

**CITY ORDINANCE NO. 585**

**AN ORDINANCE OF THE CITY OF ABERNATHY AMENDING ORDINANCE 310 (ZONING CODE) OF THE CITY OF ABERNATHY AND 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 Comprehensive Plan set forth policies and goals toward the protection of the residential character of Abernathy's residential neighborhoods and the promotion of urban design which is compatible with Abernathy'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; and

**WHEREAS**, a public hearing on this matter was held by the City Council as required by law;

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

**SECTION 1 - OTHER ORDINANCES AND LAWS.**

That Ordinance 310 (Zoning Code) 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stated herein and only those parts of said Ordinance or other ordinances that conflict herein are hereby replaced and repealed and declared no further in force or effect.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 310 and any other ordinances amending ordinances thereunder, except as may be otherwise stated herein.

### **SECTION 3 - DEFINITIONS**

- a. **“CELL TOWER”** - An elevated structure designed to support equipment used for wireless communication of purpose of transmitting and/or receiving commercially provided wireless internet, Wi-Fi, cellular phone and/or data services, and/or any other form of wireless communication.
- b. **“CELL TOWER SITE”** – A Cell Tower including Communication Equipment.
- c. **“COMMUNICATION EQUIPMENT”** – Any equipment attached, mounted, or installed at a Cell Tower Site, including antennas, control boxes, cables, conduit, power sources, and other equipment, structures, plant, and appurtenances necessary for the purpose of servicing or operating a Cell Tower Site.
- d. **“CELL TOWER SITE APPLICATION”** – A process established so that the Building Official can review surveys, engineered drawings, and other documents associated with the installation of a Cell Tower Site to ensure that the planned installation does not conflict with any ordinances, whether here or in the future passed by the City Council of the City of Abernathy.
- e. **“MONOPOLE TOWER”** – A self-supported single mast hollow steel pipe tower which utilizes a single foundation at its base that takes the vertical, horizontal and most importantly, overturning load of the tower.
- f. **UTILITY POLE** – A column or post used to support overhead power lines and various other public utilities such as telephone wires, cable, fiber optic cable, and related equipment such as transformers and street lights.
- g. **PRIVATE PROPERTY**” - Any lot or tract within the City of Abernathy, Texas owned by an Person, Firm, or Corporation.
- h. **“CITY PROPERTY”** - on any lot or tract owned entirely by the City of Abernathy that is not considered a part of a Right-of-Way.
- i. **RIGHT-OF-WAY** - the surface of, and the space above and below, any publicly dedicated street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive, or other easement now or hereafter-held by the City or over which the City exercises any rights of management control.
- j. **“HEIGHT:** - The distance between the top of a Cell Tower and the natural grade soil at a Cell Tower Site.
- k. **“BUILDING OFFICIAL”** – The City Manager or the person or department to whom the city manager may delegate the Building Official duties including regulation of this ordinance.
- l. **“STREET LINE”** - the line of a tract or lot which adjoins a street or roadway. Where curbing is present, the farthest edge of the curbing from the center of the street shall be

considered the Street Line. Where a curb is not present, the Street Line shall be considered to be 9½ feet from the actual property line nearest the street or roadway.

- m. **“PERSON, FIRM OR CORPORATION”** - includes a natural person, entity, firm, partnership, association, limited liability company, joint venturer, or corporation.

Other terms herein shall have the meanings defined in other ordinances of the City, except where the context clearly requires otherwise.

#### **SECTION 4 – STATE AND FEDERAL REGULATIONS**

This ordinance does not, and is not intended to release any Person, Firm or Corporation from any applicable state or federal regulation or requirements in regards to the installation, construction, maintenance, or operation of any Cell Tower Site within the City of Abernathy.

#### **SECTION 5 - EXISTING CELL TOWERS**

This ordinance does not make unlawful any Cell Tower Site already in place and complying with all laws when this ordinance becomes effective.

#### **SECTION 6 UNLAWFUL LOCATION (INSTALLATION) OF CELL TOWER SITES**

It shall be unlawful for any Person, Firm or Corporation to install, construct or erect, or cause to locate any Cell Tower Site at any location within the municipal boundaries of the City of Abernathy in such a way that conflicts with this or any other city ordinances.

#### **SECTION 7 - VIOLATIONS AND PENALTIES**

Any Person, Firm or Corporation who commits any of the following shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than FIVE HUNDRED DOLLARS (\$500.00) for:

- a. Any violation of this ordinance; or
- b. Providing false information to a City official concerning a Cell Tower Site Application under this ordinance or compliance with this ordinance.

Each day or portion of a day during which any violation occurs or continues shall be a separate offense.

#### **SECTION 8 - PERMISSIBLE LOCATION OF A CELL TOWER SITE.**

A Cell Tower Site is expressly prohibited on any Private Property or City Property located in area which is zoned Single Family Residential District, (R-1), A Cell Tower Site may be installed upon any other lot or tract of land or Right-of-Way as long as such Cell Tower Site complies with the terms and provisions of this ordinance and the provisions of state law. Permissible locations include:

- a. **PRIVATE PROPERTY** - Conditional to requirements in Sections 9 and 12 of this ordinance, a Cell Tower Site may be installed on Private Property as long as it meets the established zoning setback requirements by the City of Abernathy.
- b. **EXISTING CITY TOWERS** - Conditional to approval by the Abernathy City Council, Communication Equipment may be installed on any existing tower owned by the City of Abernathy.
- c. **CITY PROPERTY** – Conditional to requirements in Sections 9 and 12 of this ordinance, a Cell Tower Site may be installed on City Property.
  - 1. 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.
- d. **RIGHT OF WAY** - Conditional to requirements in Section s 9 of this ordinance and approval by the Abernathy City Council, a Cell Tower Site may be installed on any city Right-of-Way within the municipal boundaries of the City of Abernathy.
  - 1. Utility service poles which are located in any Right-of-Way may be used as a Cell Tower.
  - 2. Any part of a Cell Tower Site which is constructed within a Right-of-Way shall not be installed nearer that five (5) feet of any Street Line and no further than ten (10) feet from any alley.
  - 3. The Cell Tower Site shall not be installed in a location where Building Official deems, at Building Official’s sole discretion that the Cell Tower Site would pose a visual or travel hazard to vehicular traffic.
  - 4. Any part of a Cell Tower Site which is constructed within an alley shall not be installed in such a manner that it blocks vehicular use of the alley.
  - 5. A Cell Tower Site may not be installed on any Right-of-Way without first securing a lease, occupancy agreement, or license with the City in accordance with the Texas Constitution.

**SECTION 9 –PERMISSIBLE CELL TOWER TYPES AND HEIGHT LIMITS**

- a. Wood utility poles may be used as a Cell Tower as long as the Height does not exceed forty (40) feet.
- b. Any Cell Tower which is to be installed with a Height of forty (40) feet or more shall be a steel-Monopole Tower.
- c. In no case shall a Cell Tower be installed with a Height to exceed one hundred seventy (170) feet.
- d. A Cell Tower shall not be installed in any Right-of-Way with a Height to exceed seventy (70) feet.
- e. Existing building and structures such as water towers, church steeples, grain elevators, or other similar buildings or structures may be used as a Cell Tower.

## **SECTION 10 – EMERGENCY CONTACT INFORMATION REQUIRED**

Any Person, Firm or Corporation who erects, owns, or operates a Cell Tower Site shall affix emergency contact information at each Cell Tower Site. It shall be the Person, Firm or Corporation's duty to maintain the emergency contact information current at all times

## **SECTION 11 – CELL TOWER SITE APPLICATION**

Any person, firm or corporation who desires to erect, own, or operate a Cell Tower Site as permitted in this ordinance shall file a Cell Tower Site Application for each proposed location with the Building Official.

- a. 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.
- b. The Cell Tower Site Application form shall include:
  1. A survey depicting the proposed Cell Tower Site, the boundaries of the Right-of-Way, and adjacent property lines.
  2. Engineering design and specification drawings for the Cell Tower and all equipment to be installed.
  3. Where Communication Equipment is attached to a Utility Pole, applicant must include a load bearing study to determine whether the attachment of the Communication Equipment may proceed without pole modification or whether the installation will require pole reinforcement or replacement.
  4. Where Communication Equipment is attached to an existing building or other structure, applicant must include a load bearing study to determine whether the attachment of the Communication Equipment will significantly affect the structural integrity of the building or structure.
- c. Upon filing of a Cell Tower Site Application, the Building Official shall process the application within sixty (60) days. The Building Official shall:
  1. Verify that the Cell Tower Site Application is complete.
  2. Review engineering design documents to determine compliance with this ordinance and any other ordinances of the City of Abernathy.
  3. As appropriate, the Building Official shall require applicant to make design modifications in order to comply with applicable requirements under this ordinance and any other ordinances of the City of Abernathy.
  4. Failure to make the requested design modifications shall result in an incomplete Cell Tower Site Application which may not be processed.
- d. Upon finding that the Cell Tower Site Application is complete and in compliance with all applicable requirements as outlined in this ordinance, the Building Official shall schedule a Public Hearing before the Abernathy City Council, as required in Section 12.
- e. The Cell Tower Site Application form may be modified from time-to-time by the Building Official as deemed necessary in order to more efficiently process applications.

## **SECTION 12 – PUBLIC HEARING AND CITY COUNCIL APPROVAL REQUIRED**

Prior to the City Council, considering action to approve any Cell Tower Site Application within the City, the City Council shall conduct a Public Hearing, notice of which shall be mailed to each property owner within two hundred (200) feet of the proposed Cell Tower Site at least fourteen (14) days in advance of said Public Hearing. Additionally, notice of the Public Hearing shall be posted in keeping with the requirements of Chapter 551 of the Texas Government Code.

Following a Public Hearing, the City Council may consider approval of the Cell Tower Site Application. If approved, the applicant shall be authorized to proceed to obtain all generally applicable ministerial permits that are required.

Exception - A Public Hearing is not required for upgrading or adding Communication Equipment to an existing Cell Tower Site, or for Communication Equipment which is to be attached to an existing tower, structure, or building as a part of a Cell Tower Site.

## **SECTION 13 – 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 Abernathy.
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 14 - 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 15 - CONSTITUTIONALITY**

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

## **SECTION 16 – PUBLICATION**

The City Secretary is hereby authorized and directed to cause publication of this ordinance in accordance with law.

## **SECTION 17 - 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 Abernathy.

**A PUBLIC HEARING FOR THIS ORDINANCE, NOTICE OF WHICH WAS MADE IN KEEPING WITH CHAPTER 551 OF THE TEXAS GOVERNMENT CODE, WAS CONDUCTED ON THE 13<sup>TH</sup> DAY OF FEBRUARY, 2017.**

**PASSED AND ADOPTED THIS THE 13<sup>TH</sup> DAY OF FEBRUARY, 2017.**

**PASSED AND ADOPTED THIS THE 13<sup>TH</sup> DAY OF MARCH, 2017 UPON SECOND READING.**