

**ORDINANCE OF THE CITY OF FLOWOOD, MISSISSIPPI ESTABLISHING
REGULATIONS FOR THE CONTROL OF TYPE, PLACEMENT, AND DESIGN OF
TELECOMMUNICATIONS TOWERS AND ANTENNAE WITHIN THE MUNICIPAL
BOUNDARY AND JURISDICTION OF THE CITY OF FLOWOOD, MISSISSIPPI AND
REPEALING ALL CONFLICTING PROVISIONS OF THE ZONING ORDINANCE OF
THE CITY**

WHEREAS, the City of Flowood, by and through its elected representatives, has adopted and followed zoning regulations and ordinances to insure an orderly and coherent growth of the City of Flowood; and,

WHEREAS, the use of reasonable regulations and controls as set forth in the City's zoning regulations and ordinances has facilitated and improved the growth and development of the City; and

WHEREAS, the current regulations and controls set forth in the City of Flowood's zoning regulations and ordinances are inadequate to properly address the appropriate locations, type, size and usages of telecommunications towers and other applications within the municipal boundaries of the City of Flowood, Mississippi; and,

WHEREAS, the City of Flowood enjoys an enviable reputation as an ideal residential and business community; and,

WHEREAS, the City of Flowood previously adopted a moratorium prohibiting the installation of new telecommunications towers or other similar devices until such time as the City of Flowood, Mississippi, could appropriately address the issues set forth herein; and

WHEREAS, the City of Flowood desires to adopt a new ordinance providing for regulation and control of the type, placement and design of telecommunications towers and antennae within the municipal boundaries of the City of Flowood and other matters to accomplish the purposes and goals set forth herein, and the Board of Aldermen of the City of Flowood having determined that the adoption of this ordinance shall serve, preserve and protect the health, safety and welfare of the residents of the City of Flowood, Mississippi; and,

WHEREAS, the City of Flowood, Mississippi, desires to lift the moratorium currently in place prohibiting the installation of telecommunications towers and other similar devices immediately upon the effective date of this Ordinance; and,

WHEREAS, a public hearing was held on the 18th day of May, 1999 at Flowood City Hall, after publication of Notice of Public Hearing in the Rankin County News, a newspaper of general circulation within the City and after posting same in three (3) public places within the City; and

NOW, THEREFORE, BE IT ORDAINED by the Board of Aldermen of the City of Flowood, Mississippi, as follows:

Section 1. Wireless Telecommunications Facilities

The purpose of this Section is to establish guideline regulating the location of telecommunication towers and antennae with the objective of minimizing their number, to protect and promote public safety, and to mitigate adverse visual impacts on the community while promoting the provision of telecommunications service to the public.

The regulations contained in this ordinance have been developed under the following general guidelines as provided in the Federal Telecommunications Act of 1996:

- a. Cities have local authority over “placement, construction and modification” of cellular telephone facilities and other personal wireless telecommunication service facilities.
- b. Regulations “shall not unreasonably discriminate” among providers of functionally equivalent services.
- c. Regulations shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
- d. Denial shall be in writing and supported by substantial evidence.
- e. Cities may not “regulate the placement, construction and modification of personal wireless service facilities on the basis of environmental or radio frequency emissions to the extent that such facilities comply with the Federal Communication Commissions regulations concerning such emissions.”

Notwithstanding any other provision of this ordinance, telecommunications towers and antennae, when permitted by federal law and the laws of the State of Mississippi, shall be regulated and governed by the following use regulations and requirements.

Section 2. Definitions

Alternative Mounting Structure A clock tower, church steeple, bell tower, utility pole, light standard, identification pylon, flagpole, water tower, existing telecommunications tower, or similar structure, designed to support and camouflage or conceal the presence of telecommunications antennae.

Antenna A structure or device used to collect or radiate electromagnetic waves, including directional antennae, such as panels, wireless cable and satellite dishes, and omni-directional antennae, such as whips, but not including satellite earth stations.

Antenna Array An arrangement of antennae and their supporting structure.

Antenna, Panel An antenna which receives and/or transmits signals in a directional pattern.

Antenna, Stealth A telecommunications antenna that is effectively camouflaged or concealed from view.

Antenna, Telecommunications An antenna used to provide a telecommunications service. This excludes lightning rods, private mobile radio systems, amateur radio antennae less than 50 feet in height and whip antenna less than 4 inches in diameter and less than 10 feet in height.

Co-location A single telecommunications tower and/or site used by more than one telecommunications service provider.

EIA-222 Electronics Industries Association Standard 222, “Structural Standards for Steel Antenna Towers and Antennae Support Structures”.

Identification Pylon A permanent ground mounted sign consisting solely of a single monolithic structure used to identify a development.

Structure An object, including a mobile object, constructed or installed by man, including, but not limited to, buildings, poles, water towers, cranes, smokestacks, earth formations and overhead transmission lines.

SUP A special use permit.

Telecommunications The transmission, between or among points specified by the user, of audio and/or visual information of the user’s choosing, without change in the form or content of the information as sent and received.

Telecommunications Service The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Tower, Electric Transmission A self supporting structure in excess of 50 feet in height designed to support high voltage electric lines. This does not include local utility or distribution poles (with or without transformers) designed to provide electric service to individual customers.

Tower, Guyed Any telecommunications tower supported in whole or in part by cables anchored to the ground.

Tower, Height The distance measured from grade to the highest point of any and all components of the structure, including antennae, hazard lighting, and other appurtenances, if any.

Tower, Monopole A self-supporting telecommunications tower which consists of a single vertical pole fixed into the ground and/or attached to a foundation.

Tower, Self-supporting Lattice A telecommunications tower which consists of an open network of metal braces forming a tower which is usually triangular or square in cross-section.

Tower, Telecommunications A self-supporting or guyed structure more than twenty feet in height, built primarily to support one or more telecommunications antennae.

Section 3. General Provisions

1. Applications

A. No telecommunication tower or structure may locate within the Corporate limits of the City without first filing an Application with the City Clerk on a form prescribed by the City Clerk. All existing towers shall be permitted, without charge, so that the City will have a record of existing towers located within the City. For existing towers, the owner thereof shall be deemed to have complied with the Application requirements upon submitting the information provided in Section 7 of this Ordinance.

B. The Application shall contain the following:

- a) Name and Address of the Applicant, provider, property owner tower owner;
- b) A description of the proposed tower and drawing or rendering depicting the tower design;
- c) All design specifications approved and certified by a structural engineer;
- d) Legal Description of the property upon which the tower is to be located;
- e) Names and addresses of all property owners within 160 feet of the property;
- f) Site plan;
- g) Map of Area to be served by the tower and comparison map showing other overlapping similar telecommunication coverage for said area; and
- h) Such other information as required by the City Clerk to evaluate the Application.

C. Prior to granting the Application for a SUP, the Applicant shall demonstrate to the City that there are no viable alternatives to the placement of the tower, that the tower is compatible with the surrounding land uses or not have a material impact on surrounding land uses, that the tower will not have a negative impact on the environment or City infrastructure and such other reasonable requirement as determined by the City.

D. Applications shall be first considered by the Architectural Review Board (“ARB”) and it shall recommend approval or disapproval to the Mayor and Board. If approval is recommended a public hearing shall be held by the Mayor and Board in accordance with the provisions of the zoning ordinance relating to public hearings and thereafter the board may approve or deny the request. If the ARB recommends disapproval, the applicant shall state whether the matter should

be sent to the Mayor and Board for public hearing and if further consideration is requested the Mayor and Board shall conduct a public hearing as aforesaid.

Section 4. Special Use Permits

Telecommunication towers may be located in zoning districts C-3, I-1 and I-2 only by the issuance of a special use permit pursuant to the provisions of this Ordinance. No telecommunication tower may be located in a residential district (except multi-family districts) except on Alternative Mounting Structures in accordance with Section 9 of this Ordinance and only upon the issuance of a Special Use Permit.

Section 5. Technical Assistance

When a rezoning or SUP is required to comply with the provisions of this section, and when the technical information provided by the applicant is beyond the technical capacity of City of Flowood personnel to review, the applicant, in addition to the usual application fee, shall reimburse the City for the actual cost to the City for the services of a technical expert to review the application and/or information supplement, up to a maximum of \$5,000 dollars.

Section 6. Pre-application Meetings

Prior to leasing or purchasing facilities, the telecommunications service provider is encouraged to meet with the City Building Inspector or his/her designee to determine if the location will require a special use permit or other approvals, and to review the merits of potential locations.

Section 7. Master Antenna Plan

To facilitate co-location and coordination of telecommunication sites, the city shall, within 90 days following the effective date hereof, notify the providers of telecommunications services, as that term is defined by federal law, of the enactment of this ordinance. Said providers shall, within 30 days of the date of such notice, provide the City with their respective master antenna plans. Said plans shall include detailed maps, showing the locations and characteristics of all telecommunications towers and antennae serving any portion of the City and indicating coverage areas for current and, to the extent possible, future telecommunications towers and antennae. Providers shall also provide the City with any updates to the above documents within 120 days of their creation.

Section 8. Telecommunications Tower Standards

1. Applicable Federal and State Standards – All telecommunications towers and antennae shall be erected and operated in compliance with current Federal Communication Commission (FCC) and Federal Aviation Administration (FAA) rules and regulations and other applicable federal, state, and local standards.
2. Structural Standards - Telecommunications tower structures must conform to the most current revision of EIA 222 standards and all applicable City and State Ordinances and

regulations regarding construction standards. Guyed telecommunications towers shall be designed and located such that if the structure should fall it will avoid habitable structures and public streets.

3. Co-location – Towers shall be designed and built to accommodate a minimum of three cellular or PCS providers, if over 85 feet in height. The owner of the tower must certify to the City that the tower is available for use by other telecommunications service providers on a reasonable and nondiscriminatory basis. Co-Location of providers on an existing approved tower shall not require further approval from the City.

4. Fencing – Security fencing shall be installed by the owner operator of any freestanding tower and shall be erected around the base of the communications tower and all accessory structures. All anchor points of the guy wires of a guyed tower shall also be fenced.

5. Setbacks – All telecommunication towers as well as guys and guy anchors shall be located within the buildable area of the lot and not within the front, rear, or sideyard building setbacks. Telecommunication towers in excess of 300 feet in height shall be set back a minimum of 2600 feet from the right-of-way of all controlled access federal and state roadways designated as highways to provide unobstructed flight paths for helicopters.

6. Signage – Except as otherwise permitted in this ordinance, no signage, lettering, symbols, images, or trademarks in excess of 200 square inches shall be placed on or affixed to any part of a telecommunications tower, antenna, antenna array, equipment building, or security fencing other than as required by FCC regulations or other applicable law.

7. Lighting – Except as otherwise permitted in this ordinance, no signals, lights or illumination of any kind shall be permitted on or directed toward any tower unless required by the FCC, the FAA or other appropriate public authority.

8. Abandonment – In the event the use of any Wireless Communication Facility, which would include any telecommunications tower or other antenna support structure, has been discontinued for a period of 360 days, the antenna support structure shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the City of Flowood building inspector or his designed who shall have the right to request documentation from the owner/operator regarding the issue of usage. Upon the determination of abandonment, the owner/operator of the antenna support structure shall remove same within 90 days of receipt of notice from the City of Flowood notifying the owner/operator of such abandonment. If said antenna support structure is not removed within 90 days, the City of Flowood may cause it to be removed at the owner's expense.

9. Replacement – An existing approved tower may be replaced provided that the height of the tower does not exceed its height prior to replacement. A non-conforming tower may not be replaced without the issuance of a Special Use Permit for replacement of same after Application for same. Prior to approval of the Application, the applicant shall demonstrate to the City that a substantial hardship will occur to the owner of the tower and general public if replacement is not allowed.

Section 9. Tower Location Standards

1. Residential Zoning – Except as otherwise provided in this ordinance, telecommunications towers are not permitted in any residential zoning district and must be a minimum of a 5 to 1 distance to height ratio from a single family residential district. Provided, however, that nothing contained in this Ordinance shall preclude an approved tower constructed for a multi-family occupied use of more than 10 individual apartments, from being located on the property upon which such multi-family use is situated, provided that the tower must be permitted in accordance with the terms of this Ordinance and must only serve the multi-family use.

2. All Towers Require a Special Use Permit (SUP) – Except as otherwise provided in this ordinance, all telecommunication towers may only be located in zoning districts C-3, I-1 and I-2 upon issuance of a Special Use Permit.

3. Tower Spacing – Any new telecommunications tower in excess of 85 feet in height must be located a minimum of 1,620 feet from any existing tower in excess of 85 feet in height.

4. Alternative Mounting Structures

a. Alternative Mounting Structures 85 feet or less in height are permitted in the non-residential districts of the City of Flowood.

b. Alternative Mounting Structures in excess of 85 feet in height are permitted in the non-residential districts of the City of Flowood with a Special Use Permit (SUP).

c. All Alternative Mounting Structures located in the residential zoning districts shall require a Special Use Permit (SUP).

d. Alternative Mounting Structures must be similar in color, scale and character to adjoining buildings or structures or blend with the landscaping and other surrounding immediately adjacent to them so as to generally avoid the creation of unique visual objects that stand out in the environment.

e. City-Owned Alternative Mounting Structures. All Alternative Mounting Structures owned in part or in whole by the City of Flowood shall be available as a mounting structure for telecommunications towers pursuant to this section. The City of Flowood shall receive bids, through the appropriate public bid process, for proposals to lease space upon City-owned Alternative Mounting Structures. Authority is granted hereunder to the appropriate City of Flowood personnel to take an inventory, by description and location, of all suitable City-owned Alternative Mounting Structures and begin the public bidding process for proposals to lease space upon identified City-owned Alternative Mounting Structures as set forth in Addendum “A” to this Ordinance, said Addendum being incorporated herein by reference and expressly made a part hereof.

Section 10. Permits The permit fee for an application to construct a cell tower pursuant to the terms of this Ordinance shall be as establishes in Schedule A of the Standard Building Code adopted by the City from time to time.

Section 11. Non-Conforming Towers

All non-conforming towers located within the City may remain and may be utilized for co-location. However, no non-conforming tower may be increased in height. If a non-conforming tower is abandoned pursuant to the provisions of Section ____ of this Ordinance, it shall be removed in accordance with said Section.

Section 12. Appeal

Any person desiring to appeal the granting or denial of any Application shall follow the appeal procedures of the Official Zoning Ordinance of the City.

Section 13. Violation Deemed Nuisance

In addition to the penalties provided herein, any violation of this subchapter is hereby declared to be nuisance. In addition to any other relief provided by this subchapter, the city may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this article, and other available relief.

Section 14. Separability and Validity Clause

Should any Section or provision of this Ordinance be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so held to be unconstitutional or invalid.

Section 15. Repeal of Conflicting Ordinances or Parts Thereof

All Ordinances or parts of Ordinances adopted heretofore by the City of Flowood, Mississippi, which are in conflict herewith or inconsistent with the provisions of this Ordinance ARE HEREBY REPEALED. Specifically, Article III, Section 306.02.08 of the Comprehensive Ordinance establishing zoning regulations for the City of Flowood, Mississippi, is hereby repealed.

Section 16. Failure to Enforce Ordinance

Failure to enforce any provision of this Ordinance shall not constitute a waiver nor imply that the action is legal.

Section 17. Effective Date of Ordinance

This Ordinance shall become effective immediately upon publication the public health and safety demanding same.

SO ORDAINED this the 18th day of May, 1999.

Gary Rhoads, Mayor

ATTEST:

Julia Williams, City Clerk

Publish June 2, 1999