

ORDINANCE NO. XXXX

AN ORDINANCE RELATED TO LAND DEVELOPMENT IN THE CITY OF STILLWATER; AMENDING STILLWATER CITY CODE CHAPTER 23, TITLED "LAND DEVELOPMENT CODE", ARTICLE V, TITLED "USE CATEGORIES AND LIMITATIONS"; AMENDING SECTION 23-96, TITLED "DEFINITIONS"; REPEALING SECTION 23-113, TITLED "TELECOMMUNICATIONS TOWERS"; ENACTING NEW SECTIONS 23-113 THROUGH 23-113.4, TO PROVIDE FOR THE REGULATION OF TELECOMMUNICATIONS TOWER AND SMALL CELL TELECOMMUNICATION FACILITY MOBILE WIRELESS NETWORK USES; AND PROVIDING FOR SEVERABILITY.

(AMENDMENTS HIGHLIGHTED BY STRIKETHROUGH AND UNDERLINING)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STILLWATER, OKLAHOMA THAT:

Section 1. That Stillwater City Code, Chapter 23, titled "Land Development Code", Article V, titled "Use Categories and Limitations", Division 1, Section 23-96, titled "Definitions", be and the same is now amended by modifying current definitions for "telecommunications tower" and "utilities" and adding definitions for "collocation", "small cell facility" and "utility pole", to read as follows:

"Collocation means the mounting or installation of transmission equipment on an existing telecommunications tower or other support structure for the purpose of transmitting and/or receiving radio frequency signals for providing telecommunications services."

"Small cell facility means a low-powered wireless base station which functions much in the same way as larger cells in a wide-area, mobile wireless network that are typically installed relatively high on a telecommunications tower, to provide signal coverage to a large geographic area. Small cells facilities cover a smaller, targeted, localized area to provide connectivity to wireless network subscribers in areas that typically present capacity and coverage challenges to traditional wide-area wireless networks. Small cell facilities are smaller in size and thus are more conducive to collocation on an existing support structure or installation on a private utility's, single-use utility pole erected for the sole or primary purpose of supporting a small cell facility."

"Telecommunications tower means any freestanding structure, other than a utility pole, built or used for the sole or primary purpose of supporting antennas and their associated facilities, licensed or authorized by the Federal Communications Commission, particularly including structures that are constructed for wireless communications services and also including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site."

"Utility or Utilities means establishments engaged in the provision of the following utility services: electric power, natural gas, steam supply, water supply sewage removal and telecommunications services. Specific activities associated with the utility services provided by utilities include the following:

- (1) Electric power includes generation, transmission, and distribution;*
- (2) Natural gas includes distribution;*

- (3) Steam supply includes provision and/or distribution;
- (4) Water supply includes treatment and distribution
- (5) Sewage removal includes collection, treatment, and disposal of waste through sewer systems and sewage treatment facilities; and
- (6) Telecommunications includes the transmission of signs, signals, messages, words, writings, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems.”

“*Utility pole* means a long, slender, generally vertical and usually cylindrical object, other than a telecommunications tower, that is or may be used in whole or in part by a public or private utility for wireline, wireless or optical telecommunications, electrical distribution, lighting, traffic control, signage or similar functions.”

Section 2. That Stillwater City Code, Chapter 23, titled “Land Development Code”, Article V. titled “Use Categories and Limitations”, Division 3, Section 23-113, titled “Telecommunications towers”, be and the same is now specially repealed.

Section 3. That Stillwater City Code, Chapter 23, titled “Land Development Code”, Article V. titled “Use Categories and Limitations”, Division 3, is now amended by enacting new Sections 23-113 through 23-113.4, to read as follows.

“Sec. 23-113. – Intent, and Purpose of Wireless Telecommunication Regulation.

- (a) The land use regulations prescribed in Sections 23-113 through 23-113.##, pertaining to wireless telecommunications facilities, are enacted pursuant to the following authorities:
 - (1) Oklahoma Constitution Article 18, Section 7, which provides that ‘[n]o grant, extension, or renewal of any franchise or other use of the streets, alleys, or other public grounds or ways of any municipality, shall divest the State, or any of its subordinate subdivisions, of their control and regulation of such use and enjoyment.’
 - (2) The Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996), as amended, which, in part, regulates personal wireless telecommunications services and facilities.
 - (3) Title 47 United States Code, Section 332(c)(7), which preserves to the City of Stillwater the authority to regulate the placement, construction, and modification of personal wireless service facilities, provided that such regulations do not unreasonably discriminate among providers or prohibit or have the effect of prohibiting the provision of personal wireless services.
 - (4) Title 47 United State Code, Section 224, which exempts the City of Stillwater and the Stillwater Utilities Authority from any obligation to permit pole attachments to any pole, duct, conduit or rights-of-way controlled by them.
 - (5) Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (*i.e.*, the “Spectrum Act”), codified as 47 United States Code, Section 1455, which

mandates that a State or local government approve certain wireless broadband facilities siting requests for modifications and collocations of wireless transmission equipment on an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station.

- (6) The Federal Communications Commission's 2009 Declaratory Ruling, 24 FCC Rcd. 13994 (F.C.C.), 24 F.C.C.R. 13994, FCC 09 99, Federal Communications Commission Report and Order, FCC-14-153A1 Rcd, FCC 14-153, adopted October 21, 2014 and Title 47 Code of Federal Regulations (CFR), Section 1.40001(c)(2)"
- (b) The City of Stillwater declares that by the promulgation of these land use regulations governing wireless telecommunications facilities, its intent and purpose is to exercise its constitutional authority to regulate matters of local concern and public right-of-way within its boundaries consistent with the above-cited federal and state authorities.

Sec. 23-113.1. - Telecommunication Tower Use Conditions.

All telecommunication towers ('towers') and their attached telecommunications facilities shall only be permitted by the grant of a specific use permit, subject to the requirements of this section, except as expressly provided otherwise.

- (a) Collocation of telecommunications facilities is encouraged wherever technologically feasible. An application to erect a tower shall include competent, written evidence that collocation of facilities on an existing telecommunications tower is not feasible.
- (b) Towers may be considered either principal or accessory uses. Another principal or accessory use on the same property shall not preclude the installation of a tower on a property.
- (c) No tower shall be permitted:
- (1) On property owned by the City within a Public (P) District, without prior city council approval and an associated lease agreement or permit.
 - (2) Without an approved specific use permit, on property within any Large Lot Single-Family Residential (RSL), Small Lot Single-Family Residential (RSS), Two-Family Residential (RT), Two-Family and Multi-Family (RTM), Multi-Family Intermediate (RMI), Multi-Family Urban (RMU), or Planned Unit Development (PUD) district zoned for residential use.
 - (3) Within any publicly owned or dedicated right-of-way or easement.
 - (4) Within any aviation flight path of the Stillwater Regional Airport, except as permitted or authorized by the Federal Aviation Administration (FAA).
- (d) The maximum height of any tower shall not exceed seventy-five (75) feet unless approved by a specific use permit.
- (e) Towers shall be subject to the following requirements:

- (1) Towers and attached telecommunications facilities shall be designed to blend into the surrounding environment through the use of color, camouflaging and architectural treatment, so as to make the antenna and related equipment as visually unobtrusive as possible.
 - (2) Except in districts zoned for industrial use, towers shall be of a monopole design, without guy wires or external supporting braces; provided that an alternative configuration may be permitted, if approved by specific use permit, after a determination is made that it would be more compatible with the surrounding environment or that the necessary telecommunications facilities cannot be supported by a monopole.
 - (3) Towers and attached telecommunications facilities shall be constructed in compliance with all applicable federal and state statutes and regulations and all applicable ordinances of the city, including but not limited to all building, electrical and mechanical codes adopted by the city or state.
- (f) Towers shall not be illuminated by artificial means and may not display strobe lights unless federal or state authorities expressly require such lighting. When incorporated into the approved design of a tower, light fixtures used to illuminate ball fields, parking lots or similar areas may be attached to the tower.
- (g) The use of any portion of a tower for advertising or signs other than warning or equipment information signs is prohibited.
- (h) All utility buildings and structures accessory to a tower shall comply with all applicable requirements of the underlying zoning district. Exterior ground-mounted equipment occupying more than fifty (50) square feet, if visible from ground level, shall be screened from view from abutting properties used or zoned for residential purposes by a six (6) foot privacy fence or wall constructed with customarily used materials, designed and arranged to provide visual separation of uses.
- (i) The following setback requirements apply to all towers unless otherwise expressly approved as part of the specific use permit:
- (1) Towers shall be set back a distance equal to at least 110% of the height of the tower from any adjoining lot line of any residential, office, or agriculture zoned property.
 - (2) Accessory buildings shall be subject to all applicable zoning district building setback requirements.
- (j) Towers shall be enclosed by security fencing that is at least six (6) feet in height or shall otherwise be equipped with an effective tower anti-climbing device.

Sec. 23-113.2. - Small Cell Telecommunication Facility Use Conditions.

All small cell facilities ("small cells") and supporting structures shall be subject to the requirements of this section, unless otherwise expressly stated.

- (a) Collocation of small cell telecommunications facilities is encouraged wherever technologically feasible. An application to erect a new small cell facility shall include

- competent, written evidence that collocation of facilities on an existing or other supporting structure is not feasible.
- (b) Small cell facilities, including their collocation, modification and their supporting structures shall be:
- (1) Permitted by special exception, when located outside of any public right-of-way and within any Large Lot Single-Family Residential (RSL), Small Lot Single-Family Residential (RSS), Two-Family Residential (RT), Two-Family and Multi-Family (RTM), Multi-Family Intermediate (RMI), Multi-Family Urban (RMU), or Planned Unit Development (PUD) district zoned for residential use, provided that they comply with all applicable requirements of the underlying zoning district and this section;
 - (2) Permitted by right within any zoning district other than those cited in paragraph (1) above, provided that they comply with all applicable requirements of the underlying zoning district and this section; and
 - (3) Permitted within any public right-of-way or easement regulated by the City of Stillwater, only by the grant of a right-of-way occupancy permit. No small cell facility shall be collocated on a utility pole owned by a municipal public utility or other infrastructure owned by a public utility, except as authorized and governed by a lease, license or permit approved by the public utility. As such, they shall be exempt from the requirements of this section.
- (c) Unless otherwise permitted by special exception, the size of any small cell shall be subject to the following regulations:
- (1) Any antenna, including exposed elements, shall not exceed a volume of three (3) cubic feet.
 - (2) All antennas, including exposed elements, shall not exceed a total volume of six (6) cubic feet.
 - (3) The primary equipment enclosure located with the facility shall not exceed a volume of seventeen (17) cubic feet.
 - (4) Ancillary equipment such as any the supporting utility pole or structure, electric meters, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services are not included in these equipment volume calculations.
- (d) *Setback and Spacing Requirements.* Unless otherwise permitted by special exception, the siting of any new small cell facility located within any public right-of-way or easement regulated by the City of Stillwater or a public trust with the City as its beneficiary shall be subject to the following regulations:
- (1) Small cell supporting structures shall be located a minimum of five-hundred (500) feet from any other small cell supporting structure located on the same side of the street. This distance shall be measured in a straight line from the nearest point of each supporting structure, located at surface grade.

- (2) Supporting structures located between any existing utility poles shall be sited equidistant between them, within ten (10) percent variance of the total distance. This distance shall be measured in a straight line from the nearest point of each utility pole, located at surface grade.
 - (3) Small cell facilities and supporting structures shall be set back from any road surface or curb no less than eight (8) feet to allow for a six (6) foot sidewalk or trail set back two (2) feet from any road surface or curb.
 - (4) Small cell facilities and their supporting structures shall be located where there is no encroachment into any existing or planned corner sight triangles or sight line triangles. Supporting structures shall not interfere with any safe sight distances or otherwise block vehicular, bicycle or pedestrian traffic, or conflict with the installation, maintenance, or repair of any public utility.
 - (5) The supporting structures of small cell facilities shall be set back a distance equal to at least 110% of the height of the facility, including its supporting structure, from any adjacent residential, office, or commercial structure. Small cell facilities including their support structures shall not exceed fifty (50) feet in height measured at grade; provided that in no event shall any small cell facilities with their support structures exceed 110% of the tallest existing utility pole located within 500 feet along the same street. This distance shall be measured in a straight line from a small cell facility's supporting structure the nearest point of any utility pole, located at surface grade.
- (e) Small cells and supporting structures shall be designed to blend into the surrounding environment through the use of color, camouflaging and architectural treatment, so as to make the antenna and related equipment as visually unobtrusive as possible.
 - (f) Small cells and supporting structures shall not be illuminated by artificial means and may not display strobe lights unless federal or state authorities expressly require such lighting. When incorporated into the approved design of a supporting structure, light fixtures used to illuminate ball fields, parking lots or similar areas may be attached to the supporting structure.
 - (g) The use of any portion of small cells and supporting structures for advertising or signs other than warning or equipment information signs is prohibited.
 - (h) Small cells and supporting structures shall be constructed in compliance with all applicable federal and state statutes and regulations and all applicable ordinances of the city, including but not limited to all building, electrical and mechanical codes adopted by the city or state.

Sec. 23-113.3. – Federal Restrictions on Application Review Periods.

- (a) The City shall complete its review and approve or deny a completed application for:
 - (1) Modification of an existing telecommunications tower or small cell facility that does not substantially change the physical dimensions of such tower or facility within sixty (60) days of the date such an application is received.

- (2) Collocation of small cell and other telecommunication facilities on any existing supporting structure within ninety (90) days of the date such an application is received; and
 - (3) Construction or installation of a new telecommunications tower, small cell facility, and all other telecommunications facilities within one hundred fifty (150) days of the date such an application is received;
- (b) The City may toll the running of the sixty (60), ninety (90) or one hundred (150) days if it notifies the applicant within thirty (30) days of submission that its application is incomplete. The timeframes begin to run when an application is first submitted, not when it is deemed complete by the City. A determination of incompleteness tolls the timeframes only if the City provides notice to the applicant in writing within thirty (30) days of the application's submission, specifically delineating all missing information, and specifying the code provision, ordinance, application instruction, or otherwise publicly-stated procedures that require the information to be submitted. Following an applicant's submission in response to a determination of incompleteness, the City may reach a subsequent determination of incompleteness based solely on the applicant's failure to supply the specific information that was requested within the first thirty (30) days. The timeframes begin to run again when the applicant makes its supplemental submission; provided that the timeframes may be tolled again if the City notifies the applicant within ten (10) days that the supplemental submission did not provide the specific information identified in the original notice delineating missing information.
- (c) These timeframes may be extended beyond the sixty (60), ninety (90) or one hundred (150) days by mutual consent of the applicant and the City Council.
- (d) Pursuant to Section 6409(a) of the Spectrum Act, codified as 47 United States Code, Section 1455 and Title 47 Code of Federal Regulations (CFR) Section 1.40001(c)(2), the City may not deny, and shall approve, any eligible facilities request for a modification of an existing telecommunications tower or small cell facility that does not substantially change the physical dimensions of such tower or facility. As used in this subsection, cumulative modifications substantially change the physical dimensions of a tower or small cell facility if it meets any of the following criteria:
 - (1) Supporting structures outside of public rights-of-way or easements: it increases the height of the structure by more than ten percent (10%), or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for those supporting structures in rights-of-way or easement and for all small cell facilities, it increases the height of the structure or facility by more than ten percent (10%) or ten (10) feet, whichever is greater;
 - (2) Supporting structures outside of public rights-of-way: it protrudes from the edge of the structure more than twenty (20) feet, or more than the width of the structure at the level of the appurtenance, whichever is greater;
 - (3) For those supporting structures in the rights-of-way and for all small cell facilities, it protrudes from the edge of the structure more than six (6) feet;

- (4) Involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
 - (5) Entails any excavation or deployment outside the current site of the tower, support structure or small cell facility;
 - (6) Would defeat the existing concealment elements of the tower, supporting structure or small cell facility; or
 - (7) Does not comply with conditions associated with the prior approval of construction or modification of the tower, supporting structure or small cell facility unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding “substantial change” thresholds identified above.
- (e) Upon denial or approval of an application for collocation, construction or installation of a new telecommunications tower, small cell facility and all other telecommunications facilities, or modification of an existing tower or facility, the City shall adopt a written determination which clearly states the basis for the decision to approve or deny an application. If an application is denied, the written notice must include substantial evidence in support of the denial. A notice is considered written if it is included in the minutes of the public meeting in which the application was denied.
- (f) If the City fails to approve or deny an application seeking approval of modification of an existing telecommunications tower or small cell facility within the timeframe for review, accounting for any tolling, the request shall be deemed granted; provided that the deemed granted shall not become effective until the applicant notifies the City in writing after the review period has expired, accounting for any tolling, that the application has been deemed granted. If the City does not act upon any application for collocation, the construction or installation of a new telecommunications tower, small cell facility, or any other telecommunications facilities within their prescribed timeframes, then the applicant may seek redress in a court of competent jurisdiction within thirty (30) days, as provided in Title 47 United States Code, Section 332(c)(7)(B)(v).

Sec. 23-113.4. – Application Requirements.

- (a) The specific use permitting process as established in City Code Chapter 23, Article VI, Division 7 shall be applicable to specific use permits requested for the construction or installation of a new telecommunications tower. The special exception process provided in this chapter shall be applicable to new small cell facilities. All new telecommunications and small cell facilities, the collocation of telecommunications and small cell facilities on an existing supporting structure, and the modification of an existing telecommunications tower or small cell facility shall include in their applications the information and documentation required in this section.
- (b) *Application Requirements.* An application required by this section shall be on a form furnished by the Development Services Department which shall include, but not be limited to the following:
- (1) A typewritten and electronic/digital copy of the legal description of the subject property;

- (2) A copy of any existing or proposed restrictive covenants on the subject property, if applicable;
- (3) A nonrefundable filing fee;
- (4) A site plan, drawn to an appropriate scale and containing, at a minimum, the following:
 - a. The location and distance to the nearest adjacent residential, office, or commercial structure to the site;
 - b. The location of existing or proposed above and underground public utilities, including the depth of underground utilities, the height (accounting for seasonal variances) of overhead utility wires and the closest distance the proposed small cell facility and its supporting structure and other telecommunications facilities will be to any existing or proposed above and underground utility;
 - c. The location of the proposed telecommunications tower or small cell facility and any supporting structure and other telecommunications facilities by longitude and latitude (degrees, minutes and seconds) and approximate street address, the distance to the nearest, abutting road surface, curb and sidewalk, the nearest utility poles the proposed site is between, and the nearest existing small cell supporting structures located within 1,000 feet;
 - d. The height of the proposed telecommunications tower or small cell facility and its supporting structure above ground level, in feet and meters, including any top mounted attachments, such as antennae and lightning rods;
 - e. The dimensions of the site, including easements and rights-of-way, and location with respect to streets and adjacent properties;
 - f. The location of the telecommunications tower, small cell facility, or other telecommunications facilities by longitude and latitude (degrees, minutes and seconds) and distance to each property line of the site;
 - g. The location and dimensions of any buildings or other structures located on the site;
 - h. The current zoning and use of the subject property;
 - i. The location, current zoning and use of abutting or adjoining properties; and
 - j. The location of existing and proposed public utilities;
- (5) The type of supporting structure, i.e., guy lattice tower, self-supporting lattice, monopole, utility pole or other;
- (6) A detailed description of the project, including but not limited to: purpose, technical and functional use of the facility, how the facility will close a significant gap in telecommunications coverage, competent evidence that collocation of facilities on

an existing or other supporting structure is not feasible, and how the facility is designed to blend into the surrounding environment;

- (7) Photographs, attached to the application including:
 - a. Photographs taken from the supporting structure site, with views from the proposed location in all directions. The direction (e.g., north, south, etc.) shall be indicated on each photograph and, as a group, should present a complete (360 degree) view of the area around the supporting structure and its accompanying telecommunications facilities; and
 - b. Aerial photograph(s) of the site and its abutting or adjoining properties.
- (8) If for a collocation or modification, the identification of any previously approved permit for the supporting structure requested to be used; and
- (9) If the Director of the Development Services Department shall find that the proposed collocation is consistent with previously approved permit, the site's current zoning regulations and complies with all other applicable federal and state statutes and regulations and all applicable ordinances of the city, including but not limited to all building, electrical and mechanical codes adopted by the city or state, the Director is authorized to approve an application for collocation or modification, without any further requirement."

Section 4. SEVERABILITY CLAUSE. If any section, sentence, clause or phrase of this ordinance or any part of it is for any reason found to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance or any part of it.

PASSED, APPROVED, AND ADOPTED THIS ____ DAY OF _____ 2018.

XXXXXXXXXX, MAYOR

(SEAL)
ATTEST:

ELIZABETH CHRZ, CITY CLERK

APPROVED AS TO FORM AND LEGALITY THIS ____ DAY OF _____ 2018.

JOHN E. DORMAN, CITY ATTORNEY

First Reading: XX-XX-18
Second Reading: XX-XX-18

DRAFT