

AGENDA REQUEST

FOR: COUNCIL MEETING OF SEPTEMBER 18, 2012

FROM:

JEREMY PATE, DEVELOPMENT SERVICES DIRECTOR  
KIT WILLIAMS, CITY ATTORNEY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance To Amend §163.13 **Wireless Communication Facilities** Of The Unified Development Code To Clarify Height Limitations For Antennas Placed Upon Existing Structures, To Empower The Zoning And Development Administrator To Grant A Variance In Appropriate Circumstances And To Declare An Emergency

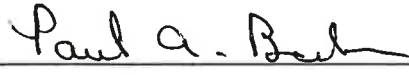
APPROVED FOR AGENDA:

  
\_\_\_\_\_  
Department Director

08.31.2012  
Date

  
\_\_\_\_\_  
City Attorney

8/31/2012  
Date

  
\_\_\_\_\_  
Finance Director

9.4.2012  
Date

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*Kim J.*

  
\_\_\_\_\_  
Chief of Staff

9/5/12  
Date

  
\_\_\_\_\_  
Mayor

9/5/12  
Date

Kit Williams  
City Attorney

Jason B. Kelley  
Assistant City Attorney

TO: **Mayor Jordan**  
**City Council**

CC: **Jeremy Pate**, Development Services Director

FROM: **Kit Williams**, City Attorney



DATE: **August 31, 2012**

RE: **Amending §163.13 (C) to provide authority to grant height variance for antennas mounted on a building's roof**

KNWA is moving to the Dickson Building and needs to install two dish antennas on its parking deck for its television programming. The station will then be able to remove their dish antennas installed above the parking lot west of the Campbell Bell Building which had housed its current television station. In order to preserve parking and ensure drive-aisle safety, the two new dish antennas would slightly exceed the twenty-foot limit of §163.13 (C)(1).

Jeremy and I met with Scott Broadbent of pb2 Architecture & Engineering (which is doing the engineering for KNWA's move) about this problem. We concluded that this section would be improved if the Zoning and Development Administrator could grant a slight height variance as long as the placement of the antennas and any additional necessary screening would limit the visual impact on the building's silhouette (which is the purpose for the height limitation). Thus, we have drafted the attached ordinance which amends §163.13 (C)(1) and authorizes Jeremy to grant a height variance of up to an additional 10 feet for functionality and safety concerns. KNWA will probably only need an additional 2-3 feet, but I felt we should give our Administrator discretion to grant up to 10 feet if necessary in another context as long as (D) is accomplished. (D) requires appropriate screening and placement of any antenna to conceal or limit the visual impact of the antennas from streets.

I placed an Emergency Clause with the ordinance because of the time constraints to install these antennas to ensure proper continuous functioning of Fayetteville's TV station so that it can continue its public service by broadcasting news and weather alerts as needed for the safety and peace of our citizens.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND §163.13 WIRELESS COMMUNICATION FACILITIES OF THE UNIFIED DEVELOPMENT CODE TO CLARIFY HEIGHT LIMITATIONS FOR ANTENNAS PLACED UPON EXISTING STRUCTURES, TO EMPOWER THE ZONING AND DEVELOPMENT ADMINISTRATOR TO GRANT A VARIANCE IN APPROPRIATE CIRCUMSTANCES AND TO DECLARE AN EMERGENCY**

**WHEREAS**, for well over a decade, the City's express and clear policy is to encourage co-location of new antennas on existing towers and structures; and

**WHEREAS**, reasonable height limitations for antennas placed upon structures are necessary to assure reduced adverse visual impact to the building's silhouette and to preserve aesthetics, but should have a variance procedure to authorize the Zoning and Development Administrator to allow slightly taller antennas in appropriate circumstances with appropriate screening or other safeguards; and

**WHEREAS**, KNWA needs to have its dish antennas installed promptly at the right height to ensure traffic safety on the drive-aisle under the dish antenna so it can continue to transmit news and weather reports to ensure the peace and safety of our citizens.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends §163.13 **Wireless Communication Facilities** (c) *Co-location* by repealing (1) *Locating on existing structures* and enacting a replacement (1) *Locating on existing structures* as shown below:

“(1) *Locating on existing structures.* Installation of an antenna or antenna array on an existing structure other than a tower (such as a building, light pole, electric transmission tower, water tank, or other free-standing non-residential structure) provided the antenna or antenna array and its support are not more than 20 feet in height. The Zoning and Development Administrator may grant a variance of up to 10 additional feet in height when such additional

height is necessary for improved functionality or safety and where the requirements of (D) have been accomplished.”

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby declares that, pursuant to the need for traffic safety and the need for KNWA’s continued public service for news and weather reports and warnings, an emergency is declared so that this ordinance shall take effect immediately and be in full force and effect upon its passage by the City Council and execution by Mayor Jordan.

**PASSED** and **APPROVED** this 18<sup>th</sup> day of September, 2012.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**SONDRA E. SMITH**, City Clerk/Treasurer

TITLE XV. UNIFIED DEVELOPMENT CODE

- (3) *Fall zone.* The minimum distance from the base of any tower to any residential dwelling unit shall be the lower height or required setback, whichever is greater, unless all persons owning said residence or the land on which said residences are located consent in a sign writing to the construction of said tower. This setback is considered a "fall zone." In the event that an existing structure is proposed as a mount for a wireless communication facility, a fall zone shall not be required.
- (4) *Camouflaging or stealth technology for new towers.* If the applicant demonstrates that it is not feasible to locate on an existing structure, towers shall be designed to be camouflaged to the greatest extent possible including, but not limited to, use of compatible building materials and colors, screening, landscaping, and placement within trees.
- (5) *Color of towers.* To the extent that any antenna extending above the height of the vegetation immediately surrounding it, they shall be a neutral color, painted or unpainted, unless the FAA requires otherwise.
- (6) *Information required to process new tower requests.*
  - (a) Provide a map of the geographic area that your project will serve;
  - (b) Provide a map that shows other existing or planned facilities that will be used by the wireless communication service provider who is making the application;
  - (c) Provide a map that shows other potential stand alone locations for your facility that have been explored;
  - (d) Provide a scaled site plan containing information showing the property boundaries, proposed tower, existing land use, surrounding land uses and zoning, access road(s) location and surface material, existing and proposed structures and topography. The plan shall indicate proposed landscaping, fencing, parking areas, location of any signage and specifications on proposed lighting of the facility;
  - (e) Describe why the proposed location is superior, from a community perspective, to other potential locations. Factors to consider in the community perspective should include: visual aspects,

setbacks, and proximity of single-family residences;

- (f) Describe your efforts to co-locate your facility on one of the poles or towers that currently exists, or is under construction. The applicant should demonstrate a good faith effort to co-locate with other carriers. The Planning Commission may deny a permit to an applicant that has not demonstrated a good faith effort to provide for co-location. Such good faith effort includes:

- (i) A survey of all existing structures that may be feasible sites for co-locating wireless communications facilities;
- (ii) Contact with all other wireless communications facilities;
- (iii) Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location; and
- (iv) Letter from tower owner stating why co-location is not feasible.

- (g) Describe how you will accommodate other antenna arrays that could co-locate on your facility. Describe how this accommodation will impact both your pole or tower, and your ground mounted facilities. Provide documentation of your provider's willingness to accommodate other providers who may be able to co-locate on your facility.

- (7) *Required (after condition) balloon test and crane test photographs.* The proposed tower shall be photographed from four locations taken 90° apart and 300 feet from the center of the tower. The proposed tower shall be superimposed on the photographs. A balloon or crane test shall be performed to illustrate the height of the tower and photographed from the same four locations. The time period, not to exceed one week, within which the test will be performed, shall be advertised in a newspaper of general circulation in the city at least 14 days, but not more than 21 days prior to the test. The four locations shall be approved by the Zoning and Development Administrator.

- (8) *Sight line representation.* A sight line representation shall be drawn from four points 90° apart and 100 feet from the proposed tower. Each sight line shall be depicted in profile, drawn at one inch equals

CO-Location  
encouraged  
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Fayetteville Code of Ordinances

40 feet. The profiles shall show all intervening trees and buildings.

(9) *Structural integrity and inspections of towers.*

(a) The applicant shall provide a certification letter that states the tower meets or exceeds design criteria and all local, state, and federal requirements regarding the construction, maintenance, and operation of the tower.

(b) If a tower fails to comply with the requirements and criteria above and constitutes a danger to persons or property, then upon written notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such requirements and criteria. If the owner fails to bring such tower into compliance within 30 days, the city may terminate the owner's conditional use permit and/or cause the removal of such tower (at the owner's expense).

(c) By making application hereunder, the applicant agrees to regularly maintain and keep in a reasonably safe and workmanlike manner all towers, antenna arrays, fences and outbuildings owned by applicant which are located in the city. The applicant further agrees to conduct inspections of all such facilities not less frequently than every 12 months. The applicant agrees that said inspections shall be conducted by one or more designated persons holding a combination of education and experience so that they are reasonably capable of identifying functional problems with the facilities.

(10) *Security fencing and anti-climbing device.*

Through the use of security fencing, towers and equipment shall be enclosed by wood board fencing not less than six feet in height. The tower shall also be equipped with an appropriate anti-climbing device. The facility shall place signs indicating "No Trespassing," "High Voltage," or other pertinent information on the outside of the fence, unless it is decided that the goals of this ordinance would be better served by waiving this provisions in a particular instance. Barbed wire fencing or razor wire shall be prohibited.

(11) *Vegetative screening requirements.*

Wireless communications facilities shall be surrounded by buffers of dense tree growth

and understory vegetation in all directions to create an effective year-round visual buffer. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both.

(12) *Setbacks from property lines.* Wireless communication facilities shall meet current setbacks as required by zoning.

(C) *Co-location.*

The Zoning and Development Administrator, following an administrative review without the requirement of an issuance of conditional use permit, may approve the following antenna installation.

(1) *Locating on existing structures.* Installation of an antenna on an existing structure other than a tower (such as a building, sign, light pole, electric transmission tower and similarly scaled public utilities/facilities, water tower, or other free-standing nonresidential structure), provided that the addition of the antenna does not add more than 20 feet of height to the original structure.

(2) *Locating on existing tower not previously approved through §163.14 of the U.D.C.* Existing towers that do not have cell antennas or arrays may not add such capability without securing a conditional use. Antennas may be replaced by similar antennas at the same height and for the same basic usage as the antennas being replaced.

(3) *Locating on existing towers previously approved through §163.14.* Additional antennas may be placed upon any tower already approved through §163.14 of the U.D.C. so long as such additional antenna would not violate any requirements of the conditional use permit or other provisions of §163.14.

(4) *For the purpose of co-location,* the applicant must submit information from a licensed professional engineer certifying the capacity of the tower for additional providers and a letter of intent from the applicant indicating their intent to share space.

(D) *Other requirements.*

(1) *Wireless communications facilities placed on top of buildings.* When a wireless communications facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing

section  
to be  
Amended  
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Screening  
requirements

TITLE XV. UNIFIED DEVELOPMENT CODE

Screening



architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front façade in order to limit their impact on the building's silhouette.

(2) *Wireless communications facilities placed on sides of buildings.* Antennas which are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them.

(E) *Exemptions.*

(1) *Personal use.* Towers for personal use which, including the height of all antenna arrays, do not extend more than 80 feet from the ground and shall meet the current setbacks as required by zoning.

(2) *Temporary structures.* Temporary structures designed to be used for not more than 14 days in connection with a special event or for any reasonable period of time in and immediately following an emergency, including without limitation those towers which are identified as "C.O.W.s" or "Cellular on Wheels."

(3) *Existing towers.* All existing towers may be replaced with the same type and height of tower structure as currently exists. All replacement towers shall comply with §163.14(A) and (B) regarding color of towers, structural integrity and inspections of towers, security fencing and anti-climbing device, and vegetative screening requirements. All existing guyed towers shall also be subject to the following conditions:

(a) A demolition permit shall be issued prior to a building permit being issued for the replacement tower;

(b) The demolition permit shall expire within 90 days and shall require the existing tower to be demolished within 90 days from issuance of the building permit for the replacement tower;

(c) The new tower shall be constructed as close as technically feasible to the existing tower;

(d) The replacement structure may be increased in width to a maximum of 36 inches. Existing guyed towers over 36 inches shall not be increased in width with a replacement tower.

(4) *Emergency and utility towers and antennas.* Towers and antennas under 35 feet in height used for 9-1-1 services and utility monitoring (gas, water, sewer, traffic lights, etc.).

(5) *Emergency services pole antennas and microwave dish antennas.*

(a) *Mayoral determination.* If sufficient information concerning gaps in vital emergency services radio coverage or microwave relay capability and the lack of any reasonable alternative is presented to the Mayor who concludes an exemption to the 150 foot height limitation or to a requirement that antennas must be within a permitted cell tower should be made to ensure public safety, the Mayor may grant the following exemptions.

(b) *Emergency services antenna.* The Mayor may authorize the placement or extension of an emergency services pole antenna affixed to the top of a permitted cell phone tower as long as the top of this antenna does not exceed 155 feet above the ground, nor has a diameter larger than four inches.

(c) *Emergency services microwave dish antenna.* The Mayor may authorize the placement of an emergency services microwave dish antenna on the outside of a permitted cell phone tower as long as this dish antenna does not have a diameter more than four feet.

(F) *Municipal profits from towers.* The City of Fayetteville should actively market its own property and existing structures as suitable co-location sites. As noted above, the review process is shortened and simplified when co-location on city property is submitted by applicant. An annual lease amount should be charged according to the fair market value of the location. In cases where the company no longer needs the tower, the city may require it to be removed. Applicants can provide co-location space for city-owned antenna.

(G) *Abandoned antennas and towers.* At such time that a licensed carrier abandons or discontinues operation of a wireless communication facility, such carrier will notify the city of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations. In the event that licensed carrier fails to give such notice, the wireless communications facility shall be considered abandoned upon such

