with the objectives and standards of this section.

- (3) *Setbacks.* Setbacks for all structures constructed in connection with guyed or lattice cellular antenna towers, except fences and/or guy wires, shall be a minimum distance from the property line or lease line equal to at least the height of the tower, but not less than 50 feet. All structures constructed in connection with a monopole or alternative cellular antenna tower shall comply with the applicable setback requirements established for other structures within the applicable zoning district. Alternative cellular antenna towers that are to be located as part of a utility service facility (e.g., power pole or telephone pole) shall comply with setback requirements applicable to such utility service facilities, if any.
- (4) *Height.* A cellular antenna tower may be constructed to a maximum height of 200 feet regardless of the maximum height requirements listed in the specific zoning district. This also applies to any tower taller than 15 feet constructed on the top of another building or structure, with the height being the overall height of the building/structure and tower together, measured from the grade to the highest point. The Planning Commission may allow antennas greater than 200 feet in height upon review of the applicant's justification that the additional height is reasonably necessary.
- (5) *Construction standards.* The cellular antenna tower shall be constructed in compliance with the current ANSI/EIA/TIA 222-F standard and any other applicable state and/or federal standards.
- (6) *Illumination.* Cellular antenna towers shall not be illuminated, except in accordance with other state or federal regulations.
- (7) *Staffing.* The site shall be unstaffed. Personnel may periodically visit the site for maintenance, equipment modification, or repairs. To accommodate such visits, ingress/egress shall be only from approved access points.
- (8) *Fencing.* Woven wire or chainlink (80 percent open) or solid fences made from wood or other materials (less than 50 percent open) shall be used to enclose the site. Such fences shall not be less than four feet and no more than eight feet in height, and may be located within the front, side, or rear yard.

- (9) *Screening.* Screening shall be provided by evergreen trees, with a minimum height of six feet, planted in a staggered pattern at a maximum distance of 15 feet on center. The screening shall be placed in an area between the property line, or lease line, and a ten-foot setback. Screening shall be required when located in or adjacent to a residential zone. Minimum size for evergreens will be 2½- inch ball and burlap. Plants under this provision must be guaranteed for a period of three years.
- (10) *Signs.* There shall be no signs permitted, except those displaying emergency information, owner contact information, warning or safety instructions, or signs that are required by a federal, state or local agency. Such signs shall not exceed six square feet in area.
- (11) *Number of service providers.* All new non-alternative cellular antenna towers shall be designed and constructed to accommodate a minimum of three service providers. Alternative cellular antenna towers should accommodate at least one additional service provider.
- (12) *Lease agreements.* All option and site lease agreements shall not prohibit the possibility of collocation, and in the case of abandonment, shall include a method that the entity will follow in dismantling and removing the proposed cellular antenna tower, including a timetable for removal.

Section 4. Planning Commission Approval Requirements.

Approval or disapproval of the proposal shall be based upon an evaluation of the proposal's agreement with the comprehensive plan and zoning regulations, subject to the following regulations:

- (1) The Planning Commission shall not regulate the placement of a cellular antenna tower on the basis of the environmental effects of radio frequency emissions to the extent that the proposed facility complies with the regulations of the FCC concerning radio frequency emissions.

Section 5. Abandonment and Dismantling.

Any cellular antenna tower including, but not limited to, guyed, lattice and monopole cellular antenna towers, alternative cellular antenna towers, antennas and related equipment, (hereinafter referred to as structure) shall be deemed abandoned when such structure is removed from or no longer in service for a period in excess of 60 days. At the point in time any structure is considered to be abandoned within the meaning of this section, the structure shall be disassembled and removed from the property upon which it is located within 60 days thereafter.

PASSED and APPROVED this _____ day of _____ 2018.

Kevin Johnston, Mayor

Attest:

Tonya Carney, Director of Finance