

Ordinance No. 2016-3

An Ordinance Establishing Telecommunication Regulations

BE IT THEREFORE ORDAINED that the City of Midfield hereby establishes the following telecommunication regulation

**SPECIAL EXCEPTION ZONING ORDINANCE
TELECOMMUNICATIONS REGULATIONS**

• **Sec. 1.0. - Purpose.**

In order to accommodate the communication needs of residents and businesses while protecting the public health, safety, and general welfare of the community, these regulations are necessary in order to (1) facilitate the provision of wireless telecommunications services to the residents and businesses of the city; (2) minimize adverse visual effects of towers through careful design and siting standards; (3) avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and (4) encourage and maximize the use of existing and approved towers, buildings and other structures to accommodate new wireless telecommunications antennas in order to reduce the number of towers needed to serve the community.

• **Sec. 2.0. - Applicability.**

This article shall apply to antennas, towers and other supporting structures which are integral to the principal use of the premises or which are a separate business from the principal use of the property, including, but not limited to: Commercial radio and television transmission antennas, television receiving antennas for cable television systems, telecommunications antennas, and other antennas which are not an accessory use of the premises. All such uses shall be a special exception use, except the following uses which shall be a permitted use in all zoning districts.

A.

Installation of antennas on existing towers where the tower height is not increased and all accessory structures and uses are located within the existing tower compound.

B.

Installation of antennas on power poles where the height of the pole is not increased and accessory cabinets and boxes have a volume of less than two (2) cubic feet.

C.

Installation of antennas owned by public utilities which are accessory to: remote terminal units serving pad mounted switch gear, remote switch controllers and similar telemetry antennas; provided the antenna is attached to a power transmission or distribution pole and does not exceed the height of the pole, or the antenna is attached to a building and does not extend more than ten (10) feet above the roof line of the building or the antenna is ground mounted and does not exceed twenty (20) feet in height. Said antennas shall also be exempt from the permitting requirements of section 10.0 of this article.

D.

Installation of antennas which are accessory to supervisory control and data acquisition facilities located within an electric power substation, provided the antenna does not exceed the height of the poles or substation structure. Said antennas shall also be exempt from the permitting requirements of section 10.0 of this article.

E.

Installation of antennas on concealment structures, except concealment towers, where the antenna is not visible from off the premises and the accessory cabinet has a volume of less than forty (40) cubic feet or is not visible from off the premises.

F.

Installation of antennas on buildings which comply with all of the following conditions.

1.

The building is not located in a single family residential district.

2.

The property is not subject to a conditional use, variance or other zoning restriction which exceeds the requirements of the zoning ordinance.

3.

The antenna does not exceed the maximum building height in the zoning district nor extend more than twelve (12) feet above the roof line of the building.

4.

The accessory cabinet does not exceed forty (40) cubic feet in volume or is located where it is not visible from off the premises.

- **Sec. 3.0. - Availability of suitable existing towers or other structures.**

No new towers, which are a special exception under the terms of this article, shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the city that no existing tower or structure can accommodate the applicant's needs.

- **Sec. 4.0. - Principal uses to be on lots.**

All telecommunication towers and other supporting structures which are not an integral part of the principal use of the premises shall be the principal use of the premises on which they are located and shall be located on a separate lot. Because of the unique nature of these structures, said lots shall be exempt from the requirement to have principal frontage upon a public street, any minimum lot area or width requirements and any setback requirements of the zoning district where they are located. However, the lot for any telecommunications tower shall be large enough to accommodate the tower and accessory structures of the applicant, as well as the accessory structures of at least one additional co-locating service provider.

- **Sec. 5.0. - Setbacks.**

Towers shall be placed no closer than a distance equal to the height of the tower from any dwelling located in the A-I, R-E, E-1, E-2, R-1, R-2, R-3, PRD, PR-I or RT-4 zoning district. However, because of the unique nature of telecommunications facilities, other required setbacks from property lines shall be determined on an individual basis by the board of adjustment as part of the special exception process. The board shall consider the following factors when establishing minimum setbacks.

- A.
The type of telecommunications facility;
- B.
Relationship to other properties and buildings;
- C.
Relationship to the public right-of-way;
- D.
Size of the subject lot or parcel;
- E.
Accessibility for public safety and other purposes; and
- F.
Other factors which effect the telecommunications facility, surrounding property and community at large.

- **Sec. 6.0. - Aesthetics and lighting.**

- A.
Towers shall either maintain a galvanized steel finish, or subject to any applicable FAA standards, be painted a neutral color so as to reduce visual obtrusiveness.
- B.
The design of the buildings and accessory structures and uses shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the telecommunication facilities to the natural setting and built environment.
- C.
If an antenna is installed on a structure other than a tower, the antenna and accessory uses and structures must be of a color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related facilities as visually unobtrusive as possible.
- D.
Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the city may review the available lighting alternatives and

approve the design that would cause the least disturbance to the surrounding views. Lighting must be shielded or directed to the greatest extent possible so as to minimize the amount of light that falls onto nearby properties, particularly residences.

E.

No portion of any antenna array may extend beyond the property line.

F.

Accessory buildings, cabinets and structures shall not exceed sixteen (16) feet in height, and shall be compatible with the surrounding area.

G.

The city may require a special design of any telecommunications facility where findings of particular sensitivity are made.

- **Sec. 7.0. - Federal requirements.**

All towers and antennas must meet or exceed the current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this article shall bring such towers antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owners expense.

- **Sec. 8.0. - Building codes and safety standards.**

The owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes, the applicable standards for towers that are published by Electronic Industries Association as amended, and all applicable codes adopted by the city.

A.

In addition to any other applicable standards and requirements, the following shall apply to all towers and telecommunications facilities:

1.

Sufficient anti-climbing measures must be incorporated into each facility to reduce potential for trespass and injury.

2.

Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anticleimbing device.

3.

At least ten (10) feet of horizontal clearance must exist between any antennas and any power lines, unless more clearance is required to meet Alabama Public Service Commission standards.

4.

All towers and telecommunications facilities must be designed and/or sited so that they do not pose a potential hazard to nearby residences or surrounding properties or improvements. Any tower shall be designed and maintained to withstand without failure, the maximum forces expected from wind, hurricanes, and other natural occurrences, when the tower is fully loaded with antennas, transmitters, and other telecommunications facilities, and camouflaging. Initial demonstration of compliance with this requirement shall be provided via submission of a report to the building official prepared by a structural engineer licensed in the State of Alabama describing the tower structure, specifying the number and type of antennas it is designed to accommodate, providing the basis for the calculations done, and documenting the actual calculations performed. Proof of ongoing compliance shall be provided via submission to the building official at least every five (5) years of an inspection report prepared by an Alabama registered structural engineer indicating the number and types of antennas and related telecommunications equipment actually present, and indicating the structural integrity of the tower. Based on this report, the building official may require repair of, or if a serious problem exists, removal of the tower or any telecommunications facilities.

B.

If, upon inspection, the city concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of a tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within said thirty (30) days, the governing authority may remove such tower at the owners expense.

- **Sec. 9.0. - Radio frequency standards.**

All applicants shall comply with federal standards for a radio frequency emissions. Within six (6) months after the commencement of any operations utilizing a tower, antenna or related telecommunications facilities, the applicant shall submit a project implementation report which provides cumulative field measurements of radio frequency emissions of all antennas installed at the subject site, and which compares the results with established federal standards. If, upon review, the city finds that the facility does not meet federal standards, the city may require corrective action within a reasonable period of time, and if not corrected, may require removal of the telecommunications facilities. Any reasonable costs incurred by the city. including reasonable consulting costs to verify compliance with these requirements, shall be paid by the applicant.

- **Sec. 10.0. - Permits.**

Except as specifically exempted in section 2.0 of this article, towers, antennas and telecommunications facilities are considered structures, requiring issuance of a building permit. In addition to any information required pursuant to Article III, section 1.0 in connection with the issuance of a permit for a tower, antenna or telecommunications facility, the applicant shall, prior to a permit being issued, submit the following to the building official:

A.

A maintenance/facility removal agreement, binding the applicant, the property owner (if other than the applicant) and the applicant's and/or owner's successors in interest, to properly maintain the exterior appearance of and ultimately the removal of the tower and

telecommunications facilities in compliance with the provisions of this article and any conditions of approval.

B.

An agreement to pay to the city all costs of monitoring compliance with, and enforcement of, the maintenance, removal, and/or disposal of any tower and telecommunications facilities, and to reimburse the city for all costs incurred to perform the work required of the applicant by this agreement that the applicant may fail to perform. Such agreement for reimbursement shall include all costs of collection and reasonable attorneys fees.

C.

An agreement to allow the city to enter onto the property and undertake any maintenance or removal activities so long as:

1.

The building official has provided the applicant written notice requesting the work needed to comply with this article and providing the applicant at least forty-five (45) days to complete it; and a follow up notice of default specifying failure to comply within the time period permitted, and indicating the city's intent to commence the required work within ten (10) days of the notice; and

2.

The applicant has not filed an appeal pursuant to Article III section 1.32 within ten (10) working days of the notice of the city's intent to commence the required work. If an appeal is filed, the city shall be authorized to enter the property and perform the necessary work if the appeal is dismissed or final action on it is taken in favor of the city.

3.

Notwithstanding anything contained in this section to the contrary, the city shall not be required to provide the notice described herein if there is a significant risk to the public health and safety requiring immediate remedial measures.

D.

In addition to any building permit fees and special exception application fees, the applicant shall pay a telecommunications facilities permit fee in an amount that shall be set from time to time by city council resolution. The fees for towers may be set at different levels

3.

Other information deemed by the board as necessary to determine compliance with this article.

B.

Each applicant for an antenna or tower shall submit an inventory of its existing towers that are either within the city or within one-quarter ($\frac{1}{4}$) mile of the city's boundaries, including specific information about the location, height, and design of each tower. The city may share such information with other organizations seeking to locate antennas within the city, provided however that the city is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

If the applicant owns the electric power or telephone poles in the area, it is not the intent of this article to require a map showing all such poles, however, it is the intent of this article for the applicant to submit a map showing the location and height of all such poles in the vicinity of the property which is the subject of the special exception use.

C.

Each applicant for an antenna or tower shall submit a copy of its one- and five-year plans for development of its telecommunications facilities in the city.

• **Sec. 12.0. - Factors considered in granting special exception permits for towers and antennas.**

The city shall consider the following factors in determining whether to issue a special exception for a telecommunications facility:

A.

Height of the proposed tower;

B.

Proximity of the tower to residential structures and residential district boundaries;

C.

Nature of uses on adjacent and nearby properties;

D.

Surrounding topography;

E.

Surrounding tree coverage and foliage;

F.

Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

G.

Proposed ingress and egress;

H.

An evaluation of the applicant's one-and five-year plans for development of its telecommunications facilities within the city, as well as those plans on file from other telecommunications providers;

I.

Availability of suitable existing towers and other structures; and

J.

Any other information that the city deems reasonably necessary in connection with the review of the application.

- **Sec. 13.0. - Removal of abandoned antennas and towers.**

Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The city, in its sole discretion, may require an abandoned tower or antenna to be removed. The owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the city notifying the owner of such abandonment. If such antenna or tower is not removed within said ninety (90) days, the city may remove and dispose of such antenna or tower at the owners expense. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

Done and adopted this 22nd day of August, 2016.

Attest:



Recarda Cobb
City Clerk



Gary R. Richardson
Mayor, City of Midfield

I, RECARDA COBB, City Clerk of Midfield, Alabama for the sole purpose of administering implementing the above and foregoing Ordinance, is a true and correct copy of Ordinance 2016-3 adopted and approved by the City Council of the City of Midfield, Alabama at its Council Meeting held on the 22nd day of August 2016 as same is represented in the Recorded Minutes.

Moreover, I hereby certify that the above foregoing Ordinance was published by Posting same at the following three (3), or more locations: Midfield City Hall, the Midfield Library, and the Midfield Post Office.

Certified and acknowledged on this 22nd day of August 2016.

City Clerk



Recarda Cobb