

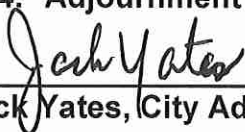
MONTGOMERY PLANNING AND ZONING COMMISSION AGENDA  
REGULAR MEETING OF MONDAY, JULY 25, 2016, 6:00 P.M.  
CITY HALL COUNCIL CHAMBERS 101 OLD PLANTERSVILLE ROAD,  
MONTGOMERY, TEXAS.

CALL TO ORDER

VISITOR/CITIZENS FORUM

Any citizen with business not scheduled on the agenda may speak to the Commission. Prior to speaking, each speaker must be recognized by the Chairman. Commission may not discuss or take any action on any item, but may place the issue on a future agenda. The number of speakers along with the time allowed per speaker may be limited.

1. Discuss/take action regarding June 27, 2016 minutes
2. Discuss/take action regarding sign permit for 202 McCown Street --  
Shawna Reilly
3. Discuss/take action regarding cellular tower ordinance
4. Adjournment

  
\_\_\_\_\_  
Jack Yates, City Administrator

Posted this 22th day of July, 2016 at 1:30 a.m./p.m. This facility is wheelchair accessible and accessible parking spaces are available. Please contact the City Secretary's office at 936-597-6434 for further information or for special accommodations



**MINUTES OF REGULAR MEETING**  
**June 27, 2016**  
**MONTGOMERY PLANNING AND ZONING COMMISSION**

**CALL TO ORDER**

Chairman Nelson Cox declared a quorum was present, and called the regular meeting to order at 6:03 p.m.

Present: William Simpson, Nelson Cox, Arnette Easley, Jeffrey Waddell and Carol Langley

Absent:

Also Present: Jack Yates, City Administrator  
Larry Foerster, City Attorney

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William Simpson stated that the way Montgomery is growing with new communities and home development, he felt that the Commission needed to take into consideration, when they are reviewing plats, etc., to look at the spacing of the homes.

William Simpson said that developers and builders are used to building on a larger lots on large tracts of land, but they are moving in homes 5-6 feet apart, leaving nowhere for the water to go. William Simpson said that they have a major problem in the Lake Creek, so they need to look at the entire drainage issue and where the water is shedding and the effects it will have downstream. William Simpson said that the first street, Racetrack, in Lake Creek has a huge drainage problem. The water comes off of Buffalo Springs and goes into their backyards, with everything converging there the water cannot get out of there quick enough.

William Simpson said that they are putting the homes closer together and where the water used to shed and be absorbed into the ground, now there is no place for it to go. William Simpson said that he witnessed two homes, when they had the 12-inches of rain, where the water was going in the front door and leaving out the back door. William Simpson said that he felt that was something that they all needed to consider when these builders come in and want to start crunching homes.

Jeffrey Waddell said that in the last two or three years, he has seen more rain deflected off roof tops to low areas, and they are seeing much more water. Jeffrey Waddell said that they are seeing situations that they have never seen, with standing water that seeps into the ground weeks later. Jeffrey Waddell said that while everybody loves the terrain of the area, it creates some real challenges with water flow.

William Simpson said that he did not know how the drainage is calculated, because there are actually no storm sewers. Mr. Glynn Fleming, City Engineer, said there are no storm sewers in Lake Creek, but the plans for Lake Creek, Section 1, was designed in 2013, then reviewed by the City in either late 2013 or early 2014. Mr. Fleming said that one of the things that he was immediately struck by was the street that William Simpson was talking about. Mr. Fleming said that the rear elevation of lots on one side of the street is 8 feet or more above the elevation of the front door of the homes across the street. Mr. Fleming said that it was his understanding, from documentation from the previous City Engineer, the developer was granted a variance for a reduction in side yard setbacks. Mr. Fleming said that there was a cumulative 5 foot building line in between each of those homes. Mr. Fleming said that the developer has admitted, even absent the flooding issue, esthetically it does not work. Mr. Fleming said that in Lake Creek, Section 2, the developer asked for and was granted a 5 foot setback on either side of the lot, as opposed 10 foot, which is what the Code requires.

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phase. Mr. Fleming asked that the issue be corrected, and to a certain extent they were corrected, or at least to the degree that they have the ability to enforce.

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William Simpson said that he did not know who regulates the elevation of the homes and the pad sites during construction, because on Racetrack there are two homes built on one elevation, then the next two were built lower, then the next ones are built higher. Mr. Fleming said that as the City Engineer, when he reviews plans, whether residential or commercial, they can really only review it for general compliance with the Code of Ordinances, and Montgomery County Drainage Criteria, because the City does not have their own Drainage Criteria it defaults to the County's Criteria.

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### **CONSIDERATION AND POSSIBLE ACTION**

1. Discuss/take action regarding May 23, 2016 and June 6, 2016 minutes.

William Simpson moved to approve the May 23, 2016 and June 6, 2016 minutes as presented. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

2. Discuss/take action on variance request from required rear yard vegetative setback and visual barrier for the proposed SH-105 Retail Center.

Mr. Fleming advised that the developer has requested that this item be removed from the agenda, via email, because they want to revise their plat. The email from the developer is attached to the minutes as Exhibit "A."

No action was taken on this Agenda Item.

3. Discuss/take action on variances request from McCoy's Building Supply regarding:
  - a. from required side yard setbacks for the proposed McCoy's Building Supply
  - b. from required driveway spacing for the proposed McCoy's Building Supply

Mr. Fleming reviewed the information and advised that the property is split into three different zoning classifications. Mr. Fleming advised that they recently went in, at the request of McCoy's and rezoned the entirety of their tract as zone B-Commercial. However, at the present time, the adjacent property on either side is still zoned with three different zones. Mr. Fleming said in the conversations that they have had with the Commission and City Council, there is a desire to go in and make a comprehensive rezoning for various areas of town, with SH 105 frontage being one of those locations. Mr. Fleming said that he anticipates that the area adjacent to McCoy's that is currently Single Family, Multi-Family and Commercial will more than likely in the future be zoned entirely commercial. Mr. Fleming said based on that, his recommendation to the Commission is that he has no objection to this request and he would say that the staff recommendation would be to allow it to move forward regarding the side yard setback. Carol Langley asked what the setback was supposed to be. Mr. Fleming said that instead of a 25 foot setback they are asking for a 15 foot setback. The developer will replace a retaining wall, drainage swale and some fencing along this area. Mr. Fleming said that they would like permission to place that retaining wall and fencing inside the required 25 foot setback. Mr. Fleming said that if and when the adjacent property is in fact rezoned commercial, at that point they

would have commercial property abutting commercial property and the City Code only requires a 10 foot setback, and they are asking for a 15 foot setback. Mr. Fleming said that on their plat, since this property abuts three different zone criteria, their side setback gets narrower and wider along the property line, and they are asking for a way to create a uniform setback along their property line.

Jeffrey Waddell asked if the drainage swale ran parallel with the retaining wall. Mr. Fleming said that was correct, it will be just below and parallel to the retaining wall. Jeffrey Waddell asked to confirm that they would not build on top of the easement. Mr. Fleming advised that they might pave over a small portion for the base of the retaining wall. Jeffrey Waddell said that with everything that has been said so far about the building along SH 105, that they would be going toward commercial. William Simpson said that he did not see any problem with the variance that they are requesting.

Jeffrey Waddell moved to approve Item 3(a) regarding approving the side yard setbacks go from 25 feet to 15 feet due to projected commercial use on the adjacent lots. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

Mr. Fleming said that he had received a phone call from McCoy's advising that they would like to rescind this portion of the request. Mr. Fleming said that he has requested that request in writing and it will be treated the same as the previous item that was pulled. Mr. Fleming said that recommendation would be to table this request, and if they want to come back in the future to make this request, they are welcome to do so.

Carol Langley said that they already have two driveways off of Buffalo Springs. Mr. Fleming said that was correct, and stated that both of those driveways are Code compliant and he has not objections to them. Mr. Fleming stated if this request would have remained on the agenda, he would have recommended denying it because he had a list of objections to the request, one being that the driveway being requested would have been too close to SH 105.

Jeffrey Waddell asked about the temporary turn-a-round shown on the plat. Mr. Fleming said that temporary turn-a-round would remain in perpetuity until such time should Buffalo Springs extend south across the creek. Mr. Fleming said that the Code of Ordinances provides that anytime there is a dead end road, you have to have some sort of turn-a-round. Jeffrey Waddell asked if the elevation would be substantially higher than where the detention pond dumps out. Mr. Fleming said that surprisingly it is not higher, which is one of the comments that he had made on the plans. Mr. Fleming said that he has already reviewed the plans and sent them back. Mr. Fleming said that one of the comments on their plans was that their proposed detention pond discharges, in part, out onto the City's road, which is not acceptable for several reasons. Mr. Fleming said that they would have to review that information and find ways to revise the plans.

After discussion, Arnette Easley moved to table Item 3(b) regarding the driveway spacing for the proposed McCoy's Building Supply. Jeffrey Waddell seconded the motion, the motion carried unanimously. (5-0)

4. Discuss/take action regarding tree ordinance

Mr. Yates reviewed the information with the Commission, which he stated also includes the extra-territorial jurisdiction, because of the growth in the area.

William Simpson asked whether the fees and enforcement of the ordinance had been worked out. Mr. Yates said that the fees have not been included because they have not been determined yet. Mr. Yates said that what he feels is that they should be enough to cover the urban forester or consultant needed to review the tree plan, and to manage the plan once it is place.

Carol Langley asked what a "previously platted residential lot" includes. Mr. Yates said that it was a platted lot that had been subdivided and on file with Montgomery County. Carol Langley said that her 2 acres that she lives on is not platted. Mr. Yates said that it was under 5 acres so it would not be affected. Carol Langley said that there were a lot of



people that properties that were not platted, they just acquired them by surveys or inheritance. Mr. Yates said that as long as the property is less than 5 acres, or previously platted they would not be affected by the ordinance.

Mr. Yates said that he had attached a protected tree listing, which was taken from the City of Shenandoah's very involved tree ordinance, which he decided not to use as the guide for the ordinance.

Arnette Easley said that since this is an older community, and asked why the properties that are not platted be grandfathered, and the new subdivisions coming in to the City be subject to the ordinance. Mr. Yates said that you could do that, but then it would open up a lot of tree cutting that would open up the land. Arnette Easley said that he thought that there were not a lot of properties inside the City limits that were over 5 acres, but he was not sure. Mr. Fleming said that the question that Arnette Easley is describing probably will take care of itself, for example, if there is no change in use and the land is not subdivided, that would not trigger submission of a plat. Mr. Fleming used the medical plaza off of Houston Street as an example, and said that because there is a proposed change in use at that location, where they are going from a residential home to a commercial building, which triggers the need for a development plat. Mr. Yates said if they excluded all the unplatted property, an owner could go in and remove all the trees before they come in to plat the property. Jeffrey Waddell said that the ordinance is really to keep developers from coming in and clear cutting their property, they are not really concerned with an individual building one house. Arnette Easley said that he felt the ordinance should apply to developers. Mr. Yates said if their property was already an existing platted lot, then they would not fall under the ordinance.

Mr. Yates said that he felt comfortable recommending the ordinance to the Commission and then to City Council. Carol Langley asked if they would have the fees ready before it goes to City Council. Mr. Yates advised that he would have the fees ready before he took the ordinance to City Council. Carol Langley said that she was not comfortable approving the ordinance without seeing some of the fees. Mr. Yates said that the fees would be

enough to cover the tree expert's time, and not much more, similar to how they handle the engineer's costs. Mr. Yates said that he will work on having the fee included in the Escrow Agreement with the developer.

Carol Langley Sec. 3.1805(9) that says at the request of the applicant, the developer can put trees on City property, and asked what that meant. Mr. Yates said that if a developer wanted to put trees on City property, instead of on their property, the City could allow them to do that. Mr. Yates used the Cheatham development on SH 105 as an example, saying that if they were working on the property and the City wanted to put some trees along the edge of the City Park, Mr. Cheatham could opt to place the required trees there instead of on his property, if the City approved. Carol Langley said that if a developer is required to have trees on their property, but they don't want them, then it would give them an option to donate to the City.

Jeffrey Waddell said that he thought the ordinance was really geared for commercial development not individual acreage. Jeffrey Waddell said that Carol Langley's concern was the fees, which he did not want to go too high. Carol Langley asked if most developers were familiar with a tree ordinance or will the City of Montgomery be the first one that they have ever dealt with. Mr. Yates said that most developers are going to be familiar with tree ordinances.

William Simpson said that the fee is probably going to be determined by the size of the project. Mr. Yates said that he was going to probably ask for the actual fee for the time, plus 10%, and include the fee in an Escrow Agreement for the tree plan, just like they do for the other developments. Carol Langley asked if they would submit the tree plan when they submit all their other plans, and asked if it would delay their approval a week or two if they did not provide the tree plan. Mr. Fleming said that largely the onus is on the developer and the tree plan would just become another portion of what is a complete application for development. Mr. Fleming said from the City's standpoint there is really not much to do, and should be pretty easy for the City to enforce. Mr. Fleming said that any one that has done development in this area is familiar with this type of concept

regarding trees. Mr. Fleming said that he would recommend that the City has a clear and easy to understand fee structure in place, which fees will be deducted out of the developers escrow account. Jeffrey Waddell said that the information would be part of the developer's packet so it is really not much more than they are used to completing. Mr. Fleming said that it would probably add two pages to the plan set. Jeffrey Waddell said that he wanted to make sure that they had a reasonable fee structure because they do not have the fee structure.

Carol Langley asked when this ordinance would go to City Council. Mr. Yates said that he was planning on taking it to them in July.

Jeffrey Waddell made a motion to recommend the ordinance, contingent upon a reasonable fee structure, based on cost, being included. William Simpson seconded the motion, the motion carried unanimously. (5-0)

Carol Langley said that she would like a copy of the fee schedule prior to the ordinance going to City Council, or she can just come to City Council.

5. Report regarding cellular tower ordinance

Mr. Yates said that he really has two versions of the tower ordinance. The one from the City of Conroe, which is very lengthy and covers the approval process, where the Department of Community Development approves the tower.

Mr. Yates said that he likes the Special Use Permit process where it comes to both Planning and Zoning Commission and City Council for approval. Mr. Yates said that if someone comes in requesting to put in a tower and meets the terms of the ordinance, then you have no choice but to accept it.

Mr. Yates said that they could take the regulations from the City of Conroe's ordinance, because their regulations are more detailed than Cedar Hill's ordinance. Mr. Yates said that

they could keep the Special Use Permit process in the ordinance. Mr. Yates said that he also liked the ending of the City of Conroe's ordinance regulations. William Simpson asked whether they could add the City of Conroe's regulations into the Cedar Hill ordinance. Mr. Yates said that they could do that. Mr. Yates said that he also liked the permit fees in the Conroe ordinance that they could also include with the Cedar Hill ordinance.

William Simpson asked whether there was anything in the ordinance that would cover other people attaching to the approved tower, without having to go through any approval process. Mr. Fleming said that he did not see anything, but they could regulate the array of the tower. Arnette Easley asked whether they could charge someone a permit fee when they piggyback onto an approved tower. Mr. Yates said that they could add that specific information into the ordinance. William Simpson asked if they could stipulate only one additional connection. Mr. Yates asked why they would care if they added more connections as long as they meet the required size. William Simpson asked if it was an antenna or another large module.

William Simpson said that he would like to see the Cedar Hill ordinance, and adding from the City of Conroe ordinance the following sections: Section 98-37 (tower permit fees), and Article 3 (regulations), and Sections 98-71 through 98-32.

William Simpson said he felt the City should collect a fee from each of the people that attach to the tower. Carol Langley said that the permit for the people attaching would have to be something else besides a tower permit. Mr. Yates said he could add another section that states new arrays would require a permit, with a proposed fee. Chairman Cox asked if they should limit the number of arrays. Mr. Yates said he did not think they needed to do that, and not every array would be for cellular service. Carol Langley said that the tower by the Methodist Church is a broadcasting tower and they do not allow cell phone arrays. William Simpson asked if they could start a draft using the regulations from Conroe's ordinance 98-37 and then they can review the information, and get the City Attorney's opinion. Mr. Yates said that he had spoken to the City of Conroe, and the City

Administrator really liked their ordinance, but it is based on them having enough staff to enforce the ordinance.

Mr. Fleming said that they could tie the tower permit into the zoning ordinances, and also mentioned that they could limit the footprint of the tower. Jeffrey Waddell said that it is easier to locate the tower close to the street because of the fiber optics. William Simpson said that the Cedar Hill ordinance is very specific on placement of where the tower can and cannot be built. William Simpson asked Mr. Yates to pull the sections of Conroe's ordinance that he had referenced earlier and combine them with Cedar Hill's ordinance. William Simpson also said that he would also like to discuss additional fees at a later date. Mr. Yates said that he would add that information to the ordinance.

6. Report regarding landscaping ordinance

Mr. Yates presented the information and said that he obtained a short ordinance from the City of Corinth, and the long version from the City of Tomball. Mr. Yates said that he liked the City of Tomball ordinance because it is more precise. Mr. Yates said that the City of Corinth has the City Manager, Planning and Zoning Commission and City Council approving the plans, because their ordinance is not that detailed. Mr. Yates said that the Tomball ordinance is very clear, while it would be more difficult to administer. Mr. Yates said that they are going to just have to start doing whatever it takes to administer the ordinances.

Mr. Yates said that the City of Corinth requires landscaping on along the street frontage of all new businesses and multifamily residential developments. Mr. Yates said that the City of Tomball covers parking lots and is much more detailed than Corinth, and has the City Manager as the deciding factor. Mr. Yates said that Tomball's ordinance would be clearer for the developer. Mr. Yates said that the developer could submit their landscaping plans with their other plans as had been discussed with the tree ordinance. Mr. Yates said that he had added the information about the education materials regarding zero scaping, which is very popular in Arizona where water is an issue.

Jeffrey Waddell said that the ordinance from Tomball was more in keeping with the area, and they might just have to tweak the ordinance as reviewed by Mr. Yates. Jeffrey Waddell said that he liked that it covered commercial and multi-family because he did not want Mr. Yates to have to get into approval of plans for residential. Chairman Nelson asked if this ordinance would make it necessary to hire additional staff to keep up with the enforcement. Mr. Fleming said that he did not think that it required additional staff. Mr. Fleming said that the City had a pretty good start to a Public Works Department and things like this are tailor made for them. Mr. Fleming said that he would like to firm up exactly what the enforcement issues are in terms of what occurs when the person is found to be not in compliance, and the time window that they have to get into compliance. Mr. Fleming said that they could state that everything must be in compliance and implementation of their landscaping plan prior to issuance of the certificate of occupancy. Jeffrey Waddell said that the Tomball ordinance would require planting in a large parking lot.

Mr. Yates said that they will get the Tomball ordinance in better form and have the City Engineer to provide comments, which he will forward during the month.

### **ADJOURNMENT**

William Simpson moved to adjourn the meeting at 7:46 p.m. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

Submitted by: \_\_\_\_\_ Date Approved: \_\_\_\_\_  
Susan Hensley, City Secretary

\_\_\_\_\_  
Chairman Nelson Cox

**MINUTES OF REGULAR MEETING**  
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**MONTGOMERY PLANNING AND ZONING COMMISSION**

**CALL TO ORDER**

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### **CONSIDERATION AND POSSIBLE ACTION**

1. Discuss/take action regarding May 23, 2016 and June 6, 2016 minutes.

William Simpson moved to approve the May 23, 2016 and June 6, 2016 minutes as presented. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

2. Discuss/take action on variance request from required rear yard vegetative setback and visual barrier for the proposed SH-105 Retail Center.

Mr. Fleming advised that the developer has requested that this item be removed from the agenda, via email, because they want to revise their plat. The email from the developer is attached to the minutes as Exhibit "A."

No action was taken on this Agenda Item.

3. Discuss/take action on variances request from McCoy's Building Supply regarding:
  - a. from required side yard setbacks for the proposed McCoy's Building Supply
  - b. from required driveway spacing for the proposed McCoy's Building Supply

Mr. Fleming reviewed the information and advised that the property is split into three different zoning classifications. Mr. Fleming advised that they recently went in, at the request of McCoy's and rezoned the entirety of their tract as zone B-Commercial. However, at the present time, the adjacent property on either side is still zoned with three different zones. Mr. Fleming said in the conversations that they have had with the Commission and City Council, there is a desire to go in and make a comprehensive rezoning for various areas of town, with SH 105 frontage being one of those locations. Mr. Fleming said that he anticipates that the area adjacent to McCoy's that is currently Single Family, Multi-Family and Commercial will more than likely in the future be zoned entirely commercial. Mr. Fleming said based on that, his recommendation to the Commission is that he has no objection to this request and he would say that the staff recommendation would be to allow it to move forward regarding the side yard setback. Carol Langley asked what the setback was supposed to be. Mr. Fleming said that instead of a 25 foot setback they are asking for a 15 foot setback. The developer will replace a retaining wall, drainage swale and some fencing along this area. Mr. Fleming said that they would like permission to place that retaining wall and fencing inside the required 25 foot setback. Mr. Fleming said that if and when the adjacent property is in fact rezoned commercial, at that point they

would have commercial property abutting commercial property and the City Code only requires a 10 foot setback, and they are asking for a 15 foot setback. Mr. Fleming said that on their plat, since this property abuts three different zone criteria, their side setback gets narrower and wider along the property line, and they are asking for a way to create a uniform setback along their property line.

Jeffrey Waddell asked if the drainage swale ran parallel with the retaining wall. Mr. Fleming said that was correct, it will be just below and parallel to the retaining wall. Jeffrey Waddell asked to confirm that they would not build on top of the easement. Mr. Fleming advised that they might pave over a small portion for the base of the retaining wall. Jeffrey Waddell said that with everything that has been said so far about the building along SH 105, that they would be going toward commercial. William Simpson said that he did not see any problem with the variance that they are requesting.

Jeffrey Waddell moved to approve Item 3(a) regarding approving the side yard setbacks go from 25 feet to 15 feet due to projected commercial use on the adjacent lots. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

Mr. Fleming said that he had received a phone call from McCoy's advising that they would like to rescind this portion of the request. Mr. Fleming said that he has requested that request in writing and it will be treated the same as the previous item that was pulled. Mr. Fleming said that recommendation would be to table this request, and if they want to come back in the future to make this request, they are welcome to do so.

Carol Langley said that they already have two driveways off of Buffalo Springs. Mr. Fleming said that was correct, and stated that both of those driveways are Code compliant and he has not objections to them. Mr. Fleming stated if this request would have remained on the agenda, he would have recommended denying it because he had a list of objections to the request, one being that the driveway being requested would have been too close to SH 105.

Jeffrey Waddell asked about the temporary turn-a-round shown on the plat. Mr. Fleming said that temporary turn-a-round would remain in perpetuity until such time should Buffalo Springs extend south across the creek. Mr. Fleming said that the Code of Ordinances provides that anytime there is a dead end road, you have to have some sort of turn-a-round. Jeffrey Waddell asked if the elevation would be substantially higher than where the detention pond dumps out. Mr. Fleming said that surprisingly it is not higher, which is one of the comments that he had made on the plans. Mr. Fleming said that he has already reviewed the plans and sent them back. Mr. Fleming said that one of the comments on their plans was that their proposed detention pond discharges, in part, out onto the City's road, which is not acceptable for several reasons. Mr. Fleming said that they would have to review that information and find ways to revise the plans.

After discussion, Arnette Easley moved to table Item 3(b) regarding the driveway spacing for the proposed McCoy's Building Supply. Jeffrey Waddell seconded the motion, the motion carried unanimously. (5-0)

4. Discuss/take action regarding tree ordinance

Mr. Yates reviewed the information with the Commission, which he stated also includes the extra-territorial jurisdiction, because of the growth in the area.

William Simpson asked whether the fees and enforcement of the ordinance had been worked out. Mr. Yates said that the fees have not been included because they have not been determined yet. Mr. Yates said that what he feels is that they should be enough to cover the urban forester or consultant needed to review the tree plan, and to manage the plan once it is place.

Carol Langley asked what a "previously platted residential lot" includes. Mr. Yates said that it was a platted lot that had been subdivided and on file with Montgomery County. Carol Langley said that her 2 acres that she lives on is not platted. Mr. Yates said that it was under 5 acres so it would not be affected. Carol Langley said that there were a lot of

people that properties that were not platted, they just acquired them by surveys or inheritance. Mr. Yates said that as long as the property is less than 5 acres, or previously platted they would not be affected by the ordinance.

Mr. Yates said that he had attached a protected tree listing, which was taken from the City of Shenandoah's very involved tree ordinance, which he decided not to use as the guide for the ordinance.

Arnette Easley said that since this is an older community, and asked why the properties that are not platted be grandfathered, and the new subdivisions coming in to the City be subject to the ordinance. Mr. Yates said that you could do that, but then it would open up a lot of tree cutting that would open up the land. Arnette Easley said that he thought that there were not a lot of properties inside the City limits that were over 5 acres, but he was not sure. Mr. Fleming said that the question that Arnette Easley is describing probably will take care of itself, for example, if there is no change in use and the land is not subdivided, that would not trigger submission of a plat. Mr. Fleming used the medical plaza off of Houston Street as an example, and said that because there is a proposed change in use at that location, where they are going from a residential home to a commercial building, which triggers the need for a development plat. Mr. Yates said if they excluded all the unplatted property, an owner could go in and remove all the trees before they come in to plat the property. Jeffrey Waddell said that the ordinance is really to keep developers from coming in and clear cutting their property, they are not really concerned with an individual building one house. Arnette Easley said that he felt the ordinance should apply to developers. Mr. Yates said if their property was already an existing platted lot, then they would not fall under the ordinance.

Mr. Yates said that he felt comfortable recommending the ordinance to the Commission and then to City Council. Carol Langley asked if they would have the fees ready before it goes to City Council. Mr. Yates advised that he would have the fees ready before he took the ordinance to City Council. Carol Langley said that she was not comfortable approving the ordinance without seeing some of the fees. Mr. Yates said that the fees would be

enough to cover the tree expert's time, and not much more, similar to how they handle the engineer's costs. Mr. Yates said that he will work on having the fee included in the Escrow Agreement with the developer.

Carol Langley Sec. 3.1805(9) that says at the request of the applicant, the developer can put trees on City property, and asked what that meant. Mr. Yates said that if a developer wanted to put trees on City property, instead of on their property, the City could allow them to do that. Mr. Yates used the Cheatham development on SH 105 as an example, saying that if they were working on the property and the City wanted to put some trees along the edge of the City Park, Mr. Cheatham could opt to place the required trees there instead of on his property, if the City approved. Carol Langley said that if a developer is required to have trees on their property, but they don't want them, then it would give them an option to donate to the City.

Jeffrey Waddell said that he thought the ordinance was really geared for commercial development not individual acreage. Jeffrey Waddell said that Carol Langley's concern was the fees, which he did not want to go too high. Carol Langley asked if most developers were familiar with a tree ordinance or will the City of Montgomery be the first one that they have ever dealt with. Mr. Yates said that most developers are going to be familiar with tree ordinances.

William Simpson said that the fee is probably going to be determined by the size of the project. Mr. Yates said that he was going to probably ask for the actual fee for the time, plus 10%, and include the fee in an Escrow Agreement for the tree plan, just like they do for the other developments. Carol Langley asked if they would submit the tree plan when they submit all their other plans, and asked if it would delay their approval a week or two if they did not provide the tree plan. Mr. Fleming said that largely the onus is on the developer and the tree plan would just become another portion of what is a complete application for development. Mr. Fleming said from the City's standpoint there is really not much to do, and should be pretty easy for the City to enforce. Mr. Fleming said that any one that has done development in this area is familiar with this type of concept

regarding trees. Mr. Fleming said that he would recommend that the City has a clear and easy to understand fee structure in place, which fees will be deducted out of the developers escrow account. Jeffrey Waddell said that the information would be part of the developer's packet so it is really not much more than they are used to completing. Mr. Fleming said that it would probably add two pages to the plan set. Jeffrey Waddell said that he wanted to make sure that they had a reasonable fee structure because they do not have the fee structure.

Carol Langley asked when this ordinance would go to City Council. Mr. Yates said that he was planning on taking it to them in July.

Jeffrey Waddell made a motion to recommend the ordinance, contingent upon a reasonable fee structure, based on cost, being included. William Simpson seconded the motion, the motion carried unanimously. (5-0)

Carol Langley said that she would like a copy of the fee schedule prior to the ordinance going to City Council, or she can just come to City Council.

5. Report regarding cellular tower ordinance

Mr. Yates said that he really has two versions of the tower ordinance. The one from the City of Conroe, which is very lengthy and covers the approval process, where the Department of Community Development approves the tower.

Mr. Yates said that he likes the Special Use Permit process where it comes to both Planning and Zoning Commission and City Council for approval. Mr. Yates said that if someone comes in requesting to put in a tower and meets the terms of the ordinance, then you have no choice but to accept it.

Mr. Yates said that they could take the regulations from the City of Conroe's ordinance, because their regulations are more detailed than Cedar Hill's ordinance. Mr. Yates said that



they could keep the Special Use Permit process in the ordinance. Mr. Yates said that he also liked the ending of the City of Conroe's ordinance regulations. William Simpson asked whether they could add the City of Conroe's regulations into the Cedar Hill ordinance. Mr. Yates said that they could do that. Mr. Yates said that he also liked the permit fees in the Conroe ordinance that they could also include with the Cedar Hill ordinance.

William Simpson asked whether there was anything in the ordinance that would cover other people attaching to the approved tower, without having to go through any approval process. Mr. Fleming said that he did not see anything, but they could regulate the array of the tower. Arnette Easley asked whether they could charge someone a permit fee when they piggyback onto an approved tower. Mr. Yates said that they could add that specific information into the ordinance. William Simpson asked if they could stipulate only one additional connection. Mr. Yates asked why they would care if they added more connections as long as they meet the required size. William Simpson asked if it was an antenna or another large module.

William Simpson said that he would like to see the Cedar Hill ordinance, and adding from the City of Conroe ordinance the following sections: Section 98-37 (tower permit fees), and Article 3 (regulations), and Sections 98-71 through 98-32.

William Simpson said he felt the City should collect a fee from each of the people that attach to the tower. Carol Langley said that the permit for the people attaching would have to be something else besides a tower permit. Mr. Yates said he could add another section that states new arrays would require a permit, with a proposed fee. Chairman Cox asked if they should limit the number of arrays. Mr. Yates said he did not think they needed to do that, and not every array would be for cellular service. Carol Langley said that the tower by the Methodist Church is a broadcasting tower and they do not allow cell phone arrays. William Simpson asked if they could start a draft using the regulations from Conroe's ordinance 98-37 and then they can review the information, and get the City Attorney's opinion. Mr. Yates said that he had spoken to the City of Conroe, and the City

Administrator really liked their ordinance, but it is based on them having enough staff to enforce the ordinance.

Mr. Fleming said that they could tie the tower permit into the zoning ordinances, and also mentioned that they could limit the footprint of the tower. Jeffrey Waddell said that it is easier to locate the tower close to the street because of the fiber optics. William Simpson said that the Cedar Hill ordinance is very specific on placement of where the tower can and cannot be built. William Simpson asked Mr. Yates to pull the sections of Conroe's ordinance that he had referenced earlier and combine them with Cedar Hill's ordinance. William Simpson also said that he would also like to discuss additional fees at a later date. Mr. Yates said that he would add that information to the ordinance.

6. Report regarding landscaping ordinance

Mr. Yates presented the information and said that he obtained a short ordinance from the City of Corinth, and the long version from the City of Tomball. Mr. Yates said that he liked the City of Tomball ordinance because it is more precise. Mr. Yates said that the City of Corinth has the City Manager, Planning and Zoning Commission and City Council approving the plans, because their ordinance is not that detailed. Mr. Yates said that the Tomball ordinance is very clear, while it would be more difficult to administer. Mr. Yates said that they are going to just have to start doing whatever it takes to administer the ordinances.

Mr. Yates said that the City of Corinth requires landscaping on along the street frontage of all new businesses and multifamily residential developments. Mr. Yates said that the City of Tomball covers parking lots and is much more detailed than Corinth, and has the City Manager as the deciding factor. Mr. Yates said that Tomball's ordinance would be clearer for the developer. Mr. Yates said that the developer could submit their landscaping plans with their other plans as had been discussed with the tree ordinance. Mr. Yates said that he had added the information about the education materials regarding zero scaping, which is very popular in Arizona where water is an issue.

Jeffrey Waddell said that the ordinance from Tomball was more in keeping with the area, and they might just have to tweak the ordinance as reviewed by Mr. Yates. Jeffrey Waddell said that he liked that it covered commercial and multi-family because he did not want Mr. Yates to have to get into approval of plans for residential. Chairman Nelson asked if this ordinance would make it necessary to hire additional staff to keep up with the enforcement. Mr. Fleming said that he did not think that it required additional staff. Mr. Fleming said that the City had a pretty good start to a Public Works Department and things like this are tailor made for them. Mr. Fleming said that he would like to firm up exactly what the enforcement issues are in terms of what occurs when the person is found to be not in compliance, and the time window that they have to get into compliance. Mr. Fleming said that they could state that everything must be in compliance and implementation of their landscaping plan prior to issuance of the certificate of occupancy. Jeffrey Waddell said that the Tomball ordinance would require planting in a large parking lot.

Mr. Yates said that they will get the Tomball ordinance in better form and have the City Engineer to provide comments, which he will forward during the month.

### ADJOURNMENT

William Simpson moved to adjourn the meeting at 7:46 p.m. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

Submitted by:  Date Approved: \_\_\_\_\_

Susan Hensley, City Secretary

\_\_\_\_\_  
Chairman Nelson Cox

<b>Meeting Date: July 25, 2016</b>	<b>Budgeted Amount:</b>
<b>Department:</b>	
<b>Prepared By: Jack Yates</b>	<b>Exhibits:</b>
<b>Date Prepared: July 21, 2016</b>	

<b>Subject</b>
Sign permit for 202 McCown Street

<b>Discussion</b>
The sign information is attached. The signs fall within the guidelines of the regulations.

<b>recommendation</b>
Approve the permit

<b>Approved By</b>		
Department Manager		Date:
City Administrator	Jack Yates	July 21, 2016 Date:



# Sign Permit Application

Public Works and  
Community Development  
Department

City of Montgomery, Texas  
101 Old Plantersville Road  
Montgomery, Texas 77356  
[www.montgomerytexas.gov](http://www.montgomerytexas.gov)

\* SIGN PERMIT APPLICATION EXPIRES IN 6 MONTHS (180 DAYS) NON-TRANSFERABLE\*

TEMPORARY SIGN?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
PERMANENT SIGN?	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Pre-Existing OR New Sign?	Pre-Existing <input type="checkbox"/>	New <input type="checkbox"/>

<b>Permit #:</b>
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<b>Date:</b>
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JOB ADDRESS: <i>202 McCown St.</i>		BUSINESS NAME: <i>Fare Tree Well</i>	
BUSINESS OWNER: <i>Shawna Reilly</i>	MAILING ADDRESS: <i>202 McCown St.</i>	TELEPHONE: <i>281-687-5409</i>	
APPLICANT: <i>Shawna Reilly</i>	MAILING ADDRESS: <i>202 McCown St.</i>	TELEPHONE: <i>281-687-5409</i>	
CONTRACTOR LICENSE # (if electrical):			

IS THE SIGN IN THE HISTORIC PRESERVATION DISTRICT?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	IS THE SIGN ILLUMINATED?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
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SIGN PLACEMENT: <i>In center of each side of building, replacing old signs.</i>	VALUATION:
SIGN DESIGN & COLOR SCHEME: <i>Classic ; Black + White</i>	
<b>SIGN TYPE</b>	<b>SIGN DIMENSIONS</b>
FREESTANDING MONUMENT SIGN	SIGN HEIGHT: <i>4'</i>
BUILDING WALL SIGN <input checked="" type="checkbox"/>	SIGN WIDTH: <i>8'</i>
BANNER	TOTAL SQ FT:
OTHER	SET BACK:
	BUILDING/LOT LINEAR FOOTAGE:

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of law and ordinances governing this type of work will be complied with whether or not specified herein. The granting of a permit does not presume to give authority to violate or cancel the provisions of any state or local law office regulating construction or the performance of construction.

NAME of Property Owner or Agent: <i>Shawna Reilly</i>	SIGNATURE of Property Owner or Agent: <i>Shawna Reilly</i>
--	---

**OFFICE USE ONLY**

APPROVED BY:	TOTAL FEE:	\$
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COMMENTS:	
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To the City of Montgomery,

I would like to start by thanking the counsel for reviewing my sign permit this evening. I want to explain why I am not here to represent myself at this meeting. Until this summer I have been a work at home parent. In the last couple of months things have changed and while my family welcomes the change and we are all very excited to get our store open, my children have seen less of me than they ever before. This brings me to the reason I am not here this evening. It is because I am on our summer vacation. This was planned at the beginning of the year, and at first I thought about abbreviating it so that I would be here but I felt like the best choice was for my husband and I to take our children on vacation and give them our undivided attention during this week. I hope you understand. I will be available to speak by telephone or email during this week, so if you have any questions at all please call or email me. I will answer promptly.

Again, thank you for reviewing my sign permit and I am looking forward to opening my business in Historic Montgomery.

Sincerely,

Shawna Reilly

281-687-5409

Shawna.Reilly@yahoo.com

Fare Thee Well

202 McCown St.

Montgomery, Tx 77356

July 11, 2016

To the City of Montgomery,

My name is Shawna Reilly and I am opening a gift shop and home goods store at 202 McCown St, Montgomery, Texas 77356. The name of my store is Fare Thee Well. My store will be similar to Front Porch Friends, the store that has been in the building for quite some time. I will be carrying some of the same products and some similar ones, and renovating to give the space a fresh new look inside and out. My products will include candles, soaps, home goods, gifts, and clothing. Many of the products I will be selling are made by small businesses in America.

I am asking to replace the current two signs, Country Creations and Front Porch Friends with two Fare Thee Well signs measuring 4'x8' (the same dimensions as the signs that are currently hung on the building). These two signs will be black and white.

Thank you very much for your consideration and I am very much looking forward to opening my store in August.

Sincerely,  
Shawna Reilly  
281-687-5409

Fare Thee Well  
202 McCown St.  
Montgomery, Tx 77356  
936-597-9899

# PROOF

## READ PROOF CAREFULLY

Please review the layout(s) below and advise whether approved or changes for production.  
Please reply via this email noting order is approved or noting any changes.

**\*\*Production will not begin until approval is emailed or fax back stating APPROVED.\*\***



DATE 7/11/16

COLOR black and white

ORDER NUMBER 16-3 2880

QUANTITY 2 total

SIZE 8ft w x 4ft h

OTHER \_\_\_\_\_

- Proof APPROVED as is
- OK with changes
- NEW Proof needed

### YOU MUST CHECK THE FOLLOWING:

WORDING - SPELLING: Is everything spelled correctly? Check all names and words.

LAYOUT: Do all components correlate to each other?

SIZE: Check the size noted on the drawing.

Changes may have been necessary to meet the size requirements.

**\*ONCE APPROVED, YOU ARE RESPONSIBLE FOR 1/2 OF THE REMAKE COST SHOULD ANY ERRORS BE FOUND AFTER PRODUCTION BEGINS. NO EXCEPTIONS.**



www.jkgraphicsinc.com

281-351-1111 (Tomball 249)

832-559-8697 (Tomball Kobs)

936-447-1869 (Montgomery)



<b>Meeting Date: July 25, 2016</b>	<b>Budgeted Amount:</b>
<b>Department:</b>	
<b>Prepared By: Jack Yates</b>	<b>Exhibits:</b>
<b>Date Prepared: July 21, 2016</b>	

**Subject**  
 Telecommunications Tower ordinance

**Discussion**  
 The ordinance is attached. I think it worked out quite well -- your suggestion of using partly of the Conroe based portion and Cedar Hill portion. It has cleared city attorney and city engineer review and is recommended for your approval to recommend to the City Council.

**Recommendation**  
 That you recommend the passage of the ordinance to the City Council

<b>Approved By</b>		
Department Manager		Date:
City Administrator	Jack Yates	July 21, 2016 Date:

ORDINANCE \_\_\_\_\_

**AN ORDINANCE BY THE CITY OF MONTGOMERY, TEXAS REGARDING TELECOMMUNICATIONS TOWER FACILITIES BY AMENDING THE MONTGOMERY CODE OF ORDINANCES BY ADDING ARTICLE V, "TELECOMMUNICATION FACILITIES" TO CHAPTER 18, "BUILDINGS AND BUILDING REGULATIONS;" PROVIDING DEFINITIONS; PROVIDING HEIGHT STANDARDS, DISTANCES FROM RESIDENTIAL USES, LANDSCAPING, APPLICATION REQUIREMENTS, AND APPLICATION FEES; PROVIDING SEVERABILITY AND REPEALING CLAUSES; PROVIDING A TEXAS OPEN MEETINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION**

**WHEREAS**, telecommunication towers and appurtenant facilities are a necessary part of modern life and need to be placed within the City to best serve the citizens of the City and the immediate area surrounding the City; and

**WHEREAS**, placement of a telecommunication facility, specifically cell towers, has a significant effect on community development, property values, and quality of life aspects for City residents in the immediate area of the structure; and

**WHEREAS**, the standards and regulations should be known by applicants for new telecommunication tower placement and so that the City staff, the Planning and Zoning Commission, and the City Council can use these guidelines and regulations in their deliberations; and

**WHEREAS**, these standards and regulations have been publicly discussed and decided on in advance of the decisions related to the placement of telecommunication facilities in the City;

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS THAT:**

**SECTION ONE: FINDINGS INCORPORATED**

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

**SECTION TWO: AMENDMENT TO CODE OF ORDINANCES**

The City Code of Ordinances at Chapter 18, "BUILDINGS AND BUILDING REGULATIONS," is hereby amended by adding Article V to the chapter, entitled "TELECOMMUNICATION FACILITIES," such that it reads as follows:

**Sec. 18-141. TELECOMMUNICATION FACILITIES.**

Telecommunications facilities are authorized by a Special Use Permit and the following standards and procedures apply to consideration of such uses and construction.

**Sec. 18-142. DEFINITIONS.**

- (1) **Antenna:** A metallic, graphite, fiberglass or other device which is attached to a transmission tower, cellular tower, monopole, mast, building or other structure for transmitting and receiving electromagnetic waves.
- (2) **Building-mounted facility:** A telecommunications facility in which antennas are mounted to the roof or facade of a building.

- (3) **Cellular communications facility:** A telecommunications facility, including but not limited to an antenna or tower.
- (4) **Lattice tower:** A guyed or self-supporting three- or four-sided, open steel frame structure used to support telecommunications equipment.
- (5) **Monopole:** A single, self-supporting vertical pole with no guy wire anchors, usually consisting of a galvanized or other unpainted metal or a wooden pole, with a below grade foundation that is intended to support antennas necessary to deliver and receive cellular or personal communications services transmissions.
- (6) **Telecommunications tower:** A free-standing structure consisting of a support structure, antenna and associated equipment. The support structure may be a wooden pole, monopole, lattice tower, light standard or other vertical support.
- (7) **Telecommunications facility:** An unmanned facility consisting of equipment for the reception, switching or receiving of wireless telecommunications.

**Sec. 18-142. HEIGHT AND SETBACK STANDARDS FOR TELECOMMUNICATION TOWERS.**

- (1) The height of a telecommunications tower, excluding antenna array, shall be a function of distance of the tower from any residential use, and shall be subject to the following standards:
  - a. No tower shall be erected within two hundred (200) feet of any residential use.
  - b. The height of the tower shall not exceed seventy-five (75) feet in height, if the tower is located two hundred (200) or more feet and less than two hundred fifty (250) feet from any residential use.
  - c. The height of the tower shall not exceed one hundred (100) feet in height, if the tower is located two hundred fifty (250) feet or more and less than five hundred forty (540) feet from any residential use.
  - d. The height of the tower shall not exceed one hundred twenty (120) feet in height, if the tower is located five hundred forty (540) feet or more from any residential use.
  - e. Only monopole towers shall be allowed within five hundred forty (540) feet of any residential use.
  - f. The antenna array shall not exceed the allowed tower height by more than ten (10) feet.
  - g. All guy wires and guy anchors shall be set back a minimum of twenty (20) feet from any property line.
  - h. No guy wires may cross over any adjoining property, public easements or public rights-of-way.
  - i. The tower shall be erected and operated in compliance with current Federal Communication Commission, Federal Aviation Administration, and other applicable federal and state standards.
- (2) The height limitations shall not apply in the following circumstances:
  - a. There are no more than two residential uses within two hundred (200) feet of the tower base.
  - b. The proposed tower is erected to replace existing poles and either:

1. The pole replaced is a functioning utility pole or light standard within a utility easement or public right-of-way, recreation facility light pole or telecommunication tower; or
2. Replacement tower height, including antenna array, does not exceed:
  - (a) The height of the original utility, light standard, or recreation facility pole by more than ten (10) feet; and
  - (b) The replacement tower does not obstruct a public sidewalk, public alley, or other public right-of-way; and
  - (c) Pole function is not significantly altered.
- c. Towers erected to be used by a public agency, including those for police, fire, EMS, 911, or other similar public emergency communications for the city.
- (3) For the purpose of applying the restrictions the term "residential use" has the meaning set forth in the City zoning ordinance use charts., but excludes property that is vacant and unplatted.
- (4) Distances in this section shall be measured along a single straight line between the center of the tower base and the nearest point on any property line of a residential zoning district or use.

**Sec. 18-143. BUILDING-MOUNTED FACILITIES.**

- (1) Antennas on the rooftop or above a structure shall be screened, constructed and/or colored to match the structure to which they are attached and may not exceed the height of the rooftop or structure by more than ten (10) feet.
- (2) Antennas mounted on the side of a building or structure shall be painted to match the color of the building or structure or the background against which they are most commonly seen.
- (3) Antennas may be located wholly within any building authorized in the zoning district. If an accessory equipment shelter is present, it must blend with the surrounding building(s) in architectural character or color.

**Sec. 18-144. ACCESSORY BUILDINGS.**

A single-story unmanned accessory building of no more than three hundred (300) square feet gross floor area is permissible to store equipment needed to send and to receive transmissions but may not include offices or long term storage of vehicles.

**Sec. 18-145. INSPECTIONS.**

The City reserves the right to make inspections of any telecommunication facility within the corporate limits of the City to ensure structural integrity. Based upon the results of the inspection, the City may require repair or removal of the telecommunications facility.

**Sec. 18-146. APPLICATION REQUIREMENTS.**

- (1) Any person, firm, corporation, or any other entity desiring to build a telecommunication facility within the corporate city limits of the City must obtain a building permit, pay appropriate fees and submit a signed application that includes all materials and information as detailed herein:
  - a. Name of applicant.
  - b. Address of applicant.
  - c. Location of proposed site.

- d. Type of support structure and antenna and height.
- e. Photos and/or drawings of all equipment, structures and antennas.
- f. Names and addresses of telecommunication providers or users of the proposed tower or antenna.
- g. Applicants master antenna/tower plan for the City and surrounding area, if necessary.
- h. Detailed account of co-location efforts as described in subsection (2) and (3) below.
- i. If a new tower is allowed, the owner must certify in writing a willingness to allow co-location at the new site, as well as the technological and fiscal feasibility of co-location.
- j. Any other requirement of this article.

(2) Subject to subsection (3) below, no wireless telecommunication tower shall be permitted unless it is demonstrated by sufficient documentary evidence that at least one of the following conditions is applicable:

- a. No existing towers or suitable structures are located within the geographical areas required to meet the applicant's engineering requirements, and no such tower or suitable structure is under consideration for building permits.
- b. Existing towers or other structures are not of sufficient height and cannot be reasonably altered to meet the applicant's engineering requirements.
- c. Existing towers or other structures do not have sufficient structural strength and cannot be reasonably altered to support applicant's proposed antenna and related equipment.
- d. The proposed antenna would cause electromagnetic interference with existing antenna(s) on the other towers or structures; or the existing antenna(s) on other towers or structures would cause interference with the proposed antenna and the interference cannot be prevented at a reasonable cost.
- e. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
- f. Co-location would have a more detrimental environmental, aesthetic or visual impact on the surrounding area than would construction of a new tower.

(3) Even if an applicant is able to demonstrate the existence of one of the foregoing conditions, a new tower may not be permitted if it is determined that the proposed location of the tower is not essential to the applicant to provide service in a given geographical area and the proposed tower would:

- a. Interfere with or endanger the use of other telecommunication facilities,
- b. Endanger persons or property;
- c. Not be compatible with existing or proposed adjacent development;
- d. Have an impermissible environmental, visual or aesthetic impact on the surrounding area; or
- e. That the proposed tower will interfere with public safety and emergency communications.

(4) **Special Exceptions:** In order to be considered for a special exception to these application requirements, the applicant must demonstrate that the applicant has sent written requests by

certified mail to the owner(s) of the tower for proposed possible co-location.

- a. The owner of the tower for possible co-location shall answer the requesting applicant within thirty (30) days of receipt of the request for co-location.
- b. It shall be unlawful for a tower owner or the person in control of said tower to deny a request without substantial documentary evidence as required herein demonstrating why co-location would not be reasonably possible.

**Sec. 18-147. LOCATION OF TOWERS.**

- (1) A tower permit shall not be approved for the construction of a tower on a lot, tract or parcel of land where the construction of a tower is prohibited, expressly or impliedly, by duly recorded and unexpired deed restrictions or covenants running with the land.
- (2) In a residential area, a tower permit shall not be approved for the construction or alteration of a tower structure.
- (3) A tower permit shall not be approved for the construction or alteration of a tower structure unless the proposed tower structure is located a distance at least equal to the applicable setback area established by subsection (6) of this section.
- (4) In an area within one-quarter mile of the downtown Historic Preservation District, a tower permit shall not be approved for the construction or alteration of a tower structure unless the proposed tower is:
  - a. Located from the Historic Preservation District a distance at least equal to the applicable setback area established by subsection (6) of this section, which shall for this limited purpose apply without regard to the existence of any residential lot; for purposes of this requirement, measurements shall be made from the perimeter of the District; and
  - b. One or more intervening buildings, structures, topological features or trees will substantially obstruct a person's sight line of the tower structure from ground level at the perimeter of the district.
- (5) A tower permit shall not be issued for the construction or alteration of a tower structure in a park or on a tract surrounded by a park.
- (6) A tower permit shall not be approved for the construction or alteration of a tower structure unless the distance between the center of the base of a tower and the nearest residential lot is at least 1½ times the height of the tower or tower structure. This measurement shall be made to the nearest point on the property line of the residential lot, unless the tower permit application includes a category 3, condition II survey, as defined by the Texas Surveyors Association, of all properties within the setback area. If the survey is provided, the measurement shall instead be made as follows:
  - a. If a residence has been constructed on the lot, the measurement shall be from the tower structure to the nearest outside wall of the residential structure on each lot; or
  - b. If a residence has not been constructed on the lot, the measurement shall be from the tower structure to the center of the residential lot minus 25 feet.
- (7) If a proposed tower site does not directly front onto a public right-of-way, there must be a public access easement of at least twenty-five (25) feet in width to provide easy access to the tower site.
- (8) A tower permit shall not be approved for the construction or alteration of a tower structure

within 1,000 feet of an approved tower structure, other than a tower structure for which a permit would not be required under this article. For purposes of this requirement, a tower is considered to be "approved" when a tower permit has been issued pursuant to this article and the tower structure has been constructed or any building permit issued thereunder remains in effect. The city administrator shall promulgate rules and procedures for establishing precedent to the extent of conflict between two or more tower structures.

- (9) Property uses and distances referred to in this section shall be determined as of the date and time that the completed tower permit application is filed.

**Sec. 18-148. TOWER STRUCTURE AND DESIGN.**

- (1) Each antenna tower structure for which a permit is approved and issued shall be designed, engineered and constructed to accommodate the placement of a minimum of two antenna arrays. This requirement shall not apply to a camouflage tower.
- (2) All telecommunication towers must meet or exceed the requirements of the EIA/TIA-222-E "Structural Standards for Steel Antenna Towers" in effect at the time of the application.
- (3) All new applications for a telecommunications tower or any proposed alteration to an existing tower must be submitted for review and approval by the City Building Code Official and the City Engineer.

**Sec. 18-149. SECURITY FENCE.**

- (1) The base of a tower shall be completely enclosed by a fence, wall, or barrier which limits climbing access to the tower and any supporting systems, lines, wires, buildings or other structures.
- (2) Guy wires must also be fenced if they are outside the enclosed tower site.
- (3) The fence, wall or barrier required by subsection (1) of this section shall not be less than eight feet in height with no openings, holes or gaps larger than four inches measured in any direction. Gates and doors opening directly into the area enclosed by a fence, wall or barrier, as required by this section, shall be equipped with a lock to keep and capable of keeping the doors or gates securely closed and locked at all times.
- (4) The requirements of this section do not apply to:
  - a. Any tower located on a building that is not designed or built primarily to support the tower, provided that the general public has no physical access to the tower; or
  - b. Existing tower sites having security fences at least six feet in height.

**Sec. 18-150. SCREENING FENCE.**

- (1) The base of a tower, including all mechanical equipment and accessory structures, shall be screened from view of residential lots by a wooden, substantially opaque screening fence designed and built to provide privacy with a minimum height of eight feet.
- (2) The screening fence may contain gates or doors allowing access to the tower and accessory structures for maintenance purposes, which shall be kept completely closed except for maintenance purposes and shall be located a minimum of 18 feet from the public right-of-way.
- (3) The requirements of this section do not apply to:

- a. Any tower constructed or placed a distance of more than two times the height of the tower structure from all residential lots and at least 50 feet from the right-of-way of the nearest street; or
  - b. Any tower located on a building that is not designed or built primarily to support the tower, provided that the general public has no physical access to the tower.
- (4) When both Section 18-150 and this section are applicable, a single fence conforming to all applicable requirements of both sections may be provided.

**Sec. 18-151. LANDSCAPING.**

- (1) The entire facility must be aesthetically and architecturally compatible with its environment. The telecommunications tower itself must be camouflaged to blend with the surrounding environment through the use of color, materials and design. The entire facility and its landscape must be maintained in accordance with a submitted landscape plan that is approved by the City.
- (2) A tower site shall have landscaping maintained in a healthy, growing condition at all times and in compliance with all applicable ordinances, deed restrictions and regulations.
- (3) At a minimum, a tower site shall have one large shrub, not less than 18 inches in height at the time of planting, capable of reaching a minimum height of four feet for each three linear feet of required screening fence; provided that not less than eight large shrubs shall be provided for each tower site. The shrubs required by this subsection shall be installed at the tower site along the exterior side of the screening fence required in Section 18-150.
- (4) At a minimum, a tower site shall have one tree, with a minimum caliper of four inches, for each 30 linear feet of required screening fence; provided that not less than one tree along each public right-of-way bordering the host tract shall be provided at each tower site. All trees shall be selected from the list of trees identified as acceptable under the City commercial landscaping and tree preservation requirements.
- (5) The person or entity in whose name the tower permit is issued shall have complete responsibility for the maintenance of all landscaping required by this section.
- (6) Any tower site that is excluded from the screening requirements of Section 18-150 shall also be excluded from the landscape requirements of this section for which any amount of linear footage of screening fence is required.

**Sec. 18-152. SIGNS AND LIGHTS.**

- (1) Lettering, signs, symbols, images or trademarks large enough to be legible to occupants of vehicular traffic on any adjacent roadway shall not be placed on or affixed to any part of a tower, antenna array or antenna, other than as required by Federal Communications Commission regulations regarding tower registration or other applicable law.
- (2) A tower or tower structure shall not be artificially lighted, unless required by the Federal Aviation Administration or other applicable authority. If lighting is required by law or regulation, a design that reasonably minimizes disturbance to any adjacent residences shall be utilized.
- (3) The base of the tower shall have security lighting in conformance with the City's dark sky lighting ordinance.
- (4) A sign identifying the tower operator's address and an emergency phone number must be posted upon each gate of the enclosure.



**Sec. 18-153. ADDITIONAL ANTENNAS PLACED ON TOWER.**

After a tower has been completed and is in use, any additional antennas must be approved by the City Engineer in compliance with Section 18-148 above; reviewed by the Planning and Zoning Commission; and approved by the City Council. Additional units are not required to follow the Special Use Permit approval process in the City zoning ordinance, but must be publicly acted upon by the two bodies.

**Sec. 18-154. MAINTENANCE AND INSPECTION.**

- (1) All buildings, structures, supporting structures, wires, fences or ground areas used in connection with a tower shall be maintained in a safe condition and in good working order. All equipment or machinery required by the City building codes, the fire code or any other applicable regulation or ordinance for a building or structure or supporting structure or device shall be maintained in good working order. The owner or operator of a tower shall be responsible for the maintenance of the tower, supporting structures, buildings, fences and ground areas.
- (2) Within thirty (30) days of the annual anniversary of the City Council approval of the tower application, the owner or operator of the tower shall submit an annual written inspection report from a professional engineer confirming that the tower is in a safe condition and in good working order.
- (3) By applying for a tower permit under this article, the applicant specifically grants permission to the City, its duly authorized agents, officials and employees, to enter upon the property for which a permit or waiver is sought, after first providing reasonable notice, for the purpose of making all inspections required or authorized to be made under this article, the fire code, the building codes, this Code or any other applicable regulation, rule or ordinance.

**Sec. 18-155. REMOVAL OF TOWERS.**

Any antenna or tower that is not operated for a continuous period of six months shall be considered abandoned, and the owner of the antenna or tower shall remove the antenna or tower within 90 days of receipt of notice from the city administrator notifying the owner of the abandonment. If the antenna or tower is not removed within the 90 days, the City may remove the antenna or tower at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the antenna or tower. The city attorney is hereby authorized to pursue all necessary legal remedies to implement the provisions of this section.

**Sec. 18-156. DEED RESTRICTION AFFIDAVIT.**

- (1) Every applicant for a tower permit or a waiver shall furnish to the city administrator an affidavit setting forth that the applicant is familiar with the title to the real property to which the requested permit appertains and that the intended use will not violate any applicable deed restrictions. The affidavit shall be accompanied with a certified copy of the instruments containing the deed restrictions, the instrument of revocation or termination, the declaratory judgment or any other recorded document containing restrictions that affect the use of the property.
- (2) A tower permit shall not be issued until the requested affidavit and supporting documentation has been produced. Any permit issued on the basis of erroneous documentation known to the applicant or an affidavit which contains false information known to the applicant is void with the same force and effect as if it had never been issued and without the necessity of any action by the City or any other person or agency. A tower permit shall not be issued for the construction or alteration of a tower if the use or the intended use will be in violation of the recorded deed restrictions.

**Sec. 18-157. PERMITTED HOURS FOR CONSTRUCTION AND MAINTENANCE.**

Construction, placement, removal and maintenance of, and alterations or modifications to, a tower or equipment storage facility for a tower shall not be performed except between the hours of 7:00 a.m. and 9:00 p.m. of any day, except in a bona fide emergency; provided however, that the owner, operator or his agents may perform regular maintenance between the hours of 9:00 p.m. through 7:00 a.m. as long as it does not create an unreasonable noise.

**Sec. 18-158. BUILDING PERMIT REQUIREMENT AND PLAN REVIEW.**

- (1) A tower permit obtained pursuant to the provisions of this article shall become invalid after the passage of 180 days from the date of final approval of the tower permit unless any required building permit for the construction or alteration of the tower has been obtained before the expiration of that 180-day period.
- (2) The construction, placement or alteration of a tower is subject to any plan review by the City staff, permitting requirements or hearing process applicable to commercial construction in general which is required either by ordinance or by the rules promulgated by the city administrator; provided that the regulation or rules are consistent with the provisions of this article.

**Sec. 18-159. FINAL APPROVAL OF APPLICATIONS.**

Any application for a telecommunications tower, a telecommunications facility, or an additional antenna placed on a tower must be reviewed by the City Planning and Zoning Commission which shall submit its recommendation to the City Council. The City Council shall have final authority on approval of the application.

**Sec. 18-160. TOWER PERMIT FEES.**

- (1) The fees authorized with a permit application under this article are for the following:
  - a. Towers having a height of 100 feet or less, the fee shall be \$2,000.00;
  - b. Towers having a height of more than 100 feet but not exceeding 150 feet, the fee shall be \$2,500.00; and
  - c. Towers having a height in excess of 150 feet, the fee shall be \$3,500.00.
- (2) The fee authorized with a permit application for additional antennas, receiving/sending units is \$ 1,000.00.

**SECTION THREE: REPEALING CLAUSE**

All other ordinances shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed; but such repeal shall not abate any pending prosecution for violation of the repealed Ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance.

**SECTION FOUR: SEVERABILITY**

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court or competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby

declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

**SECTION FIVE: TEXAS OPEN MEETINGS ACT**

The City Council hereby officially finds and determines that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**SECTION SIX: EFFECTIVE DATE UPON PUBLICATION**

The provisions of this Ordinance will become effective immediately upon adoption by the City Council and publication as provided by law. It is the intent of the Council that the Ordinance apply to every property within the City on which it may apply without violating any state or federal law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_  
Kirk Jones, Mayor

ATTEST:

\_\_\_\_\_  
City Secretary Susan Hensley

APPROVED AS TO FORM:

\_\_\_\_\_  
Larry Foerster, City Attorney