

**ORDINANCE #2001-**

**AN ORDINANCE REGULATING THE CONSTRUCTION AND  
AESTHETIC IMPACT OF WIRELESS TELECOMMUNICATIONS TOWERS  
WITHIN THE CORPORATE LIMITS OF THE CITY OF  
STARKVILLE, MISSISSIPPI**

- Section A. Definitions.**  
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**Section E. Towers: Performance Standards and Other Requirements.**

*WHEREAS, the Mayor and Board of Aldermen of the City of Starkville, Mississippi, desire to facilitate and encourage the expansion of the wireless telecommunications industry through the use of reasonable and non-discriminatory policies that will benefit the industry as well as the citizens of the City of Starkville; and*

*WHEREAS, the Mayor and Board of Aldermen of the City of Starkville, Mississippi, desire to protect the public against any adverse impact upon the aesthetics of the City, and to avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and*

*WHEREAS, the Mayor and Board of Aldermen of the City of Starkville, Mississippi, desire to maximize the use of existing and approved towers and buildings through co-location, seeking to optimize quality of service to its citizens; and*

*WHEREAS, the Mayor and Board of Aldermen of the City of Starkville, Mississippi, desire to establish regulations that seek to protect the public health, safety, and welfare of its citizens;*

*THEREFORE, BE IT ORDAINED by the Mayor and Board of Aldermen of the City of Starkville, Mississippi, as follows:*

It is the intention of the Mayor and Board of Aldermen that this Ordinance be interpreted consistently with the language of the Telecommunications Act of 1996, as found in 47 U.S.C. Section 332, *et seq.*, and subsequently amended.

**A. Definitions.**

1. Antenna - Any structure or device used for the purpose of collecting or radiating electromagnetic waves, including, but not limited to, directional antennas, such as panels, microwave dishes, satellite dishes and omni directional antennas, such as whip antennas.
2. Commercial Wireless Telecommunication Services - Licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging and

similar services that are marketed to the general public.

3. FAA - Federal Aviation Administration.
4. FCC - Federal Communications Commission.
5. Height - The height of a tower generally is the distance from the base of the tower to the top of the structure. Height is more specifically defined herein.
6. Person - any natural person, a partnership of two (2) or more persons having a joint or common interest, corporation, partnership, limited partnership, limited liability company or other entity or form of entity, including an association of persons or entities.
7. Public Utility - For the purpose of this Ordinance, Commercial Wireless Telecommunications Services as defined in #2 above, shall not be considered a public utility, as defined in the Code of Ordinances of the City of Starkville.
8. Satellite Dish - The term Satellite Dish shall be an inclusive term and shall mean any antenna designed to receive direct broadcast satellite service, including direct-to-home satellite services, video programming services, via multipoint distribution services, including multi-channel multipoint distribution services or television broadcast signals, via direct or orbital satellite signals.
9. Substantial evidence - That evidence that appears to a reasonable mind to be creditable, reasonable, and adequate to support a conclusion, taking all inferences in the manner most reasonable to sustain the action of the Mayor and Board of Aldermen.
10. Tower - Any ground or roof mounted pole, spire, mast, structure, or combination thereof taller than twelve (12) feet, including support lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an antenna, meteorological device, or similar apparatus above grade.

## **B. Applicability**

### 1.0 District Height Limitations

The requirements set forth in this Ordinance shall govern the location of towers that exceed, and antennas that are installed at a height in excess of, the height limitations specified for each Zoning District. The height limitations applicable to buildings and structures shall not apply to towers and antennas.

### 2.0 Amateur Radio: Receive-Only Antennas

This Ordinance shall not govern any tower, or the installation of any antenna, that is under seventy (70) feet in height, located in the rear yard of residentially zoned parcels, and is owned and operated by a federally-licensed amateur radio operator, or is used exclusively for receive-only

antennas.

### 3.0 Grandfathered Towers and Antennas

Any tower or antenna existing on the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance, other than the requirements of Sections V 2.0. 5.0. 6.0. 7.0 and 8.0. Any such towers or antennas that fail to meet the requirements of this Ordinance shall be referred to in this Ordinance as "grandfathered towers" or "grandfathered antennas."

### 4.0 Violations

Any person who shall violate any of the provisions of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$ 100.00 or imprisoned for not more than 30 days, or both, and in addition, shall pay all costs and expenses involved in the case. All costs and expenses of enforcement incurred by the City will be deemed reasonable. Each day such violation continues shall be considered a separate offense. Furthermore, violations may, at the discretion of the Mayor and Board of Aldermen, be subject to appropriate civil action, both injunctive and monetary.

### 5.0 Application to Satellite Dishes.

1. This Ordinance shall apply to all satellite dishes and other forms of antennas located within the City of Starkville, except that the following shall be exempt from the requirements of this Ordinance:
  - a. Any antenna or satellite dish described below that is mounted at a height no greater than twelve (12) feet above grade (this measurement includes both the height of the mast or tower to which the antenna is attached, as well as the height of the structure upon which it is mounted, such as a house, if applicable):
    - i. That is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter; or
    - ii. That is designed to receive video programming services via multi-point distribution services, including multi-channel multi-point distribution services, instructional television fixed services, and local multi-point distribution services, and that is one (1) meter, or less, in diameter, or diagonal measurement.
  - b. An antenna designed to receive television broadcast signals that is mounted at a height no greater than twelve (12) feet.
2. The City of Starkville expressly finds that, in order to protect the safety and welfare of its citizens, to protect adjacent property owners from damage by excessively tall, bulky or heavy antennas mounted on insufficiently designed or constructed towers or masts, and to ensure that the aesthetic value of the City is protected, that it is necessary to

regulate antennas that exceed requirements of paragraph (A) of the provisions of this Ordinance.

3. Any antenna or satellite dish that does not fall within the exceptions set forth in (A) above shall be subject to applicable regulations contained in this Ordinance.

## **C. Application and Fees.**

### **1.0 Permit for Tower**

It shall be unlawful for any person, firm or corporation to erect, construct in place, place or erect, replace or repair any tower without first making application to the City of Starkville Building Department and securing a permit as provided herein.

### **1.5 Permit for Antenna on Existing Tower or Structure.**

It shall be unlawful for any person, firm or corporation to install any antenna on an existing tower or structure that is fifty (50) feet or higher without first making application to the City of Starkville Building Department and securing a permit therefore as provided herein.

### **2.0 Fees**

The application shall be accompanied by an initial non-refundable application fee in the sum on \$1,500.00, which shall include cost applied toward an engineering and legal verification for the City of all facets of the application. Such fee shall be reviewed and established annually by the Mayor and Board of Aldermen. If the application shall be deemed of such insufficiencies that the legal/engineering fees incurred by the City to verify it exceed the initially paid application fee, then a consideration precedent to further considerations shall be tender of this additionally assessed application fee funds.

### **3.0 Application**

Each application shall contain the following information as well as any additional information that the Mayor and Board of Aldermen and /or Planning and Zoning Commission may from time to time require:

1. **Primary Contact:** The name, address and telephone number of the person requesting the permit. The person shall be a primary contact who has authority to act on behalf of the person or entity requesting the permit.
2. **Site Plan:** The Site Plan shall contain a scaled site plan and a scaled elevation view and other supporting drawings and design data showing the proposed location of the tower, antenna or both, as well as the location of all other Towers used to provide services within the City of Starkville, and shall be certified by a qualified and licensed Professional Engineer, such license under seal of the State of Mississippi. In no circumstance shall approval be granted without prior Adopted April 17,2001 approval

by the Planning and Zoning Commission certifying that the Site Plan meets Federal Standards for health, environmental and safety. Applicant must provide a copy of any environmental impact assessment that the applicant files with the federal government.

3. Each application shall state whether the tower will be a permitted use or that a special use permit or variance is required.
4. A report from a qualified and licensed Professional Engineer, such license under seal of the State of Mississippi, which describes:
  - a. the tower height and design, including a cross section and elevation;
  - b. the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas;
  - c. describes the tower's capacity, including the number and type of antennas that it can accommodate;
  - d. documents what steps the Applicant will take to avoid interference with established public safety telecommunications;
  - e. assess the nature and extent of co-location possibilities;
  - f. includes an engineer's stamp and registrations number; and
  - g. includes other information necessary to evaluate the request.
5. Owners of all commercial wireless telecommunications service towers shall file a letter of intent, committing the tower owner, and his or her successors and assigns, to allow the shared use of the tower, if an additional user agrees in writing to meet reasonable terms and conditions for shared use.
6. Estimate of the cost of the project.
7. Written authorization from the site owner for the application;
8. Before the issuance of a permit for the construction of a tower, the following supplemental information shall be submitted:
  - a. Proof that the proposed tower complies with all regulations administered by the FAA; and
  - b. A report from the qualified and licensed Professional Engineer, such license being under the Seal of the State of Mississippi, which demonstrates the tower's compliance with structural and electrical needs required by this Ordinance.

9. Evidence indicating that the Site Plan has been given prior approval of the Federal Communications Commission as to all health, environmental and safety concerns in accordance with provisions set forth in 47 U.S. Code Section 332. Such evidence shall prove conclusively that the proposed facility will fall within the FCC's emissions guidelines, including a copy of any environmental assessment that the Applicant files with the federal government. Applicant is to acknowledge understanding of and agreement with the requirement that all wireless facilities within the City of Starkville be inspected at least annually - and more often if needed - to insure continuing operation within FCC's emission standards. Inspections will be performed by a licensed structural engineer at the tower owner/ operator's expense and submitted to the City Building Department in October of each year.
10. In the event functionally equivalent services are proposed, Applicant must provide evidence in the application as to why such services are in fact considered functionally equivalent, and the Planning and Zoning Commission shall make a fact judgment as to whether evidence submitted is sufficient. It is not the intention of this Ordinance to discriminate against any functionally equivalent services, so long as such service complies with the spirit of this Ordinance.
11. Before the issuance of a permit for the construction of a tower, Applicant shall provide a performance bond in favor of the City of Starkville, assuring that in the event the tower becomes obsolete, or for any reason is no longer used or is abandoned by Owner, in any of such circumstances, Owner will notify City within thirty (30) days of such happening, and Owner will remove the tower and accompanying accessory facilities within three (3) months of cessation of operations at site.

#### 4.0 Processing

1. Each application shall be processed with due and deliberate speed by the Planning and Zoning Commission, but in no event shall the process of the Planning and Zoning Commission take longer than six (6) months. Provided, however, in the event that the Application has failed to fully accommodate all requests and requirements of the Planning and Zoning Commission as set forth in this Ordinance, that said Planning and Zoning Commission shall reject such application.
2. If the request for a permit is denied, the denial shall be issued within two (2) days of the decision. The denial shall be in writing, setting forth in detail each specific reason for the denial. Denial of an application shall constitute no bar to the Applicant's reapplying and taking advantage of all previously submitted materials as being incorporated into the new application.
3. A denial shall be supported by substantial evidence. All Written Findings and Conclusions of the Planning and Zoning Commission, along with any evidence and documentation, considered in arriving at those conclusions, shall be entered into the written records of the City.
4. Any Applicant, aggrieved by any decision of the Planning and Zoning Commission, may seek, within five (5) days, review by the Mayor and Board of Aldermen, who

may hear the appeal, or may decline to hear the appeal, in accordance with Ordinances and regulations in force at the time, and such appeal may then be heard by a Court of competent jurisdiction, in the manner prescribed by the laws of the State of Mississippi.

## **D. District (Zoning) Regulations.**

### 1.0 Permitted Uses

1. *General.* The uses listed herein are permitted uses and shall not require special use permits. Notwithstanding the foregoing, all such uses shall comply with all sub-sections of Section V. entitled "Towers: Performance Standards and Other Requirements." Prior to the installation of any antenna, or tower, the owner of such antenna or tower shall make written application as required in Section III. entitled "Application and Fees." of this Ordinance, and include all information required therein and state on the application that the tower will be a permitted use, and no special use permit or variance is required.

a. Specific Permitted Uses are as follows:

- i. The placement of a tower or antenna, including additional buildings or other supporting equipment, in Zoning District A-1 (Agricultural), Zoning District M-1 (Manufacturing) and Zoning District C-2 (General Business), provided however, that such tower shall not exceed one foot for each two feet the tower is setback from residential property up to a maximum tower height of 150 feet.
- ii. Installation of an antenna on an existing structure other than a tower (such as a building, light pole, water tower, or other free-standing nonresidential structure) that is fifty (50) feet in height or greater, provided that the additional antenna adds no more than twenty (20) feet to the height of the existing structure; and
- iii. Installation of an antenna on any existing tower of any height, so long as the addition of said antenna adds no more than twenty (20) feet to the height of the existing tower and the existing tower is not a grandfathered tower; provided, however, that such specific permitted use shall not include the placement of additional buildings or other supporting equipment used in connection with said antenna.

### 2.0 Special Use Permits. (Variance)

1. General - The following provisions shall govern the issuance of special use permits.

- a. If the tower or antenna is not permitted use under Section 1.0 "Permitted Uses" above, then a special use permit shall be required for the construction of a tower or the placement of an antenna in all zoning districts.

- b. In granting a special use permit, the Governing Authorities may impose zoning conditions to the extent the Mayor and Board of Aldermen conclude such conditions are necessary to buffer or otherwise minimize any adverse effect of the proposed tower on adjoining properties.

2. Factors Considered in Granting Special Use Permits.

The Mayor and Board of Aldermen shall consider the following factors in determining whether to issue a special use permit, although the Mayor and Board of Aldermen may waive or reduce the burden on the Applicant of one or more of these criteria, if, in the sole discretion of the Governing Authority, the goals of this Ordinance are better served thereby:

- a. Height of the proposed tower or antenna;
- b. Proximity of the tower to residential structures and residential district boundaries;
- c. Technical or engineering requirements limiting placement of the tower in other areas in order to provide coverage;
- d. Nature of uses on adjacent and nearby properties;
- e. Surrounding topography, 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; and
- g. Availability of suitable existing towers and other structures.

**E. Towers: Performance Standards and Other Requirements.**

1.0 Co-Location Requirements with Existing Towers or Other Structures. All towers erected, constructed, or located within the City shall comply with the following requirements:

- i. Any proposed tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the tower is over 100 feet in height or for at least one additional user if the tower is over 60 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.
- ii. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Governing Authorities that no existing tower or other structure can accommodate the applicant's proposed antenna within a one mile search radius (one-half mile for towers under 120 feet in height, one quarter mile for towers under 80 feet in height) of the proposed tower. Evidence submitted to demonstrate that no existing tower

or structure can accommodate the Applicant's proposed antenna may consist of any of the following:

- a. No existing towers or structures are located within the geographic area required to meet Applicant's engineering requirements.
- b. Existing towers or structures are not of sufficient height to meet Applicant's engineering requirements.
- c. Existing towers or structures do not have sufficient structural capacity to support Applicant's proposed antenna and related equipment and the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.
- d. The Applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the Applicant's proposed Antenna.
  - i. The fees or costs required to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower construction are presumed unreasonable.
  - ii. Property owners or owners of existing towers or structures are unwilling to accommodate reasonably the Applicant's needs.
  - iii. The Applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
  - iv. Any evidence submitted to the governing authority in order to meet the requirements of paragraph (B) shall be documented by a qualified and licensed Professional Engineer, such license being under the seal of the State of Mississippi.

## 2.0 Tower Construction Requirements.

All towers erected, constructed, or located within the City of Starkville, and all wiring thereof shall comply with the following requirements:

1. All applicable provisions of the Standard Building and Standard Electrical Code, as adopted by the Governing Authorities of the City of Starkville.
2. Towers shall be certified by a qualified and licensed Professional Engineer, said license under seal of the State of Mississippi, to conform to the latest structural standards (as they exist on the date of adoption) and wind loading requirements of the Uniform Building Code and the Electronics Industry Association.

3. With the exception of necessary electric and telephone service and connection lines approved by the Mayor and Board of Aldermen, no part of any antenna or tower nor any lines, cable, equipment or wires or braces in connection with either shall at any time extend across or over any part of the right-of-way, public street, highway, sidewalk, or property line.
4. Towers and associated antennas shall be designed to conform with accepted electrical engineering methods and practices and to comply with the provisions of the National Electrical Code.
5. All signal and remote control conductors of low energy extending substantially horizontally above the ground between a tower or antenna and a structure, or between towers, shall be at least eight feet above the ground at all points, unless buried underground.
6. Every tower affixed to the ground shall be protected by chain link fence, razor wire and/or electric charged fence, and double-locked gate to prevent climbing of the tower by unauthorized persons.
7. All towers shall be constructed to conform with the requirements of the Occupational Safety and Health Administration.
8. Antennas and towers shall not be erected in any zoning district except the A-1 (Agricultural), M-1 (Manufacturing) and C-2 (General Business), as set forth in the Zoning Ordinances of the City, unless and except a special use permit has been applied for and received from the Mayor and Board of Aldermen of the City, and shall be subject to the following restrictions:
9. Notwithstanding ordinary setback provisions for construction in A-1, M-1, and C-2. The required setback for antenna and tower not rigidly attached to a building shall be equal to the height of the antenna and tower. Those antennas and towers rigidly attached to a building, and whose base is on the ground, may exceed this required setback by the amount equal to the distance from the point of attachment to the ground.
10. No tower shall be in excess of a height equal to the distance from the base of the antenna and tower to the nearest overhead electrical power line which serves more than one dwelling or place of business, less than five feet.
11. Metal towers shall be constructed of, or treated with, corrosive resistant material. Wood poles shall be impregnated with rot resistant substances.
12. No tower shall be set within a two thousand six hundred forty (2,640) foot radius of another tower or residential zoning district.
13. All tower facilities located or proposed to be located in airport areas governed by the

General Aviation Administration shall comply with all applicable airport regulations.

All towers erected within the City must conform to the applicable performance standards in Section V. of this Ordinance.

### 3.0 Tower and Antenna Design Requirements.

1. Towers and antennas shall be designed to blend into the surrounding environment, to the extent possible, through the use of color and camouflaging architectural treatment, unless the FAA or other federal or state authorities require otherwise, or that the goal of co-location would be better served by an alternate design.
2. Towers shall be of a monopole design unless the Planning and Zoning Commission determines that an alternative design would better blend into the surrounding environment.

### 4.0 Tower Setbacks.

Setback requirements for general construction in A-1 (Agricultural), M-1 (Manufacturing) and C-2 (General Business), are inadequate and do not apply to Tower Construction. See Sub-Sections V.2.0 H (1) and (2) for tower setback requirements.

### 5.0 Tower Lighting.

1. Towers shall not be illuminated through the use of artificial lights such as strobe lights or other lighting devices unless specifically required by the FAA or other state and federal government agencies. Light fixtures may be attached if it is part of the design incorporated into the tower structure to be used for the illumination of athletic fields, parking lots, streets or other similar areas. Lighting of the accessory buildings for basic security purposes is permissible but may not result in unnecessary glare on adjacent properties in residentially zoned areas.
2. Should lighting be required by state or federal law, the lighting shall be placed on the tower and designed in such a way as to minimize the glare on adjacent residential properties. White strobe lights may not be used unless required.

### 6.0 Signs and Advertising.

Towers shall not display signs or advertisements for commercial or non-commercial purposes, unless such signs are for the purpose of providing warning or specific equipment information.

### 7.0 Accessory Utility Buildings and Screening.

All utility buildings and structures accessory to a tower shall be architecturally designed to blend in with the surrounding environment and shall meet the minimum setback requirements

of the underlying Zoning District. Ground mounted equipment shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood. For a site where a tower exists, the compound area shall be enclosed by an opaque security fence or wall not less than eight (8) feet in height. Such fence or wall shall be designed to blend into the character of the surrounding environment. The Mayor and Board of Aldermen may require additional screening or otherwise require design modifications to insure that the attractiveness and the aesthetic quality of the area is not adversely impacted.

#### 8.0 Unused or Abandoned Towers.

Any wireless communications facility that is not operated for a continuous period of one hundred eighty (180) days shall be considered abandoned. Owner shall notify Mayor and Board of Aldermen within thirty (30) days after tower ceases to be used. All abandoned, unused, or obsolete towers and accompanying accessory facilities shall be removed by the property owner within three (3) months of cessation of use. In the event that a tower and its associated facilities are not removed within three (3) months of cessation of operations at a site, the City shall declare default under the take down performance bond, [Section 111(3.0) (K)] of this Ordinance, and proceed with an action against the bonding company for expenses and related costs in removal of tower, fencing and accompanying accessory facilities.

#### 9.0 Proof of Non-interference.

Each application for construction of a wireless telecommunication facility shall include either a preliminary or a certified statement that the construction of the tower, including reception and transmission functions, will not interfere with the radio, television and public safety communications devices or other services enjoyed by adjacent residential and non-residential properties. In the event only a preliminary statement is submitted with the application, a final certified statement of non-interference will be provided and approved prior to issuance of a building permit. The certificate shall be certified by a qualified and licensed professional engineer, said license under seal of the State of Mississippi.

#### 10.0 Radio Frequency Emissions.

Each application must show that any antenna placed on the tower meets state and federal regulations pertaining to non-ionizing radiation and other health hazards related to such facilities. If new or more restrictive standards are adopted then the antennae shall be made to comply or continued operation may be restricted or discontinued.

#### 11.0 Spacing.

Tower locations may not be closer than one-quarter (1/4) of a mile.

#### 12.0 Transferability.

Permit issued by City to Owner represents an exclusive agreement between the parties and

cannot be transferred or assigned to another person, partnership, firm, corporation, limited liability or any other entity or form of entity, including association of persons or entities. A new owner must apply for, providing all prerequisite information along with application fees and bonds, as if it were a new tower.

13.0 Indemnity: Claim Resolution.

The owner of the tower and all communication service providers must show by certificate from a licensed and professional engineer, said license under seal of the State of Mississippi, that the proposed facility will contain only equipment meeting FCC rules, that regular inspections be conducted to insure that the facility continues to operate inside the FCC's emission standards, and must file with the City Clerk a written identification of the City of Starkville and proof of liability insurance or financial ability to respond to claims up to \$1,000,000.00 in the aggregate which may arise from the operation of the facility during its life, fully indemnifying and holding harmless the City of Starkville at no cost to the City and in a form approved by the City Attorney.

14.0 Severability.

The provisions of this Ordinance are severable. Should any portion thereof be determined to be invalid, the remainder nonetheless remains in full force and effect.

15.0 Publication.

The Municipal Clerk is instructed to publish this Ordinance one time in the Starkville Daily News and to obtain Proof of Publication thereof.

16.0 Effective Date.

Because the adoption of this ordinance is necessary for the immediate and temporary preservation of the public peace, health and safety of the community and because the construction of wireless telecommunications towers within the corporate limits of the City of Starkville has adverse secondary effects on the community, this Ordinance shall take effect and be in force from and after the date of its passage.







