

**AN ORDINANCE TO THE CITY OF GOSHEN
CODE OF ORDINANCES, TO ALLOW SELF
SUPPORTING TOWERS OR ANTENNA STRUCTURES OR
MONOPOLES IN CERTAIN SITUATIONS; TO DECLARE AN
EMERGENCY AND FOR OTHER PURPOSES.**

WHEREAS, it has come to the attention of the City Council for the City of Goshen, Arkansas, that under the current zoning ordinances self supporting towers or antenna structures or monopoles are not mentioned or regulated; and

WHEREAS, the City Council finds that there should be an ordinance to allow for self supporting towers or antenna structures or monopoles in certain situations; and

WHEREAS, a public hearing was held before the Goshen Planning Commission on August 12, 2002, after notice was given of said hearing as required by law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF GOSHEN, ARKANSAS:

Section 1: Purpose. The purpose of these regulations is to promote the efficient and effective provision of communication services in compliance with the Telecommunications Act of 1996 while responding to the significant concerns of the citizens of Goshen. The intent of these regulations is to protect the general safety and welfare of the citizens of Goshen by providing for rules governing the location, construction, repair and maintenance of antenna arrays and communication towers in the planning area and incorporated areas of the City.

Section 2: Self supporting tower or antenna structure or monopole. Telecommunication towers that are dedicated structures for mounting transmitter equipment and antennas that are necessary for providing the full range of wireless or mobile services to the community shall be permitted in accordance with this ordinance. They can vary in their design and may include panel antennas mounted on and painted to match existing buildings, communications equipment housed in an architecturally integrated tower element in a shopping center, roof-top antennas screened with walls, and freestanding pole antennas screened by landscaping. They vary widely in height, depending on factors such as the number and types of wireless services used by the site, the coverage area of the transmitters, the local topography, soil types and other environmental factors. It is required that a permit be issued in compliance with the requirements of this ordinance before constructing or making a major modification to any tower or antenna coming within the requirements of this ordinance.

Section 3: Definitions.

(A) Applicant. The person or persons making an application to the City for approval

of a tower or major modification, as defined herein, or, for continuing obligations hereunder, any legal successor to such person(s). Such person(s) need not be tower or land owner.

(B) Antenna Array. An “antenna array” means one or more rods, panels, discs or similar devices used for the transmission or reception a radio frequency signals, which may include an omni directional antenna (rod), a directional antenna (panel) and/or parabolic antenna (disc). The antenna array does not include the Support Structure, as defined herein.

(C) Tower. A “tower” is any structure that is designed and constructed primarily for the purpose of supporting one or more antenna arrays, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The fact that one or more antenna arrays is placed on any structure which was not primarily intended for such purpose does not convert the structure into a tower.

(D) Support Structure. Any existing structure onto which one or more antenna arrays are placed; they need not be towers.

(E) Major Modification. A “major modification” to a tower or support structure is a change from personal use to non personal use or commercial use; any increase in height which would require a significant increase in lighting or noise level; or increase in height of more than 24’ for towers at 250’ or less in height or increases in height by more than 10% of tower’s original height if over 250’; any increase in width by more than 18”, or for guyed towers in excess of 500’ in height, 50% of the towers original width, or 6’ in diameter in the case of a monopole.

(F) Residence. “Residence” means a dwelling which is either currently inhabited by one or more persons legally entitled to be there, or suitable for such habitation. It specifically does not include abandoned or other structures which are not suitable for human habitation.

Section 4: General Applicability. These regulations shall apply to the construction and major modification of towers, whether or not they are designed to provide cellular, personal communications service and/or specialized mobile radio service, except as provided herein. These regulations shall also apply to all outbuildings and facilities built in connection with any tower governed by these regulations. Any major modifications to a tower or facility must be approved in the same way that a new tower would have to be approved. If a tower is damaged or for other reasons is to be replaced, the repair or replacement is subject to these regulations only if the repair or replacement amounts to a major modification as defined herein. Although these regulations do not purport to apply to towers or facilities in existence at the time of the adoption of this ordinance, these regulations do apply to any tower or facility constructed hereafter or any tower or facility which, although it existed at the time of the adoption of this ordinance, subsequent thereto seeks to or has undergone a major modification.

Section 5: Conditional Use Approval. Telecommunication towers shall be considered a conditional use permissible only by application to the Planning Commission with the submission

of a site plan in accordance with the zoning regulations as passed by the City Council and all other requirements of this ordinance.

Section 6: Setback Requirements.

(A) A self supporting tower, antenna structure or monopole shall be set back 150% of the total height of the structure plus antenna when adjacent to the property line of any use. (Note: A variance of this setback requirement shall not be granted.)

(B) All towers shall be set back from the nearest edge of all roads, as recognized by the Washington County 911 Operations Office with a specific name or number, by at least 20 feet plus the height of the tower. The edge of the road shall be defined as the edge of pavement or the edge of the unpaved surface at the time of the application.

(C) Towers subject to this ordinance will be located so that there will be no residences where the nearest part of the residence is within 150% of the height of the tower from the base of the tower, unless all persons owning said residences or the land on which said residences are located consent in a signed writing to the construction of said tower.

Section 7: Standards for self supporting tower or antenna structure or monopole. The following development standards and mitigation measures shall apply:

- (A) Tower, site, and building will be subject to site plan approval by the Planning Commission.
- (B) Federal Aviation Administration (FAA) and Federal Communications Commission (FCC) approval is required for all tower installations. All monopoles or self support towers higher than 100' (one hundred feet) shall be required to have FAA approval before a building permit is issued. The permit must include the tower height plus 20' (twenty feet).
- (C) Lighting shall be minimized. A dual light obstruction (OL-2) kit must be installed at the top of the tower for any structure between 150' (one hundred fifty feet) and 199' (one hundred ninety-nine feet). If FAA requires more lighting than the OL-2 light kit, a dual beacon light kit shall be installed. For daytime, a medium intensity strobe converting to a red dual bulb blinking beacon at twilight is required. The dual beacon light kit would be required to eliminate painting requirements.
- (D) All structure material and hardware to be of galvanized material.
- (E) If a back-up generator is installed a "residential" type muffler, not powered by a gasoline engine is required. Fuel storage guidelines will be strictly enforced and the generator exerciser timer must be adjusted for day-time hours.
- (F) All structures must conform to RS222-d or latest national code that includes

foundation, electrical, steel, etc. The applicant's engineer must certify to the City that all construction is in compliance with adopted codes.

- (G) The housing structure must be of standard construction specifications allowing it to blend into normal neighborhood surroundings.
- (H) A plan of vegetation control for inside, under and outside the fence is required for all tower installations.
- (I) Applications for new or expanded facilities shall contain long range plans which project market demand and expansion needs.

Section 8: Procedures for Review of an Antenna Array, Tower or Major Modification.

Any project which is subject to review pursuant to the terms of this ordinance, shall be submitted to the Chair of Goshen Planning Commission at least thirty (30) days in advance of the Planning Commission Meeting in which the matter is to be taken up and shall contain the information required by the form which is attached to the ordinance in Appendix "A". If the Application is complete and appears to comply with the terms of this ordinance, the Chair shall place the application on the agenda for consideration by the Planning Commission. The Applicant is to be notified within sixty (60) days after initial consideration by the Planning Commission of its decision with regard to the application. If the application is denied, the notice shall be in writing and supported by substantial evidence in a written record.

Section 9: Preference for Co-Location.

(A) All Applicants seeking permission to construct one or more towers in Goshen shall cooperate in co-location of antenna arrays on their towers where feasible. This requirement shall not be deemed to require Applicants to incur additional expense to construct their towers in order to facilitate co-location. All applicants seeking permission to construct a new tower primarily dedicated for cellular or PCS communication purposes shall, where feasible, design and construct said tower so as to accommodate co-location of at least one additional cellular or PCS provider in addition to Applicant. Co-location is not required if the new antenna array would interfere with the Applicant's use of the tower, or with reasonably foreseeable future uses anticipated by Applicant. Upon the request of any third part whose request for co-location has been denied, Applicant agrees to provide a written explanation of the reasons for the denial.

(B) All Applicants seeking permission to construct a tower in order to serve one or more specific purposes must demonstrate in the application process that they had made a reasonable and good faith effort to co-locate their antenna arrays on existing towers or support structures. This paragraph does not apply to Applicants who desire to construct a tower for the primary purpose of attracting other persons to co-locate on the tower.

(C) In complying with the requirements of paragraph (B), Applicants must include the information required in the appropriate Application Form, provided that:

i) With regard to the required statement that the owners of all such towers have been contacted and asked about the possibility of co-location, an explanation of why such contact was not made will be satisfactory if it indicates that a particular tower was obviously unsatisfactory for technological or safety reasons, or if the owner could not be located after reasonable inquiry

ii) With regard to the required statement explaining why the available towers in the area are not suitable for co-location, by way of example and not limitation, existing towers would be unsuitable if co-location would cause interference problems, if there are other technological problems, if the tower is already filled to capacity, if the cost of co-location would exceed the cost of a new tower, if co-location would require a major modification (as such term is defined herein), or if co-location would not satisfy the reasonably foreseeable future needs of Applicant which would be served by construction of a new tower.

iii) With regard to the supplemental information which may be required by the Planning Commission, Applicant may delete any and all references to confidential pricing information in any correspondence required to be submitted.

Section 10: Mitigation of Visual Impact. In minimizing any aesthetic problems with a proposed Tower or Antenna Array, Applicants agree to take the following steps:

(A) Signage at the site is limited to non-illuminated warning and equipment identification signs.

(B) Unless specifically required by law or a regulatory authority or because there is no technologically feasible alternative, no tower shall be equipped with strobe lights which operate at night.

Section 11: Precautions against excessive noise. Equipment used in connection with a tower or antenna array shall not generate noise that can be heard beyond the site. This prohibition does not apply to air conditioning units no noisier than ordinary residential units or generators used in emergency situations where the regular power supply for a facility is temporarily interrupted; provided that any permanently installed generator shall be equipped with a functional residential muffler.

Section 12: Precautions Against Trespassers. The base of every tower must be surrounded with a fence at least 6 feet in height and topped with either barbed wire or razor wire. The gate for such fence shall be kept locked except when authorized personnel are working on or around the tower. The fence must be posted with signs warning against trespass and providing a number to call in case of an emergency. With the exception of towers constructed in such a way that it is not reasonably practicable to do so, any ladder or other apparatus designed to aid in the climbing of a tower shall be constructed so that the bottom 12 feet of such ladder or apparatus is not readily accessible except when it is in use by construction, maintenance, repair or other authorized personnel.

Section 13: Maintenance of towers and facilities.

(A) By making an application hereunder, 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. Applicant further agrees to conduct inspections of all such facilities not less frequently than every 12 months. 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.

(B) The Chair of the Planning Commission may request in writing from the Applicant documentation regarding such inspection and maintenance activities at any such facilities. Such requests by the Chair for documentation shall not be made more than three (3) times per year on any given tower, Applicant agrees to provide the documentation within 30 days after the mailing of any such request from the Chair. Said documentation shall be in the form of a sworn statement and shall include but need not be limited to the following items; unless the Chair specifically indicates that one or more of the following items need not be provided:

(i) The estimated date on which the tower was originally constructed and the date of all modifications thereto.

(ii) Verification of safe and appropriate grounding and electrical connections as per the version of the National Electrical Code in effect at the last modification or addition to the electrical system.

(iii) Structural design certification by the tower manufacturer regarding the facility's capability to withstand a combination of ½" accumulation of ice and 70 mile per hour winds.

(iv) A statement that all antenna arrays on such tower have been attached and maintained in accordance with the specifications of the manufacturer, if any.

(v) For a guyed tower, a statement that all guy wires are being properly maintained so that structural integrity of the tower is not compromised.

(vi) For any lattice tower, a statement that all welds and other joints are being properly maintained so that they do not show signs of wear which would make the tower unsafe.

(vii) For lighted towers, verification of payment of the most recent applicable electric bill or other evidence that the facility remains functional and the safety signals are in working order.

(viii) For unlit towers, a statement by the owner verifying the continued use or need for the structure.

(ix) For structures which are painted for cosmetic reasons, proof that the tower has been painted within the last 5 years, or proof satisfactory to the Chair that the exterior does not currently need painting.

(C) If any such information is not submitted within 30 days after the first notice, the Chair shall send a second written notice requesting the documentation within 15 days from the date of the second mailing. If the Chair does not receive the requested information by the end of normal business on the 15th day from the date on which the second notice was mailed, the Chair shall place the issue of whether the tower has been abandoned on the agenda at the next regularly scheduled Planning Commission meeting.

(D) At that meeting, the Planning Commission shall determine whether the subject tower has been abandoned. If the owner/operator fails to respond or appear before the Commission, or fails to present evidence regarding the above describe items, the Planning Commission shall make a determination of abandonment and forward said finding to the City Council for action.

(E) The City Council at its next regularly scheduled meeting, shall consider the determination of abandonment forwarded by the Planning Board, along with any subsequent submittals by the owner/operator of the tower. The owner/operator may submit a remedial action plan which may call for the owner/operator to be given a reasonable time not to exceed three months, to implement a plan to restore the facility to safe operations. The City Council may adopt such plan or any substitute plan deemed by the City Council to be reasonable. If at any time, the City Council finds that the tower in question has been abandoned, the City Council shall instruct the Mayor to have the tower removed at the owner's expense. Any salvage value derived from the removed structures shall be applied to the costs of removal, if not paid by the owner.

Section 14: Regulatory Compliance. Applicant, by requesting approval of any Tower or Antenna Array in Goshen, certifies and agrees that no Towers or Antenna Arrays under the Applicant's control will emit electro-magnetic radiation (EMR) in excess of federal safety and health guidelines as adopted by any authorized federal regulatory agency.

Section 15: Opportunity for Public Response. Except as expressly provided herein, all landowners of record owning land within 300 feet of the base of the tower and all landowners of record owning property adjacent to the parcel of land on which any proposed tower or major modification subject to these regulations is to be placed, must be notified in writing and given a chance to voice opposition or support for a proposed tower or antenna array at a public meeting of the Planning Commission. For purposes of this provision, a landowner shall be considered to own property which is "adjacent" to the parcel of land on which the tower is to be constructed if it shares a common boundary with the parcel in question, or if it would share a common boundary except for the existence of a public road. In addition to the foregoing notice requirements, any time a variance from any of the requirements in these regulations is sought, all persons owning land within 500% of the height of the tower from the base of the tower must be notified of the requested variance, and be given an opportunity to respond to the request.


Section 16: Emergency Clause. With the passage of the Telecommunications Act of 1996 and the potential growth in the telecommunications market in the City it is hereby declared that an emergency exists and this ordinance, being necessary for the immediate protection of the health, safety and welfare of the citizens of Goshen, Arkansas, shall be in effect immediately upon its passage, approval and publication.

PASSED AND APPROVED this 10th day of September, 2002.



Mayor

ATTEST:



City Recorder/Treasurer

ROLL CALL

Names of those voting YEA

Andy Bethell
James Boyd
Jim Northup
Max Poye
Fred Wizer

Names of those voting NAY

Absent

APPENDIX "A"

**APPLICATION FOR APPROVAL
OF TOWER OR ANTENNA ARRAY**

CITY OF GOSHEN

**APPLICATION FOR APPROVAL
OF TOWER OR ANTENNA ARRAY**

Name of Applicant: _____

Address: _____

Phone: _____ Fax: _____

I certify under perjury that I have read this application. The statements and answers made herein and all data, information, and evidence herewith submitted are, to the best of my knowledge and belief after reasonable investigation, true and correct. I understand that submittal of incorrect or false information is grounds for invalidation of this application. I understand that the City might not approve my application or might set conditions for approval.

Signature _____ Date _____

Name (please print) _____

Capacity in which signed _____

Property Owner: _____

Address: _____

Phone: _____ Fax: _____

To whom should City send correspondence (names and addresses):

Property Information:

Section: _____ Township: _____ Range: _____

Tax Parcel Numbers: _____

Planning Area: _____

Quorum Court District: _____

Road Information:

U.S., State or County Road(s) giving access: _____

Road surface: _____

Environmental Information:

Is the project subject to the National Environmental Policy Act?

_____ Yes _____ No

If yes, have the NEPA requirements been met?

_____ Yes _____ No

CHECKLIST

APPROVAL OF TOWER OR ANTENNA ARRAY

1. Plat review fee of \$50. (Waived for towers for personal use.)
2. Up to 20 copies of the plat, as required by the Staff.
3. Completed Application Form.
4. If the tower is being constructed for a specific purpose, a list of all existing towers within a 1 mile radius of the proposed site, or such smaller area as Applicant demonstrates would be suitable for the purpose to be served by the tower.
5. A statement that the owners of all such towers have been contacted and asked about the possibility of co-location, or an explanation of why such contact was not made.
6. A signed statement explaining why the available towers in the area are not suitable for co-location.
7. At the request of the Staff of the Planning Board, copies of correspondence with the owners of such towers, and such other additional information about one or more potential co-location sites, including a tower study, as may be required to ascertain whether co-location is infeasible.
8. If you are asking for a waiver of a requirement, submit a completed "Variance Request Form," which may be obtained from the Planning Office.

The Plat must include the following information:

1. Name & address of owner, applicant, and surveyor.
2. Date, scale (1" - 100' preferred), and north arrow.
3. Vicinity map with scale and north arrow indicating surrounding roads, municipal limit lines, growth area boundaries, state lines, and county lines.
4. Legal description of the property on which the tower is to be placed, with dimensions and angles sufficient to locate all lines. Property shall be located by Section, Township, and Range, and tied to the nearest defined and referenced Section or Quarter Section Corner.
5. The precise location and dimensions of the proposed tower or existing tower as it is to be modified.
6. The location and identification of existing roads or access ways within and to the property

and within 20 feet plus the height of the tower from the base of the perimeter of the tower.

7. The location and size of existing easements on or adjoining the property, or a note that there are none.

8. The location of flood areas on the property or a note indicating there are none.

9. The location of perennial and intermittent water courses on or adjoining the property or a note indicating there are none.

10. A note describing any plat and deed restrictions, or a note indicating there are none.

CHECKLIST

APPROVAL OF TOWER OR ANTENNA ARRAY

Signature Blocks on the Plat

- 1. Certificate of Accuracy of Survey.

I certify that the plan shown and described hereon is a true and correct survey in compliance with the Regulations, Standards and Specification for the Division, Development and Improvement of Unincorporated Land in the City of Goshen.

Date: _____ Surveyor: _____

- 2. Planning Board Approval

This plat was approved by the City of Goshen Planning Board at a meeting on (date):

Planning Director: _____ Date: _____

Information which must be on either the plat or a signed Site Plan (at the option of the Applicant)

- 1. The location of all outbuildings to be placed on the property in connection with the tower.
2. A list of all property owners (including corresponding deed book and page numbers) who own the land within _____ feet plus the height of the tower from the perimeter of the base of the tower.
3. The location of all personal residences within 150% of the height of the tower from the perimeter of the base of the tower.
4. The existing topography on the property, as per existing U.S. Geological Services survey maps.

Signature Block on the Site Plan

Certificate of Accuracy

I certify that the information provided herein is true and correct and is in compliance with the Regulations, Standards and Specification for the Division, Development and Improvement of Unincorporated Land in the City of Goshen.

Date: _____ Applicant/Engineer: _____

Name of Signatory: _____

Capacity in which signed: _____

CHECKLIST

APPROVAL OF TOWER OR ANTENNA ARRAY

9-1-1 Information: (Sign alternative (a) or (b), not both)

(a) Applicant hereby certifies that the tower or antenna array in question is not used for the provision of 9-1-1 services, and if the use of such tower or antenna array is changed to include such services the provider of such services will be directed by Applicant to provide the information required by subsection (b).

Signature _____ Date _____

Name (please print) _____

Capacity in which signed _____

b) Applicant hereby certifies that the following information, in form reasonably satisfactory to the Washington County 9-1-1 Operations, has been provided to the Washington County 9-1-1 Operations:

- a footprint map for all sectors of the tower or antenna array
- an address for each sector of the tower meeting the address standards provided by Washington County 9-1-1 Operations, including separate designations for each sector
- a ten digit Pseudo ANT for each sector of the tower
- a non-disclosure agreement between the Applicant and Washington County 9-1-1 Operations, to be signed by the Washington County 9-1-1 Director or other authorized individual

Signature _____ Date _____

Name (please print) _____

Capacity in which signed _____