

ORDINANCE NUMBER 2007-1387-A

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BROWNSVILLE, TEXAS AMENDING THE CODE OF ORDINANCES CHAPTER 338 TELECOMMUNICATIONS ARTICLE II. TOWER REGULATIONS AND DEALING WITH RELATED MATTERS.

WHEREAS, the City of Brownsville has heretofore adopted Chapter 338 of the Code of Ordinances of the City of Brownsville as amended, and;

WHEREAS, in order to better promote the health, safety, and general welfare of the community, and its orderly development it is proposed that the said Article be amended in the particulars hereinafter setforth;

WHEREAS, the regulations contained in this article have development under the following general guidelines as provided in the Federal Telecommunications Act of 1996:

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

SECTION 1: That from and after the passage of this Ordinance that Chapter 338, Article II, Tower Regulations Sections 338-31 thru 338-38 shall read as follows:

Sec. 338-31. Purpose and goals.

The goals of this article are to:

- (1) Accommodate the communication needs of residents and business while protecting the public health, safety, and general welfare of the community;
- (2) Facilitate the provision of wireless telecommunication services to the residents and businesses of the city;
- (3) Minimize adverse visual effects of WCFs through careful design and siting standards;

- (4) Avoid potential damage to adjacent properties from WCF failure through structural standards and setback requirements;
- (5) Maximize the use of existing and approved WCFs and buildings to accommodate new wireless telecommunication antennas in order to reduce the number of WCFs needed to serve the community; and
- (6) Be in accordance with all aspects of the Federal Telecommunications Act of 1996.
- (7) Preservation of local zoning authority.

Sec. 338-32. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Antenna array means one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omnidirectional antenna (rod), directional antenna (panel) and parabolic antenna (disc). The antenna array does not include the support structure.

Attached wireless communication facility (attached WCF) means an antenna array that is attached to an existing building or structure (attachment structure), which structures shall include but not be limited to utility poles, signs, water towers, with any accompanying pole or device (attachment device) which attaches the antenna Array to the existing building or structure and associated connection cables, and an equipment facility which may be located either inside or outside of the attachment structure.

Collocation/site sharing means use of a common WCF or common site by two or more wireless license holders or by one wireless license holder for more than one type of communications technology and/or placement of a WCF on a structure owned or operated by a utility or other public entity, including rooftop structure mounts.

Development standards mean those standards set forth in section 338-34.

Equipment facility means any structure used to contain ancillary equipment for a WCE, which includes cabinets, shelters, a build-out of an existing structure, pedestals, and other similar structures.

Height means, when referring to a WCF, the distance measured from ground level to the highest point on the WCF, including the antenna array.

Monopole tower means a structure composed of a single spire used to support telecommunications equipment. The monopole tower is a stand-alone structure consisting of a support structure, antenna and associated equipment. All towers must be monopole structures.

Residence means a single unit duplex family unit, and multi family units providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Residential Area means an area with a density of 4 residences per acre.

Review process means those processes set forth in section 338-35.

Setback means the required distance from the property line of the parcel on which the WCF is located to the support structure.

Stealth WCF- means a WCF that is screened, disguised, concealed or otherwise camouflaged as a natural structure, structure or part of a structure that the WCF is not easily recognizable from other natural structures as a WCF.

Temporary wireless communication facility (temporary WCF) means a WCF to be placed in use for 120 or fewer days.

Wireless communication facility (WCF) means any unstaffed facility for the transmission and/or reception of wireless telecommunications services, usually consisting of an antenna array, connection cables, and equipment facility, and a support structure to achieve the necessary elevation.

Wireless communications means any personal wireless services as defined in the Telecommunications Act of 1996, which includes FCC-licensed commercial wireless telecommunications services, including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and similar services that currently exist or that may in the future be developed.

Sec. 338-33. Applicability.

(a) *Preexisting WCFs.* Wireless communication facilities for which a permit has been issued or for pending permit applications which have vested by operation of law prior to the effective date of the ordinance from which this article is derived shall not be required to meet the requirements of this article as further specified in section 338-38, subject to the terms and requirements of Section 338-38, as to non-conforming WCFs.

(b) *Exclusion for amateur radio facilities.* This article shall not govern the installation of any amateur radio facility that is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.

(c) *Relationship to other ordinances.* This article shall supersede all conflicting requirements of other codes and ordinances regarding the height, location, placement and permitting of WCFs.

(d) *Map.* The Department of Planning and Community Development shall maintain a map indicating preexisting WCFs and shall maintain a map of new structures as they enter the city.

Sec. 338-34. Development standards.

(a) All WCF's must be a monopole type structure design, except for stealth WCFs as approved by the building official. Such approval shall be based on conformity to the meeting the definition of a Stealth WCFs and criteria as set forth in this Article, and such approval shall not unreasonably discriminate among providers of functionally equivalent services.

(b) Wind load design shall be in accordance with the adopted Building Code with the design analysis to include the maximum designed collocations.

(c) A Stealth WCF must be a minimum of 100 feet from any residential structure, all other a WCF must be a minimum of 250 feet from any residential structure.

(d) WCF height, including antenna array, shall not exceed 135 feet. The height restriction shall not apply to either temporary or permanent WCFs erected under contract by a public agency for use by Police, Fire, EMS, 911, or other similar government communications for the city.

(e) The WCF shall be erected and operated in compliance with current Federal Communication Commission and other applicable federal, state and county standards.

(f) Distances in this section shall be measured along a single straight line between outer perimeter of the physical WCF structure and the nearest point on any property line of a residential structure.

(g) **Setbacks.**

(1) WCFs shall be located so as to provide a minimum distance from the WCF structure to all property lines of 25 feet at the front of the property and 15 feet at the rear and sides of the property.

(2) WCFs shall be set back a minimum of 30 feet from any existing or planned street right-of-way line, unless additional setback or right-of-way clearance is required by a governmental entity.

(h) **Fencing and landscaping.**

(1) Except when precluded by federal border observation and security requirements, all WCFs and support facilities must be surrounded by a solid wooden fence eight feet in height from finished grade. Other construction material substantially similar to wood may be approved by the building official and such approval shall not unreasonably discriminate among providers of functionally equivalent services. Access to the WCF shall be through a locked gate. Barbed wired may be allowed along the top of the fence if it is necessary to preclude unauthorized access to the WCF.

(2) The outside of the fence shall be landscaped along the perimeter by drought tolerant plants or shrubbery or plants native to the South Texas region. The plants shall be planted within a planting bed edged on the outward side by a minimum 3" tall wood, plastic, or fiber edging and filled in between the 8' high perimeter fence and the aforementioned edging with a minimum 2" depth of wood mulch or approved landscape stone such as, but not limited to, river rock, lava rock, marble stones, limestone, crushed granite, etc. All other Landscape Ordinance regulations will be applied on any WCF that also includes a separate enterprise that is regulated by the existing Brownsville Landscape Ordinance No. 99-1100.26.

(i) Additional uses permitted on lot. WCFs may be located on lots containing another principal use, and may occupy a leased parcel on a lot meeting the minimum lot size requirement of the district in which it is located. WCF structures and their associated equipment shall be separated from other structures on the lot by a minimum distance of six feet.

(j) **Access & Parking.** Ingress and egress areas must be maintained by the WCF structure owner providing adequate space for a service vehicle to park without interfering with adjacent roadways or sidewalks.

(k) **Radio frequency emissions.** The Federal Telecommunications Act of 1996 (FTA) gives the Federal Communication Commission (FCC) sole jurisdiction of the field of regulation of radio frequency (RF) emissions and WCFs which meet the FCC standards shall not be conditioned or denied on the basis of RF impacts.

(l) **Height exceptions for airport overlay zones.** No variance request will be accepted or approved for height exceptions within the airport overlay zones. These areas are based on an elevation contour map of the vicinity of the Brownsville, South Padre Island International Airport.

Sec. 338-35. Approval procedures.

(a) *Permitted outright.*

(1) The following WCF's are permitted outright only where a building permit is otherwise required. The Building Official shall approve the below listed WCF sites and issue the building permits within the allotted 30 day review time as required in 338-35 (a)

a) WCFs on monopoles and antenna array only if the entire site complies with the following criteria:

1) The WCF is located in Fourth, Fifth, Sixth, Seventh Commercial First Manufacturing & Second Manufacturing.

2) It is located a minimum of 500 feet from a residential structure (excluding on-site residential structure).

3) Provides a minimum structural capacity and space to accommodate at least three carrier antennas and equipment cabinets, or shelter in the lease area. Such minimum capacity and space shall be measure against the capacity and space required to accommodate the initial carrier antennas and equipment cabinets or shelter using the WCF.

4) Complies with the provisions listed in 338-34 (a) and (b), and (d) through (l).

(b) Temporary WCFs, for substantiated public emergency purposes, for a term not to exceed 120 days, with a one-time, discretionary 60-day extension with approval of the Building Official. For purposes of this section, a "public emergency" shall mean a situation which poses imminent threat to life or property. The applicant must show that the WCF will materially assist in minimizing the affect of the public emergency.

(c) A permanent WCF for use by a public agency for Police, Fire, EMS, 911, or other similar government communications for the city.

(2) The requirement of section 338-35 (a) (1) shall be waived if the WCF erected is to be used by a public agency for police, fire, EMS, 911, or other similar government communications for the city.

(b) Application requirements.

(1) All WCF structures listed in 338-34 must have final approval by Planning & Zoning Commission prior to issuance of permit. Any person desiring to build a WCF within the corporate city limits of Brownsville must; i.) obtain a building permit; ii.), pay appropriate fees of \$2,500.00 for new construction, and for any other construction work on the WCF, to include, but not limited to material repairs, additional collocations, and adding additional height, excluding normal and routine maintenance; and iii.) Submit a signed application and supplemental application that includes all materials and information detailed in this section.

- a. Name of applicant.
- b. Address of applicant.
- c. Vicinity map to illustrate a location of proposed site. The site must be a platted lot.
- d. Applicant shall provide a city map showing only the applicants existing WCF sites owned by the applicant and the proposed new or revised location WCF site.
- e. Description of WCF support structure and antenna height.
- f. Photos and/or drawings of all WCF equipment, structures and antennas.
- g. Names and addresses of currently contracted telecommunication providers or users of the proposed WCF or antenna, to the extent the information is not proprietary.
- h. If a new WCF is allowed, the owner shall document in writing provided to the City that a good faith attempt was made to allow antenna collocation at the new WCF site, which collocation may be subject to reasonable and customary liability protections and requirements for the owner.
- i. Applicant shall submit plans for WCF Site Review and Building Plan review approval. Survey showing all existing structures and zoned use within 250 foot radius, or if filing under 335-38 (a) (1), a 500 foot radius.

(2) Submit any supplemental applications for each WCF site for the building official to make a determination for permit issuance in accordance with the standards and criteria as set forth in this article.

(3) The City of Brownsville shall reserve the right to allow applicant to install tower on city property, provided such city property is located in such a manner that will not prohibit the owner from providing personnel wireless service in the area of the original proposed site and the cost and terms to use the city property is comparable to the originally requested WCF site, with the burden on the WCF owner to provide the City with written analysis of such a prohibition and that the terms or cost are materially different.

(4) WCF spacing. Any WCF tower must be located a minimum of 1 mile from any existing WCF tower provided the minimum WCF spacing requirement does not prohibit the WCF owner from providing personnel wireless service in the area of the original proposed site, with the burden on the WCF owner to provide the City with written analysis of such a prohibition. In such event, the WCF spacing shall be at the maximum allowed such that personal wireless service may be provided.

(5) Only a Stealth WCF is allowed in Residential Areas. Any other type of design of the WCF in non-residential areas shall submit an application for the review process as set forth in this article in addition to meeting the minimum standards for distance of the WCF from a residence.

(c) *Administrative review.*

(1) *Conduct of review.* Review of WCFs under this section will be conducted by the Planning and Community Development Department upon application to the building official for a building permit for the WCF.

(2) *Review criteria.* The Planning and Community Development Department shall apply the development standards in accordance with the stated purpose and goals of this article.

(3) *Timing of decision.* The Planning and Community Development Department shall render a decision on a complete building permit application and supplemental application within 30 days after receipt by the department, except that an extension may be agreed to by the applicant.

(4) *Denial of an application for a WCF Permit.* If the standards for issuance of a WCF permit of this article are not met, the issuing official shall deny the permit in writing with the reasons for the denial supported by substantial evidence in the written record of the application process. The issuing official shall provide the written denial promptly to the applicant. Any such denial shall not unreasonably discriminate among providers of functionally equivalent services.

(5) *Appeals.* If administrative approval is not allowable or is denied, the applicant may appeal the decision to the Zoning Board of Adjustments.

Sec. 338-36. Shared facilities and collocation policy.

FCC-licensed wireless communication providers are encouraged to construct and site their wireless communication facilities with a view towards sharing facilities with other utilities, to collocation with other existing WCFs and to accommodating the future collocation of other future WCFs, where technically, practically, and economically feasible. Applicant shall provide written documentation that a good faith effort has been made to collocate on the nearest tower to meet maximum collocation requirements.

Sec. 338-37. Removal of abandoned WCFs.

Any WCF that is not operated for a continuous period of six months shall be considered abandoned, and the owner of such WCF shall remove same within 90 days of notice to the building official that the WCF is abandoned. If such WCF is not removed within 90 days, the Building Official may remove or cause to be removed such WCF at the owner's expense. If there are two or more users of a single WCF, then this provision shall not become effective unless all users cease using the WCF.

Sec. 338-38. Nonconforming WCFs.

(a) WCF in existence on April 2, 2002, which do not comply with the requirements of this article (non-conforming WCFs) may continue in use for the purpose now used, but may not be replaced, repaired, rebuilt or expanded without complying with this article.

(b) Nonconforming WCFs which are damaged or destroyed less than 50 percent due to any reason or cause may be repaired and restored to their former use, location and physical dimensions subject to obtaining a building permit therefore, but without otherwise complying with this article.

(c) Nonconforming WCFs which are damaged or destroyed more than 50 percent due to any reason or cause may be repaired and restored to their former use, location and physical dimensions subject to obtaining a building permit in compliance with this article

SECTION 2: That if any provision of this ordinance, or the application of same to any particular set of persons or circumstances, should for any reason be held by the courts to be invalid, such invalidity shall not affect the remaining portions of this ordinance and to such end each provision of this ordinance is declared to be severable.

SECTION 3: All ordinances, or parts of ordinances, in conflict herewith or not in conformance with state statutes are hereby repealed or void.

SECTION 4: This ordinance shall become effective from and after its final passage and publication as provided by the Charter of the City of Brownsville and the laws of the State of Texas.

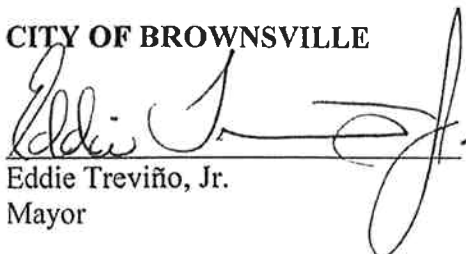
INTRODUCED on January 16, 2007, **AND PASSED** to the First Reading on the 6th day of March, 2007.

PASSED to the Second and Final Reading and **APPROVED** on this, the 20th day of March, 2007.

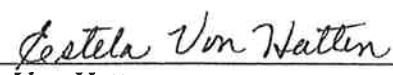


CITY OF BROWNSVILLE

BY:


Eddie Treviño, Jr.
Mayor

ATTEST:


Estela Von Hatten
City Secretary