

ORDINANCE 410

AN ORDINANCE PROVIDING SPECIFIC RULES AND REGULATIONS CONCERNING TELECOMMUNICATION TOWERS WITHIN THE CITY OF STILWELL

WHEREAS, Rules governing the placement, erecting, maintaining, inspection and, if necessary, the removal of telecommunication towers within the City of Stilwell is vital to the health and safety of the residence of the City of Stilwell

WHEREAS, it is the opinion of this Council that adequate guidelines are essential for the placement, erecting, maintaining, inspection and, if necessary, the removal of telecommunication towers,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STILWELL, OKLAHOMA:

SECTION 1. Definitions:

- A. Accessory Equipment Structure – A building or cabinet-like structure adjacent to or in the immediate vicinity of a telecommunication tower or antenna to house equipment customarily incidental to the receiving or transmitting of wireless broadcast, cellular telephone calls, voice messaging and paging services.
- B. Antenna – Equipment used for transmitting or receiving radio frequency signals which is attached to a tower, building or other structure usually consisting of a series of directional panels, microwave or satellite dishes, or omni-directional “quip” antennas.
- C. For purposes of this chapter of the City of Stilwell, the terms defined in this chapter have the meanings given them.
- D. Accessory equipment structure - A building or cabinet-like structure located adjacent to or in the immediate vicinity of a wireless telecommunications tower or antenna to house equipment customarily incidental to the receiving or transmitting of wireless broadcast, cellular telephone calls, voice messaging and paging services.
- E. Antenna - Equipment used for transmitting or receiving radio frequency signals which is attached to a tower, building, or other structure usually consisting of a series of directional panels, microwave or satellite dishes, or omni-directional "quip" antennas.
- F. Antenna support structure - Any building, pole, telescoping mass, tower, tri-pod, or other structure which supports an antenna.
- G. Base receiver station - Equipment that provides the link between wireless telecommunications and land-based public telephone switching networks, including radio-frequency receivers, backup power amplifiers, and signal processing hardware typically contained in a small building or cabinet.
- H. Co-location - The location of wireless telecommunications equipment for more than one provider on a common tower, building or structure.
- I. Commercial receiving and/or transmitting antenna: Any antenna erected to transfer information for commercial use.
- J. Guyed tower - A tower which requires the use of flexible guying cables or wires as the principal means of resisting the designed tower loads.

- K. International Building Code (IBC) - The current adopted standard published by the International Code Council (ICC) and referenced by the State of Oklahoma and the Oklahoma Uniform Building Code Commission (OUBCC) to provide jurisdictions with building related standards and regulations.
- L. Lattice tower - A self-supporting three or four sided, open steel frame structure, used to support telecommunications equipment.
- M. Mast - The portion of the outside antenna system to which the antenna is attached and the support or extension required to elevate the antenna to a height deemed necessary for adequate operation.
- N. Monopole tower - A communications tower consisting of a single pole, with no guy wire support or exposed anchors, tapering from base to top, more than 35 in height, and designed to support communications equipment.
- O. Personal wireless service - Licensed commercial wireless communications services including cellular, personal communications services (PCS), enhanced specialized mobilized radio (EMR), paging and similar services.
- P. Public property - Land, roads, buildings or other structure owned or operated by the City of Stilwell.
- Q. Tower - Any pole, spire, structure, or combination thereof to which antenna could be attached, or which is designed for an antenna to be attached, and all supporting lines, cables, wires and braces, if permitted.

SECTION 2. Existing Towers and/or Antennas

Existing towers at the time of the adoption of this ordinance will be allowed to continue their usage as they presently exist with the following requirements.

- A. All towers must be registered with the City of Stilwell
- B. All towers must be posted with;
 - a. The location of the tower
 - b. A contact name and phone number of the entity maintaining the tower
 - c. A contact name and phone number of the owner of the tower
- C. If there is ever another antenna or transmitter installed, or if the cell tower facilities are upgraded from the original plan, the cell tower must then meet all of the specifications of this ordinance as to the permits, bonds, inspections, testing and all applicable building codes.

SECTION 3. Interpretation and Applicability

- A. This ordinance shall be interpreted consistent with the provisions of the Federal Communications Act of 1934 and all amends that have and will hereafter occur
- B. This ordinance will apply to all persons, partnerships, businesses, limited liability companies, corporations and other entities seeking to locate, sight, place, modify or construct telecommunication towers in the city limits of the City of Stilwell.
- C. This ordinance reserves to the City of Stilwell all authority contained in Federal, State and existing Municipal Ordinances regulating land used which has been preempted by the federal government pursuant to the Telecommunication Act as to the placement, construction facilities modification of personal wireless service facilities.
- D. This chapter does not apply to the use or location of private residential, citizen-band radio towers, amateur radio towers, television antennas, or other public safety communication facilities owned and operated by the City of Stilwell or other public municipalities.

SECTION 4: Setback and Height Requirements

- A. Setback requirements for the telecommunication towers will be based on the height of the tower and in order to reduce the conflicts with abutting property uses, limit the adverse visual effects on the community and the environment, Address public concern for the safety and minimize the potential damage to abutting property owners. In no event shall any tower exceed 300 feet including the antenna located on a tower.
- B. Tower height, including antenna, are required to maintain a certain distance from abutting properties and residences. The distance of the cell tower will be calculated from the outer most portion of the cell tower building and perimeter fence. The distance will be determined by the height of the tower as follows;
 - a. If the tower height is 75 feet or less it must be 300 feet or more from any abutting property line and no closer than 1,500 feet to a residence or structure.
 - b. If the tower is 75 feet to 130 feet, it must be 400 feet or more from any abutting property line and no closer than 1,500 feet to a residence or structure.400 feet
 - c. If the tower is 130 to 180 feet, it must be 500 feet or more from any abutting property line and no closer than 1,500 feet to a residence or structure.
 - d. If the tower is greater than 180 feet, it will require special approval and the distance from abutting property lines and residence will be determined by the actual height of the tower and the distance will not be less than 700 feet or more from any abutting property line and no closer than 2,000 feet to a residence or structure.

SECTION 5. Removal of abandoned tower requirements and bond requirements.

- A. Any tower that is not operated or used for a continuous period of 12 consecutive months shall be considered abandoned and the owner of said tower shall be required, at the owner's expense, to remove the tower and all associated buildings, power supply, fence, and other items associated with, and permitted with, the tower. If the tower is not removed within 90 days, the bond secured by the tower owner shall be used to remove the tower and any accessory equipment and structures. If the tower has a preexisting tower approval before implementation of these ordinances, and the tower owner has not yet obtained the bond to remove the tower, the tower owner shall be required to remove the tower at their expense. If the tower is not removed within 90 days, the tower owner shall be subject to a fine for each month the tower remains in place, and shall be subject to a mandatory injunction for the removal and the owner shall be responsible for all costs, including attorney's fees, for securing the removal.
- B. Bond requirements. When an application is filed to construct a cell tower, the applicant must obtain an estimate to remove the tower from a company acceptable to the City of Stilwell and experienced in contracting for removal of towers and provide that estimate to the City of Stilwell along with the application for approval of a special permit to install said tower. Upon receiving approval, the permit will be issued when the applicant has met all of the requirements of this ordinance and has secured and filed with the City of Stilwell a bond for a length of no less than three years in an amount equal to or exceeding the estimate of the cost of removal and all associated structures, fencing, power supply, and other appurtenances connected with the tower. The bond must be provided within 30 days of the date of the approval, but prior to construction beginning. Replacement bonds must be provided 90 days prior to the expiration of any previous bond. At any time, the City of Stilwell has good cause to question the sufficiency of the bond at the end of any three-year period, the permit holder must provide an updated estimate and bond in the appropriate amount. Failure to keep the bonds in effect is cause for removal of the tower at owner's expense. A separate bond will be required for each cell tower, regardless of the number of owners or the location.

SECTION 6. Screening, landscaping, fencing and access requirements; installing overhead or underground electrical power lines, fiber optics, or other utilities.

- A. Tower facilities shall be visually buffered by a hedge of low-maintenance evergreen plant material, or other approved opaque screening material, which effectively screens the view of the tower, building, fencing and accessory facilities. The tower owner shall be responsible for all costs of equipment, labor, and materials associated with the screening of the tower facilities.
- B. The tower owner will be responsible for all costs associated with the landscaping requirements. A landscaping plan shall be included with the application permit to construct the tower. The plan shall include provisions for all materials to be used for the landscaping and screening. Existing trees and the natural landscape elevation surrounding the site shall be preserved to the maximum extent reasonably possible. Shrub planting materials that are used for screening shall be at minimum five-gallon evergreens capable of reaching a full height of eight feet at full growth. Any trees that are planted shall be at least two inches in caliper. Upon completion of the tower construction, screening and landscaping, all maintenance of the landscaping and screening shall become the responsibility of the property owner. Plants that die or do not effectively buffer the tower, screening, or building power equipment shall be replaced within a reasonable length of time, not to exceed three months, at the landowner's expense. Failure to maintain the plants shall constitute a fine to the landowner.
- C. The tower owner shall be responsible for all costs, equipment, labor for fencing around the cell tower. The fencing shall consist of a chain-link fence in type and be a minimum height of eight feet. The fence must be installed around the tower site with a locking gate. The fence must have a minimum of three strands of barbed wire located along the top edge of the fence and gate to prevent or discourage entry by intruders. A sign must also be posted containing the tower owner's name and contact information. Tower owner shall be responsible for maintaining the fence in good condition.
- D. Access to tower. All cell tower sites will be required to have a at a minimum a gravel driveway approach and access road to the tower site based on current City of Stilwell road standards. A paved, dust-free, asphalt or concrete driveway is preferred. A temporary approach for the tower construction site is required to have a 50-foot gravel entrance off the roadway. Deposits of dirt, gravel, or other similar materials on the public streets must be properly removed at the cell tower owner's expense. If not removed and cleaned in a timely manner, a fine will be assessed against the cell tower owner or abatement will occur in accordance with the general ordinances dealing with nuisance abatements at which time the owner will be assessed all costs and administrative fees. All cell towers approved for construction must obtain a driveway access permit from the appropriate governmental agency having jurisdiction over the city street, county road or state highway used to access tower.
- E. Installing overhead or underground electrical power lines, fiber optics, or other utilities. The owner of the cell tower approved for construction in the Stilwell city limits must obtain the proper permits from the appropriate governmental agencies that have jurisdiction over the placement of all lines, underground or overhead, within the public right-of-way of all streets, county roads, or state highways.

SECTION 7. Permit requirements.

The owners of all towers will be required to obtain a special telecommunications permit from the City of Stilwell to operate a tower within the city limits. The cost of the permit will be set in the most current version of ordinance 385. The permit will be valid for one year and must be renewed annually

so long as the tower is erected. Failure to keep the permit current will constitute grounds for removal of the tower at the owner's expense. A 30-day notice shall be given to the permit holders prior to an order for removal. A separate permit will be required for each tower regardless of owner or location. The tower owner must also provide continued proof of liability insurance every year

SECTION 8. Inspection and Testing

- A. The City of Stilwell may at any time inspect any telecommunications tower, antenna or other facility to ensure its structural integrity. The tower owners must inspect the tower every three years for structural integrity and file with the City of Stilwell by June 30 a certified report from a qualified structural engineer that is licensed to practice in the State of Oklahoma. The City of Stilwell may at any time request the tower owner to perform additional inspections if damaging winds, earthquakes, other natural phenomenon, or unexpected damages occur that may cause structural failure of the cell tower or facilities. If, upon inspection, the tower owner determines that the facility fails to comply with such applicable codes and that such failure constitutes a danger to persons or property, then the owner of the facility must immediately notify the City of Stilwell. The owner shall have 30 days to bring the facility into compliance with the applicable codes and standards. Failure to bring the facility into compliance within the said 30 days shall constitute cause for the removal of the facility at the owner's expense.
- B. When construction of the tower is first completed and all initial power antenna are installed on the tower, the tower owner shall be required, at their expense, to measure the non-ionizing radiation levels within 30 days to determine if the emissions are within the Federal Communications Commission (FCC) guidelines for safety regarding uncontrolled exposure to the general public. In order to effectively measure the radiation levels of both directional and omni-directional antennae at cell tower locations, the following measurements are required.
 1. For cell towers with only omni-directional antennas, the owners are required to take a minimum of three measurements. The measurements must be taken in a circular pattern at the base of the tower spaced at approximately 120 degree increments.
 2. For cell tower locations having directional antennas or a combination of omni-directional and directional antennas, a minimum of six measurements must be taken in a circular pattern at the base of the tower spaced at approximately 60 degree increments with the first measurement taken directly below one of the directional antenna.
 3. Notice. The City of Stilwell must be notified when the non-ionizing radiation levels are being measured so that an official of the city can be present. Upon completion of the measurements, the tower owner shall provide the City of Stilwell with a certified report indicating the actual measurements taken, and prove that they comply with the Federal Communications Commission guidelines. The tower owner shall also be required to provide proof that the meter used to measure the radiation levels has been calibrated at the normal intervals required by the manufacturer to maintain accuracy of the test equipment. Testing non-ionizing radiation installed, the number of channels (transmitters) are increased, or any other changes are made to the tower that would increase the power output at the specific location. It is required that the city be notified when these additional tests are made so that a city official can be present and a certified report again provided as indicated above.

SECTION 9. Interference

All new or existing telecommunications services shall comply with all relevant Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) standards and shall not interfere with public safety and other city and private communication operations.

SECTION 10. Insurance and Hold Harmless Provisions

- A. A permit will not be issued until applicant files satisfactory evidence with the City of Stilwell showing minimum liability coverage of \$300,000/\$500,000/\$300,000 limits which protect the city in the event an action is brought claiming liability as a result of the construction, operation or maintenance of the cellular tower.
- B. The property owner must hold harmless the City of Stilwell from any action, including attorney's fees, that may arise from the installation or operation of cell tower.

SECTION 11. Complaints

All complaints of any section of this ordinance will be directed to the Code Enforcement Department.

SECTION 12. Enforcement

- A. Violations of this ordinance can be handled through the City Police Department and/or Code Enforcement office.
 - B. Persons, firms or corporations in violation of this ordinance can be fined and/or subject to abatement.
 - C. Violations of State Statute will be handled through the Police Department for prosecution through District Court
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- A. Any and all existing ordinances or portions thereof in conflict herewith be and the same are hereby repealed.
 - B. The provisions of this ordinance shall be severable and, if any of the provisions shall be held in contravention of the Constitution and laws of the State of Oklahoma, the decisions of the court shall not affect the validity of the remaining portions.
 - C. It is the intent of this ordinance that the same would have been adopted had such unconstitutional or unlawful provisions, if any, not been included herein.

PASSED by the City Council this 8th day of September, 2020.

APPROVED by the Mayor this 8th day of September, 2020.

ATTEST:

Jean Ann Wright, Mayor

Larry A, Nettles, City Clerk-Treasurer