

## **PROPOSED ORDINANCE 19-03**

**Be it enacted by the Quorum Court of Faulkner County, State of Arkansas, an Ordinance to be entitled: an Ordinance to amend and supplement Faulkner County Ordinance 13-26.**

**WHEREAS**, due to the number of cell towers being placed in Faulkner County there is a need for an application process in order to establish an accurate database of the cell towers in Faulkner County and to collect an application fee.

**WHEREAS**, the Federal Government through the Federal Communications Commission (FCC) has issued wireless communications licenses for cellular, personal communication services, paging and other providers of wireless antenna services; and

**WHEREAS**, the demand by citizens for new wireless communications services has produced an increased need for installation of wireless antennas and wireless communication facilities (WCF) to serve the public, including the citizens of Faulkner County; and

**WHEREAS**, WCF are supportive of the public health, safety, and welfare in that they provide useful portable communication services for personal convenience, business and emergency purposes; and

**WHEREAS**, additional WCF are required to provide quality communication services to meet the growing needs of the public and business for wireless communications and should be accommodated in Faulkner County; and

**WHEREAS**, the siting, erection and placement of WCF should be reasonably regulated to minimize potential health, safety, and aesthetic impacts on the surrounding area.

**NOW, THEREFORE, BE IT ORDAINED BY THE QUORUM COURT OF THE COUNTY OF FAULKNER, STATE OF ARKANSAS, AS FOLLOWS:**

### **Section 1: PURPOSE AND GOALS.**

A. Purpose. The purpose of this Ordinance is to establish general guidelines for the siting, erection and placement of WCF, and to provide for a penalty for the violation of these guidelines.

B. Goals. The goals of this Ordinance are to:

- 1) provide a range of locations for the siting, erection and placement of the WCF within Faulkner County consistent with the public health, safety and welfare and reasonable aesthetic considerations;
- 2) encourage the location of WCF on existing structure, including utility poles, signs, water towers, buildings, and other WCF where feasible;

- 3) encourage Collocation and Site Sharing of new and existing WCF; and
- 4) protect the residents of Faulkner County from the uncontrolled development of WCF by requiring reasonable siting conditions.

**Section 2: DEFINITIONS.**

- A. *Antenna Array* means one or more rods, panels, discs, or similar devices used for the transmission or reception of radio frequency signals, which may include an omni-directional antenna (rod), a directional antenna (panel), and a parabolic antenna (dish). The antenna Array does not include the Support Structure defined below.
- B. *Applicant* means the person or persons make an application to the County for approval of construction of a tower, replacement of a tower or major modification, as defined herein, or, for continuing obligations hereunder, and legal successor to such persons(s). Such person(s) need not be an owner of a tower or landowner.
- C. *Attached Wireless Communications Facility (Attached WCF)* means Antenna Array attached to an existing building or structure which shall include, but not be limited to, utility poles, signs, water towers, with any accompanying pole or device that attaches the Antenna Array to the existing building or structure and associated connection cables.
- D. *Collocation or Site Sharing* means use of a common WCF or common site by two or more wireless license holders or by one wireless license holder for more than one type of communications technology or placement of a WCF on a structure owned or operated by a utility or other public entity.
- E. *County Judge* means the duly elected Judge of the County Court of Faulkner County, Arkansas.
- F. *Equipment Facility* means any structure used to contain ancillary equipment for a WCF that includes cabinets, shelters, a build-out of an existing structure, pedestals, and other similar structures.
- G. *Height*, when referring to a WCF, means the distance measured from ground level on the highest point on the WCF, including the Antenna Array.

- H. *Major Modification* means any increase in height of more than 10% of the tower's original height; any increase in width by more than 18"; or any alteration adding an additional collocation.
- I. *Setback* means the required distance from the foundation of the WCF land based elements to the property lines of the parcel on which the WCF is located.
- J. *Stealth Technology* means systems, components, and materials used in the construction of WCF which are designed to mask or conceal the WCF to make it less intrusive with respect to the surrounding property.
- K. *Support Structure* means a structure designed and constructed specifically to support an Antenna Array, and may include a monopole tower, a self-supporting (lattice), a guy-wire supported tower, or similar structures. Any device used to fasten an Attached WCF to an existing building or structure shall be excluded from the definition of and regulations applicable to Support Structures.
- L. *Wireless Communications* means any personal wireless service as defined in the Telecommunications Act of 1996, which includes FCC licensed commercial wireless Telecommunication services including: cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that currently exist or that may in the future be developed.
- M. *Wireless Communications Facilities (WCF)*, transmission tower/station, means any unstaffed facility for the transmission or reception of wireless telecommunications services, usually consisting of an Antenna Array, connection cables, an Equipment Facility, and a Support Structure to achieve the necessary elevation.

### **Section 3:     APPLICABILITY.**

- A. New Construction. No person, firm, or corporation shall install or construct any WCF from and after the passage of this Ordinance unless the installation, construction, and the WCF comply with the requirements of this Ordinance.
- B. Pre-existing WCF. WCF installed and constructed prior to the effective date of this ordinance shall not be required to meet the requirements of this Ordinance. WCF that replace an established, legal WCF will be subject to this Ordinance, except that setback non-conformities will be grandfathered in without the need for a variance.
- C. Major Modifications. Any WCF which is need of a major modification as defined in this ordinance shall comply with the requirements of this ordinance.

#### **Section 4: Administrative Review**

- A. Any project involving the construction, replacement, or major modification of a WCF shall be submitted to the Faulkner County Judge, and shall contain the information required in the application form developed by the Faulkner County Judges Office. If the application is complete and complies with the terms of this ordinance, the County Judge may approve the application.

The application may include the following:

- Completed application with notarized original signatures
- Completed authorization and right to enter site form
- Fee-\$1000.00
- Legible site plans to scale
- Electronic versions of all materials, drawings and completed application form
- Service agreement forms
- Applicable State and Federal Permits
- Erosion control plan
- Landscaping installation and maintenance plan
- Stormwater Pollution Prevention Plan (SWP3)
- Hazardous Chemical Compliance Form
- Floodplain Permit

#### **Section 5: Fees**

- A. The Faulkner County Judges Office shall be authorized to charge an application fee of \$1,000.00 per application for the construction, replacement, or major modification of a WCF.
- B. All fees shall be paid to the Faulkner County Clerk. Revenue generated from this ordinance shall be placed in Fund 3413 for use by the Faulkner County Office of Emergency Management for administration and enforcement of this ordinance.

#### **Section 6: DEVELOPMENT STANDARDS.**

- A. Height Standards. The following height standards shall apply to all WCF installations:

- 1) *Attached WCF* Attached WCF shall not add more than twenty (20) feet in height to the existing building or structure to which it is attached (Attachment Structure).
- 2) *WCF with Support Structures.* WCF with Support Structures be limited to three hundred and twenty-five (325) feet maximum as measured from the average undisturbed soil area to the highest tower projection unless otherwise approved by the County Judge of Faulkner County.

B. Setback Standards. The following setback standards shall apply to all WCF installations.

- 1) *Attached WCF* Antenna Arrays for Attached WCF are exempt from the setback provisions. An attached WCF Antenna Array may extend up to thirty (30) inches horizontally beyond the edge of the Attachment Structure so long as the Antenna Array does not encroach upon the adjoining parcel.
- 2) *WCF with Support Structure.* WCF with Support Structure shall be setback at a distance equal to the tower's height from the property line or any habitable structure. If the applicant provides a letter or design drawings stamped by a certified structural engineer documenting that the proposed structure's fall zone is less than the actual height of the structure, the setbacks may be reduced by a variance granted under Section 7 of this Ordinance.

C. Land Form Preservation. Existing mature tree growth and natural land form on the site shall be preserved to the extent feasible; provided, however, that vegetation that causes interference with the antennas or inhibits access to the Equipment facility may be trimmed or removed.

D. Aesthetics, Placement, Materials, and Colors. WCF shall be designed so as to be compatible with the existing structures and surroundings to a feasible extent, including placement in a location which is consistent with the proper functioning of the WCF, the use of compatible or neutral colors, or stealth technology.

E. Lighting and Signage. The following lighting and signage requirements shall apply to all WCF facility installations:

- 1) *Artificial Illumination.* WCF shall not be artificially illuminated, directly or indirectly, except for:
  - a. security and safety lighting or equipment buildings if such lighting is appropriately down shielded to keep light within the boundaries of

the site; and

- b. such illumination of the WCF as may be required by the Federal Aviation Administration (FAA) or other applicable authority installed in a manner to minimize impacts on adjacent residences.

2) *Signage.* WCF shall not display any signage, logos, decals, symbols, or any message of a commercial or noncommercial nature, except for a small message containing provider identification and emergency telephone numbers and such other information as may be required by local, state, or federal regulations governing WCF.

F. **Security Fencing.** WCF with Support Structures shall be enclosed by a security fence not less than six (6) feet in height. Nothing herein shall prevent security fencing which is necessary to meet requirements of State or Federal agencies.

G. **Structural Integrity.** WCF with Support Structures shall be constructed to the Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision F Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures" (or equivalent), as it may be updated or amended. Each Support Structure shall be capable of supporting at least three antenna arrays.

## **Section 7:      VARIANCES**

A. Plans for construction of cell towers that do not meet the requirements of this ordinance will be submitted to the County Judge on the Faulkner County Variance/Waiver Request form along with documentation and/or plans that justify each request for variance.

B. A \$500.00 fee will be assessed per variance request.

C. If the County Judge is satisfied with any one of the following, then the County Judge may grant the applicant's request for variance:

- 1) A letter or design drawing stamped by a certified structural engineer documenting that the proposed structure's fall zone is less than the actual height of the structure.
- 2) Waivers from all the proposed structure's surrounding neighbors stating their support for the variance.

- 3) Documentation showing that the proposed structure is a replacement and exact copy of an older structure found at the same location.

**Section 8:      SHARED FACILITIES AND COLLOCATION POLICY.**

- A. Collocation. All WCF shall be constructed to be capable of sharing the facility with other providers, to collocate with other existing WCF, and to accommodate the future collocation of other WCF. Persons proposing to erect or construct new WCF shall demonstrate that he or she has made a reasonably good faith attempt to find a collocation site. Competitive conflict and financial burden are not deemed to be adequate reasons against collocation.

**Section 9:      REMOVAL OF ABANDONED WCF.**

- A. Any WCF that is not operated for a continuous period of twelve (12) months shall be considered abandoned and the WCF owner shall remove the WCF within ninety (90) days after notice from the County Judge to remove the WCF. If the abandoned WCF is not removed within ninety (90) days, the County Judge may remove it and recover the costs from the WCF owner. If there are two or more users of a single WCF, this provision shall not become effective until all providers cease to use the WCF. If the owner of an abandoned WCF cannot be located or is no longer in business, the requirements of this Section shall be the responsibility of the land owner on whose property the WCF is located.

**Section 10:    NONCONFORMING WCF.**

- A. WCF in existence on the date of the adoption of this Ordinance which do not comply with the requirements of this Ordinance (nonconforming WCF) are subject to the following provisions:
  - 1) *Expansion.* Nonconforming WCF may continue in use for the purpose now used, but may not be expanded without complying with this Ordinance.
  - 2) *Additions.* Nonconforming WCF may add additional antennas (belonging to the same provider or other providers) subject to provisions of this Ordinance.
  - 3) *Repairs.* Nonconforming WCF which become damaged or destroyed due to any reason or cause, may be repaired and restored to their former use, location, and physical dimensions subject to the provisions of this Ordinance.

**Section 11: NOTIFICATION.**

- A. No person, firm, or corporation shall install or construct any WCF unless the person, firm, or corporation has first applied to the County Judge at least thirty (30) days in advance of his, her, or its intention to install or construct the WCF.

**Section 12: EXEMPTIONS**

- A. Nothing in this ordinance shall be construed to limit or restrict the operation of a licensed amateur radio operator on his or her private property.

**Section 13: ENFORCEMENT.**

- A. The enforcement of the provisions of this Ordinance is hereby delegated to the County Judge. In addition to the right to seek the imposition of the penalty set forth in Section 11 hereof, the County Judge is hereby expressly authorized to seek the immediate removal of all new WCF erected or constructed in violation of the provisions of this Ordinance.

**Section 14: PENALTY**

- A. The fine or penalty for violating any provisions of this Ordinance shall, upon conviction in the municipal court, not exceed five hundred dollars (\$500.00) for any one specified offense or violation, or double that sum for each repetition of such offense or violation; provided, further, that if a thing prohibited or rendered unlawful is, in its nature, continuous, in respect to time, the fine or penalty for allowing the continuance thereof in violation of this Ordinance shall not exceed two hundred fifty dollars (\$250.00) for each day that it may be unlawfully continued.

**Section 15: SEVERABILITY.**

- A. The various parts, sections, and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

**Section 16: EMERGENCY.**

- A. Whereas the construction of WCF, placement of WCF and related facilities are of concern to the citizens who are affected by such; and whereas there is increasing construction and proliferation of WCF, and related facilities not subject to the reasonable regulations provided herein; now, therefore, an emergency is declared to



exist and this Ordinance shall be and is effective from the date of its passage.

**Section 17: SUPERSESSION**

- A. This Ordinance supersedes and repeals all prior ordinances of Faulkner County regulating WCF.

Dated:

Dated:

Attest: \_\_\_\_\_

Approved: \_\_\_\_\_

Margaret Darter  
Quorum Court Secretariat  
Faulkner County, AR

Jim B. Baker  
Faulkner County Judge  
Faulkner County, AR