

MONTGOMERY PLANNING AND ZONING COMMISSION AGENDA  
REGULAR MEETING OF MONDAY, JUNE 27, 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.

CONSIDERATION AND POSSIBLE ACTION

1. Discuss/take action regarding May 23 and June 6, 2016 minutes
2. Discuss/take action on variance request from required rear yard vegetative setback and visual barrier for the proposed SH-105 Retail Center
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
4. Discuss/take action regarding tree ordinance
5. Report regarding cellular tower ordinance
6. Report regarding landscaping ordinance
7. Adjournment

  
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Jack Yates, City Administrator

Posted this 24th day of June, 2016 at 3:00 ~~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.



**To: Chairman and Commission members**  
**From: Jack Yates**  
**Subject: June 27 Commission Meeting**  
**Date: June 24, 2016**

**Item #2 Variance request from required rear yard vegetative setback and visual barrier for the proposed SH-105 Retail Center** -- an email from the City Engineer is in your packet. He is recommending denial.

**Item #3 Variances request from McCoy's Building Supply regarding:** A memo from the city engineer is in your packet

- a. **from required side yard setbacks for the proposed McCoy's Building Supply**-- The city as an engineer is recommending approval
- b. **from required driveway spacing for the proposed McCoy's Building Supply** -- The city engineer is recommending denial

**Item #4 Discuss/take action regarding tree ordinance** -- the ordinance is in your packet. It does not have the fees printed as of now but I should have them before the meeting.

**Item #5 Report regarding cellular tower ordinance** -- what is in your packet is to variations of a tower ordinance. The first is the city of Conroe's ordinance- a very thorough ordinance but could but most of the body of the ordinance has nothing to do with a tower design guidelines but describes a very involved application process. The second ordinance is based upon the city of Cedar Hill which is south of Dallas. The Cedar Hill ordinance would involve the same SUP approval process as now and gives more technical items for you to consider during your deliberation.

My thought on giving you both these ordinances was so that you could consider the direction that you want me to go in the preparation of the ordinance-- meaning very involved on the application process or more directed to the design and shape of the tower.

I am not thinking that at this meeting that you would decide one way or the other on either of the ordinances.

**Item #6 Landscaping ordinance**-- I ran out of time to get you a draft of an ordinance but I should have one by the meeting. At that time you can discuss the extent of how much of it ordinance you want to provide.

**MINUTES OF PUBLIC HEARINGS and REGULAR MEETING**

**May 23, 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 6:00 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

**VISITOR/CITIZENS FORUM**

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No comments were made.

**CONSIDERATION AND POSSIBLE ACTION**

1. Discuss/take action regarding April 25, 2016 minutes.

Jeffrey Waddell moved to approve the minutes from April 25, 2016 Meeting. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

2. Public Hearing for a request for a special use permit to allow a radio station and tower to be located on a 0.05474 acre tract of land situated in the John Corner survey, abstract number

eight, Montgomery County, Texas, and being out of a called 108.89 acre tract (tract one) conveyed to LaFevre Development Inc., (property is immediately east of Rampy Lake and west of Lone Star Pkwy.)

Chairman Cox convened the Public Hearing at 6:03 p.m.

Mr. David Strauss stated that he did not object to the tower, but he wondered how the ordinance that they had set up to cover property along Lone Star Parkway regarding height restrictions and all the other restrictions effects this tower. Mr. Strauss said that he would like to see if when they put the fence up that it could be a cedar wood fence so that you would not see all the equipment that will be located there.

Mr. Nick Liberatore, representing the owners in partnership with the Estates of Mia Lago, which is directly across from where the tower project is supposed to be located, said that as property owners they have been very selective over the years on use of their land and people purchasing their land commercial and residential. They have several million dollar homes that they have built and pay hundreds of thousands of dollars in property tax and they are very concerned about the project. Mr. Liberatore said that he has studies that have been done near and around these cell towers where the property values have actually decreased from 10-50 percent, and in some cases making them impossible to sell. Mr. Liberatore said that with their investment in the City and being right at the entrance of the City of Montgomery they are very concerned about the tower and they are opposing the project. Mr. Liberatore shared a letter with the Commission from their group. Chairman Cox advised that they had already received the letter. Mr. Liberatore said that property around and near cell towers is very hard to sell and decreases the value of the properties. Mr. Liberatore said that they have been very selective in what they allow to be built on their property and he was hoping that the Commission could help them out.

Arnette Easley asked if the report showed that the tower could affect the specific area or the overall market around the tower. Mr. Liberatore said that there are so many different studies done and it could be anything within a couple hundred feet to a mile parameter of

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the tower. Mr. Liberatore said that every report on towers that he has read was negative, with no positive comments at all, with serious declines in property values. Mr. Liberatore said that he knows that they need the towers, but right at the entrance to the City of Montgomery corridor, where the new Kroger is being built would be pretty detrimental to the area.

Mr. Cody Cogdill, representative for the tower project, asked if the Commission had any questions. Arnette Easley asked if there were any hazards caused by the tower or was it just an eyesore. Mr. Cogdill said that the only thing that they come up with is an eyesore. Arnette Easley asked whether there were any gamma or microwave rays from the tower. Mr. Cogdill said that they would have more of an issue holding your cell phone up to your head than you would from a radio tower. Mr. Liberatore said that the reports talked about the health issues with towers.

William Simpson asked Mr. Fleming about the report that says 0.0574 acres of what they are going to build on, and on the drawing there is an additional acreage. Mr. Fleming said that he was sure that there was an access easement along the property. William Simpson asked about another square that was shown on the drawing. Mr. Fleming said that he could not speak about that piece of property. Mr. Yates said that the access easement was right off of Lone Star Parkway.

William Simpson asked about the size of the base of the tower. Mr. Cogdill advised that the base can be 5-6 foot and the concrete base diameter will depend upon the design. He did not know the dimensions of the tower itself. William Simpson asked if the tower would have lights. Mr. Cogdill said that the tower does reach the height required for lighting by the FAA or nearby airports, so it will not be a nuisance to the local residents or businesses. Mr. Cogdill said that regarding safety from radiation, he has been around them for 20 years, and there are no safety issues, and if there was, there would be a lot larger outcry. Mr. Cogdill said that there are hundreds of thousands of them across the country with tens of thousands of them in Texas. Mr. Cogdill said that everyone wants their cell phones to work, but nobody wants to look at the towers.

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Mr. Cogdill said that unfortunately it was not only a need, but a safety requirement by communities as they grow. Mr. Cogdill said that it was his understanding that at that intersection it was also planned to be a commercial development area, and as that develops the requirements for communication and safety increase. Mr. Cogdill said that people are moving away from landlines and using their cell phones.

Jeffrey Waddell asked what the distance was from Lone Star Parkway to the tower. Mr. Cogdill said that he did not have that information, but he was guessing it would be 150 feet. Jeffrey Waddell said that there was a lot of engineering information from Jones & Carter, but he did not see anything about the distance from the road. Jeffrey Waddell said that he did not know why the distance information would not be available. Mr. Cogdill said that was not something that was called out. Jeffrey Waddell said that the feeling that he is getting from people is that the real issue is the appearance of the tower as you are approaching from any angle, and being the site of the Memorial and the flag. Jeffrey Waddell said the tower is 172 feet tall and it seems awfully close to a main street.

Jeffrey Waddell said that the other question is why the tower has to be located there. Mr. Cogdill said that you have to have a property owner that will work with you, and Mr. LeFevre has agreed to move forward with a deal on this property. Mr. Cogdill said that the problem is finding property owners willing to work with him, because they do not want to give up their land until they see how the property is going to develop first and then see if they have a place for the tower.

Mr. Cogdill said that Verizon and other carriers would rather get in ahead of the game so they can be there for the development. Mr. Cogdill said that the spot that they are on is a piece of property that can't be developed and is located on the back of the pond area, and can't be used unless the pond has been removed. Mr. Cogdill said that it was his understanding that Mr. LeFevre plans to make the pond a little smaller, but not to take it away. Mr. Cogdill said that the spot that they are at can't be used for anything, so they are not taking up prime commercial land. Jeffrey Waddell said he was not quite sure whose

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opinion that would be because this could be very valuable property because it is on water. Mr. Cogdill said that is true, but they would have to get rid of that pond to make that work because that pond is used as an overflow. They are having to build up their site to make sure that there is water overflow into the backside of the pond.

Jeffrey Waddell asked for an estimate on how many feet the tower would be from Lone Star Parkway. Mr. Fleming said that he thought the answer would be approximately 150 feet from the edge of the pavement to the front gate. Mr. Fleming said that the tower would be set back 52 feet from the right of way, with about another 80-100 feet between the right of way line and the edge of the pavement. Mr. Cogdill said that L3 on the survey shows 46 feet from the edge of the fence just to the right of way. Jeffrey Waddell asked about the right of way. Mr. Fleming said that the actual right of way allotted to Lone Star Parkway is wider than the pavement itself, which he believed was a 120 foot right of way. Mr. Fleming said that right now the road is only a two travel way and there is a potential for future expansion and there is land allotted there for nothing but Lone Star Parkway. Jeffrey Waddell said that it seems that the tower is right there on top of the main commercial retail area and he asked why it needs to be there. Mr. Cogdill said that it needed to be there for coverage. Jeffrey Waddell asked how much leeway they had when trying to determine where the tower has to be. Mr. Cogdill said that he was not an engineer and he could not speak to that, the company advises him of the location, but ultimately it comes down to having a favorable property owner to work with.

William Simpson asked how many other towers were in the City of Montgomery. Mr. Yates said that he did not know. William Simpson said if they let Verizon in, how many more will be allowed to follow, because according to some of the documents that he has read you can't pick or choose, so if you let one in, will it just multiply. Mr. Foerster said that is a possibility and certainly an argument that could be made. Mr. Foerster said that they are doing this on a case-by-case basis and every application is treated on the value of that item. Mr. Foerster asked Mr. Cogdill whether Verizon would be the only one using that tower. Mr. Cogdill said that at this particular time it would only be Verizon, but anybody is able to co-locate on the tower, such as AT&T, T-Mobile, etc. and share that

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facility, which is usually encouraged by municipalities to help reduce the number of cell towers. Mr. Cogdill said that some municipalities require a certain distance from existing cell towers to help reduce the number of towers, and they make sure that there is appropriate distance between residential structures and cell towers. Mr. Cogdill said that there are ways that the City can protect the community and still make sure that people are covered.

Mr. Foerster asked to clarify that this would be a monopole tower. Mr. Cogdill said this would be a monopole tower with no wires coming off of the tower to go out and would not be a big ugly tower. Mr. Cogdill said that the only reason the tower is the height that it is was to optimize coverage. If you don't have appropriate height for the signal then there will be a need for additional towers. Jeffrey Waddell said that there was always going to be a need for towers and asked if things could be added to the tower later. Mr. Cogdill said that was correct. Mr. Cogdill said that for the community and for the City the only thing that he recommend in the future to help protect themselves and the community would be to put in an ordinance where there are certain places where towers are allowed and limitations regarding residential structures. Mr. Cogdill said that the towers do not just fall and there is not a safety concern to people, the only thing that comes up is an aesthetic eyesore. Mr. Yates said that they could pass an ordinance before this is approved, which he was not recommending, but it could be done. Mr. Cogdill said that it would have to be a very strict ordinance, because he is not close to any residential structures. William Simpson said that they are going to be looking at another residential item that is going to be very close to that location. Mr. Liberatore said that there would be million dollar homes within 400 feet of the tower.

William Simpson said they have been approached to discuss getting a Comprehensive Land Use Plan Ordinance together, and Mr. Yates has done a lot of work on the tree, light and sign ordinances. William Simpson said that what concerns his is he knows the people that are going to be building in that area do not want the tower.



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William Simpson said that he was at an MEDC meeting and Mr. LeFevre brought his poster of his proposed futuristic development of Buffalo Springs, and right around that pond he wants to make a Market Street. William Simpson said that he did not know how the tower would affect his plans with the visibility of the tower right next to that pond and the restaurant. Mr. Cogdill said that you can't go to any major city or community and not have cell towers. William Simpson said that Montgomery is not a major City, and they are trying to keep this City as quaint as possible. William Simpson said that this location being requested is going to be a focal point coming into the City of Montgomery and when you come down the hill the tower is going to be the first thing that you see. You won't see the monument from Kroger you will see the tower.

Jeffrey Waddell said he knows that the towers are very well built, but he asked Mr. Cogdill if he got involved with fall zones and whether the tower is away from major roads. Mr. Cogdill said that roads are not a problem, it is hard to restrict anyone from roads because if they have to go too far from the road it would not be cost effective, because you have to build access, utilities and fiber optics. Mr. Cogdill said that the biggest concern was residential structures, and the standard distance from residential structures is one and a half times the tower height for the distance, and in commercial and industrial area almost all communities allow towers.

Chairman Cox said that they had time constraints for comments, and asked if they had anything else to comment. Mr. Cogdill said that he did not have any other comments. Mr. Foerster said that he had a couple questions. Chairman Cox asked Mr. Foerster to continue. Mr. Foerster asked where the next closest tower that serves the City was located. Mr. Cogdill said that for Verizon it looked like you would have to go southwest 1.5 miles. Mr. Foerster asked, ideally to have the adequate coverage, how far away does his cell phone have to be to get good coverage. Mr. Cogdill said that it was hard to say because it would depend upon terrain, and on flat land the transmission goes further and better. Mr. Cogdill said that optimally you want to be about a mile to a mile and a half for good service. Mr. Foerster said that what Mr. Cogdill is suggesting is that as the City grows there is going to be towers that have to be there in order to serve the community. Mr. Cogdill said that it

really has to be, but the bottom line is aesthetics is the problem with the tower not safety. Mr. Cogdill asked what was more important the aesthetics of the tower or the safety of the people. Mr. Cogdill said that when the intersection gets developed, with Kroger and a strip mall, the exterior cell towers will be jammed with just the regular day to day calls and won't be able to keep up.

Arnette Easley asked if locating the tower in the City limits was the only viable location, or could it be located just outside the City limits where it was more rural. Mr. Cogdill said that you would not be optimizing your coverage and covering your residents. Mr. Cogdill said that you could surround the outside of the City limits with cell towers, but then you won't have the coverage inside the City where you have more of a population and safety concerns. Arnette Easley asked what the closest tower to the City limits was now. Mr. Cogdill said that he did not know because he did not have the City limits marked out showing the towers outside the City.

Mr. Fleming said that there was a large transmission tower on the west side of the City by MidSouth Electric, on the north side of SH 105 by Nappa Auto. Mr. Fleming did not know if that was a cell tower. Mr. Yates asked if Mr. Cogdill could co-locate on an existing tower. Mr. Cogdill said that there was nothing in that area because he had already looked. Mr. Cogdill said if there was one available they would not have to go through all this process, they would just file an application with the owner of the tower, which they prefer to do, but there is nothing in this area.

Mr. Foerster stated that Mr. Strauss asked a question about the kinds of structure that would be hiding the equipment on the ground. Mr. Cogdill said that they would build whatever they would like, he had no problem. Mr. Cogdill said they could put up a nice 8 foot cedar fence, he had no problem with that at all, they would do whatever they like.

Chairman Cox adjourned the Public Hearing at 6:34 p.m.

3. Discuss/take action regarding special use permit to Verizon Tower for a special use permit to allow a radio station and tower to be located on a 0.05474 acre tract of land situated in

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the John Corner survey, abstract number eight, Montgomery County, Texas, and being out of a called 108.89 acre tract (tract one) conveyed to LaFevre Development Inc. (property is immediately east of Rumpy Lake and west of Lone Star Pkwy.)

Mr. Yates advised that the Commission had been provided with a copy of the Special Use Permit Ordinance.

Mr. Foerster stated that it had been mentioned about Mr. LeFevre and his property development, and said that it was his understanding that Mr. LeFevre has posed no objection to the tower. Mr. Yates said that Mr. LeFevre has stated that he has no comment about the tower. Mr. Fleming stated that the Development Agreement, for this area in question, does include a specific prohibition of structures of this nature and height. Mr. Fleming said that the sole arbiter is the Architectural Control Committee, which the members of that Committee have offered no objection. William Simpson said that Mr. LeFevre also owns the land.

Mr. Yates noted that the height of the tower would be 181 feet, including the lighting rod.

Mr. Foerster asked for the diameter of the monopole. Mr. Cogdill said that the tower would have a larger base that can range 4-6 feet, and then tapers off at the top.

Jeffrey Waddell asked about Note 10 on the survey abstract that shows Lone Star Parkway, and has an arrow pointing to the box, and he did not see Note 10. Mr. Cogdill said that Note was on the back page of the document. Jeffrey Waddell said that he was trying to visualize the distance from the edge of the pavement to the structure. Mr. Fleming said that from the edge of the pavement to the fenced structure is going to be roughly 60-80 feet, maybe slightly more. Jeffrey Waddell said that somewhere it stated that typically you take the height of the antenna times 75% percent and that should be the minimum setback, 172 time 75% percent would be 129 feet and this is a lot closer than that to the edge of the pavement. Jeffrey Waddell said that some people could perceive that as a safety issue because anything can fall down, and what happens if it does fall, does it come apart or stay solid. Mr. Cogdill

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said that he has never seen one fall. Jeffrey Waddell said that in the business it must happen. Mr. Cogdill said that it does not happen. Mr. Yates asked whether the tower was a breakaway type construction. Mr. Cogdill said that it was not because it would compromise the actual structure. Mr. Cogdill said there was more of a chance of a tower burning to the ground versus falling down. Mr. Cogdill said the only way that a tower would come down, would be if you were cutting a porthole and catch the interior cables on fire. Jeffrey Waddell said that they could have hurricanes, so his question is why they have to be so close to a major street and to an entry way to the new shopping center. Mr. Cogdill said that Mr. LeFevre is not willing to give any other area, this area is an overflow area and not a development area. William Simpson said that the problem is the property across the street is a development area that Mr. LeFevre does not own.

Mr. Fleming said that regarding Note 10, which might be immaterial, but reads “this survey has been prepared for the sole purpose of the transaction described in the above referenced abstractors certificate and parties listed thereon. The survey is not to be used for any subsequent transactions. Jeffrey Waddell thanked Mr. Fleming. Jeffrey Waddell said that he thought that history has shown that a lot of other cities had a problem because they were highly visible on the skyline, which is what they are talking and asked if the tower can be put near trees or more forested area. Mr. Cogdill said that it could be if there was land in that area, but the only ones available are next to that creek, and they can’t build in a creek. Jeffrey Waddell said that they are getting ready to rezone some areas that are pretty close to that area that he would think would have available land. William Simpson said that they would have to have a landowner willing to give up the land and if it is valuable land they are not going to give it up a piece of land to break up their property.

Arnette Easley said that Mr. Cogdill made a few interesting points and he felt that they need to look at moving forward and from a futuristic standpoint with the growth in Montgomery and when you think about 9-1-1 and businesses moving in, all those things have to be considered and we just need to figure out how we are going to address them. Arnette Easley said that maybe they have a shorter tower on the backside of the pond. William Simpson said that there is give and take on both sides. William Simpson said that the City is trying

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to come up with a Comprehensive Plan and he wants to make what is left here attractive to good developers. In his opinion, he does not want to have to take a lesser development in the City because something was put in that brought the property values down. Arnette Easley said that at the end of the day William Simpson was exactly right, because when you talk about opinions there is a whole calamity of just opinions, some people don't like fences and brick facades.

Mr. Liberatore said that he understands Mr. Cogdill's concern and the need for the towers, but not at the entrance to the City of Montgomery. He and his partners have spent tens of millions of dollars of his money for development in the City of Montgomery, and he feels the tower is detrimental to our future with them even moving forward. Mr. Liberatore said that if the tower were to go in, they would probably figure out something else to do with their development. Mr. Liberatore said that they can't build million dollar homes 400 feet from a 200 foot tower, it just won't work. Mr. Liberatore said that he understood they have to go in and he was trying to think of some more land that they own, even on the backside of his development or the backside of The Villas, which is still near their property, but not at the entrance to his property, the new Kroger and to the City of Montgomery. Mr. Liberatore said that he was not objecting to the tower it is just the vicinity of where it is going. Mr. Liberatore said that they have spent in excess of 15 million dollars as of today developing and building homes in the City of Montgomery.

Chairman Cox asked if there was any consideration given to using the stadium. Mr. Cogdill said that it was too far away and if they get too close to existing cell towers they have overlapping coverage and it would not work, which is why they are spaced apart. Glynn Fleming asked if the tower could be constructed in the flood plain. Mr. Cogdill said that they could, it would just be expensive because they would have to do elevated platforms and upfront construction costs. Several different locations were suggested and discussed, but Mr. Cogdill advised that they were too far away and would not provide the service needed.

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After discussion, William Simpson asked what would be the procedure to table the decision to gather more information. Mr. Yates advised that they could have a Special Meeting. Mr. Yates also advised that the City Council would hold a Public Hearing on the same matter on June 14, 2016. Chairman Cox said that City Council would like to have a recommendation from the Commission by their Public Hearing.

Mr. Cogdill asked the Commission what additional information they would like to make their decision. William Simpson said that he would like to know how it is going to affect the undeveloped residential properties all around the tower location. William Simpson said that he would like to know how it is going to affect those people that come in with the price target homes that they like in this area. William Simpson said that they are going through a lot of trouble working with the developers and the home builders to keep everything a tight knit deal with price points, and if they start knocking the price value down for the property, then they will come in with their price points down on their homes. Mr. Cogdill said that he personally did not see how one cell tower would drop the value down on homes. Mr. Liberatore said that if Mr. Cogdill read the reports he would understand. Mr. Cogdill said that the people in those homes will still want cell coverage. William Simpson said that he understood that they needed cell coverage and it needs to be updated for safety purposes. After discussion, William Simpson moved to table the decision regarding the Verizon radio tower until the Special Meeting to be held on June 6, 2016 at 6:00 p.m. Jeffrey Waddell stated that as long as they have a quorum, because he was going to be out of town. Arnette Easley seconded the motion.

Discussion: Carol Langley asked what type of information they are trying to get for this next meeting. Carol Langley asked if she needed to work on something and/or is someone going to get the information. Chairman Cox said that he felt that it would allow time to think about the matter, because they have been given a lot of opinions pro and con, and he felt that it was difficult for them to make a decision tonight. Jeffrey Waddell said that they are not experts and it seems like there should be other options. William Simpson said that he would like to see if Mr. Cogdill had any other options. Mr. Cogdill said that he would

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love to have other options other than the pond area, because he has checked with other owners and realtors.

The motion carried unanimously. (5-0)

Mr. Cogdill thanked the Commission for their time and consideration.

4. Discuss/take action regarding sign permit for 20998 Eva Street – Lance DeLoach

Mr. DeLoach was present for the discussion and advised that the sign would go up June 1, 2016. Carol Langley asked about the lighting and asked if the sign was lit for the inside. Mr. DeLoach said that was correct. Carol Langley asked if the sign colors were true colors. Mr. DeLoach said that was correct. Mr. DeLoach advised that the sign was 4' x 4' and made of aluminum with plastic facing and florescent lighting behind it. Jeffrey Waddell asked about the sign height. Mr. DeLoach stated that the sign would have a seven inch overlay. Carol Langley asked where Mr. DeLoach was purchasing the sign. Mr. DeLoach advised that he was purchasing the sign from Lone Star Sign.

William Simpson confirmed that the sign was in the historical district and asked if there was any other similar signage in the district that are plastic and light up from the backside. Mr. Yates advised that Burger Fresh has a similar sign on a pole.

After discussion, Carol Langley moved to approve the sign permit for 20098 Eva Street in the Historic District. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

5. Discuss/take action regarding Villas of Mia Lago, Section Two Preliminary Plat

Mr. Fleming presented the plat to the Commission stating that it is a continuation of an existing development. Mr. Fleming said that the plat is in keeping with the Code of Ordinances with a handful of review comments that he felt were fairly typical regarding

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clearly identifying side yard setbacks and some conceptual questions. Mr. Fleming said that he did identify a handful of items, if left unchanged, would require variance requests to be brought to the Commission, specifically on side yard setbacks, lot widths and minimum lot areas.

Jeffrey Waddell asked if there was an intended use for Reserve A. Mr. Fleming said that was actually one of his comments because it is not identified, because it could be used as compensating green space to compensate for the smaller lot sizes, which then would have to be labeled as a Restricted Reserve.

Mr. Liberatore said that they had thought about doing a community pool and park area for the Villas. Mr. Fleming said that they have not seen civil site drawings yet for this plat.

William Simpson moved to approve the preliminary plat for Section Two of the Villas of Mia Lago, Section Two Preliminary Plat. Jeffrey Waddell seconded the motion, the motion carried unanimously. (5-0)

6. Discuss/take action on Final Plat and construction drawings for Heritage Place Medical Center

Mr. Fleming presented the final plat to the Commission. Mr. Fleming stated that the Commission has approved the preliminary plat for the project, then they brought some variance requests regarding minimum driveway spacing, which the Commission acted favorably on and then sent to City Council. City Council offered provisional approval on the variance request pending resolution of a couple of items. One of these items included receipt of a comprehensive landscaping plan, which was submitted last Friday along with civil site drawings and the final plat submission. Mr. Fleming said that they have a request from the developer to offer the Commission's provisional approval of the final plat submission as well as the revised construction drawings, pending review and approval by the City Engineer, and City Council action. Mr. Fleming said that the developer would like to get underway as quickly as possible. Mr. Fleming said that they do have a handful



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of items to hash out, such as variance requests, improvements to Houston Street, which they have submitted a drawing. Mr. Fleming said that he will be reviewing the drawings and meeting with TxDOT to discuss the plans next week.

Mr. Fleming said that the action this evening would be to offer the provisional approval of the final plat submission and construction drawings, pending City Council action on the variance requests and his review and his comments have all been addressed.

Carol Langley asked when the plat would go to City Council. Mr. Fleming advised that it will be on May 31, 2016, and they have also asked to see the landscaping plans prior to moving on the variance requests. Jeffrey Waddell said that they are going with the assumption that they need an entry/exit on Houston Street. Mr. Fleming said that everyone is in agreement that there is a need for improvements to Houston Street. Jeffrey Waddell said that at a future date he guessed that they would discuss who would pay for the improvements. Mr. Fleming said that was correct, and the indications coming from City Council are that they expect most if not the entirety to be paid for by the developer.

Carol Langley asked what happens if the Commission approves the plat tonight and City Council is not happy with the landscaping plans. Mr. Fleming said that he was sure that City Council would have some comments and directives for the developer and his engineering team. Carol Langley asked if it would have to come back before the Commission. Mr. Fleming said that if the Commission acts favorably on the plat it will not need to come back.

William Simpson moved to grant provisional approval for the final plat and construction drawings for Heritage Place Medical Center. Jeffrey Waddell seconded the motion, the motion carried unanimously. (5-0)

7. Discussion regarding Lighting Ordinance –citizen’s comments welcome

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Jack Yates introduced Brian Solomon, electrician, to discuss with the Commission regarding the full cut off light fixture.

Carol Langley asked why they would want a full cut off fixture in a parking lot versus what they have now. Mr. Solomon said that with the current lighting that is there now, if it backs up to a residential neighborhood you don't want that light shining into the residential properties. The full cut off fixtures limit the amount of light that is dispersed. Carol Langley asked if they would still put out enough light for people to be safe. Mr. Solomon said that as far as light output they would be safe. Mr. Solomon said that a non-cutoff fixture allows light to go up into the sky where it is not needed. Mr. Solomon said that they might want to designate areas where a cut off fixture is allowed, because it would eliminate the flood lights or the standard wall lights. Mr. Solomon said that a full cut off fixture directs the light down not out. Mr. Solomon said that in comparing a full cut off fixture and a standard fixture, you still get the same amount of light on the ground it just does not allow the glare to come in someone's window.

Mr. Solomon said that as far as parking lots he did not see a need for the full cut off in the middle of the parking lot. Mr. Solomon said that the cut off fixture would prevent the light from shining out onto the roadway.

Carol Langley asked if the full cut off fixtures cost a lot more money. Mr. Solomon said that there really was not much of a cost difference from what you have now. Carol Langley asked if the full cut off fixtures were popular. Mr. Solomon said that they are becoming more popular now than in the past mainly due to the light trespassing ordinances and things of that nature. Jeffrey Waddell said that from the photo examples that compare the fixtures it seems like from a distance the full cut off might be better because it is not glaring in your face so you can see what is going on. Jeffrey Waddell asked if everything was going LED. Mr. Solomon said that most everything is going LED. Mr. Solomon said that there was really no cost difference between the current fixtures and the full cut off, it was more of a specification difference.

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Arnette Easley said that after looking at the diagrams, the full cut off fixture is fine, but the other fixture is a safety hazard. Mr. Solomon said that if you look at the ground level output that fixture will only have so much light hit the ground, whether it be the cut off or the full cut off. Mr. Solomon said that he did not foresee any problems with future commercial developments other than specifications for different light fixtures, it would just be a matter of changing the part number and ordering the correct fixture. Mr. Solomon said that cut off and full cut off is becoming more common and most parking lot lights now are those type of fixtures.

William Simpson said that the plans that have already been approved can't be changed and asked how many of those are there. Mr. Fleming said there was only one large scale commercial development that is Kroger, McCoy's is still in the preliminary phase. Mr. Solomon said that he would assume that Kroger parking lot lights are probably a cut off fixture, because most of those are deemed that way. Mr. Yates said that given the choice of cut off or full cut off could be added to the ordinance. Mr. Solomon said that you could do that or do it by location, such as, if the property borders residential, it might need to be a full cut off to keep the light from glaring in someone's windows.

8. Discuss/take action regarding recommendation of Lighting Ordinance to City Council

Carol Langley asked about Section 98-381(4) where it addresses parking lot lighting and says that all lighting shall be full cut off. Mr. Yates said that they will give them a choice of cut off or full cut off. Carol Langley said that she liked that. Mr. Foerster said that they will also need to add the definition of "cut off." Mr. Solomon said that as far as property or structures bordering residential property would deem that light to be a full cut off and not disperse light past their property. Mr. Yates advised that Section 98-381(c)(2) addresses multi-family residential property and can add "if it borders residential property it shall be full cut off."

Jeffrey Waddell asked Mr. Yates if he was comfortable with his staff enforcing an ordinance like this with all the time involved for somebody to review the information, and

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asked how it would change things from how it is being currently done for enforcement. Mr. Fleming said that he did not know that it would change much because the building code reviewer would just have to be notified of the new requirements and the building code officer who goes out on site to do above grade inspections would also need to be notified. Mr. Fleming advised that both of those people are third party consultants that work with a host of municipalities around here so it is not something that they have not been exposed to already. Mr. Foerster asked whether Rick Hanna, Code Enforcement Officer, has been approached about this information to get his suggestions. Mr. Yates said that he had been consulted, and he said that this would not be much more for him other than glancing at the light fixtures to make sure they are correct.

Mr. Foerster said that the terms “cut off” and “luminous flux” need to be defined because the average person won’t know what that means. Mr. Foerster said that as they draft this ordinance it needs to be easily understandable.

Mr. Solomon said that the main issue that he sees with lighting ordinances is the height of the pole is going to mean how far out the light throws, which is going to be the architectural engineer drawing the plans to determine what light fixture and how far actually throws out. Mr. Fleming asked about retro fitting existing light fixtures like the Brookshire Bros. lot. Mr. Solomon said that it would probably require a lot of light fixture change outs on the poles. Mr. Solomon said that he was almost positive that there were shoebox fixtures on the poles at Brookshire Bros. parking lot, which would be a cut off fixture.

Mr. Fleming asked at what point the businesses would be required to bring their fixtures up to the current Code. Mr. Solomon said that he would think that if it would be anything that would have to be replaced, it would need to be brought up to the current specifications.

Carol Langley asked if Mr. Solomon was familiar with what the Cowboy Church has in their parking lot. Mr. Solomon said that he was not. Mr. Solomon said that at his parking lot they actually have one of each of the fixtures, one a semi cut off fixture that is a flood

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light mounted and shining into the parking lot from a light pole. Mr. Solomon said that they have cut off fixtures in the parking area on another light pole.

Carol Langley said that the Cowboy Church is the problem and it is surrounded by residential property, except on SH105. So evidently the residences around the parking lot don't think they have cut off or full cut off. Mr. Solomon said that he could drive through and check them. Carol Langley asked if when one of their lights went out would it be grandfathered and they just replace the bulb, or would they have to replace the fixture. Mr. Yates said that they would be able to replace the bulb.

Chairman Cox asked whether they needed to include the height of the pole in the ordinance. Mr. Yates said that he did not think so at the time because of the definition that it could not cause glare to the residential area. Mr. Solomon said that with a 30 foot pole, no matter what fixture, you will get some glare, so that might be something to consider. Jeffrey Waddell asked what a typical height was for a parking lot pole. Mr. Solomon said that it varies, and he would say that around 30 foot for a larger parking lot. Jeffrey Waddell said that the larger parking lots don't usually have residents around them.

Carol Langley asked about Section 98-382(c) (d), and whether this was over and above the sign ordinance that they have already or does it blend with the sign. Mr. Yates said that this was a bit more descriptive than our current ordinance and he felt it described it better. Carol Langley asked if this was saying that they could not have these types of electronic signs at all. Mr. Yates said that he did not mean that, so he would recommend excluding (c) and (d) of that Section. Carol Langley said that the sign just can't flash, which is addressed in the current sign ordinance.

Mr. Yates said that he did receive one comment from Ken Stephens at 65 Waterstone who said that he was in favor of a lighting ordinance that requires the use of full cut off fixtures because the back of his house is lit up from the Industrial Park on FM1097.

Mr. Foerster commented on page 3 that discusses municipal activities and states that all municipal activities shall be exempt from the requirements of this ordinance. Mr. Foerster said that he was wondering if they should also exempt State activities, because as the City grows and they have more traffic on SH 105 and FM 149, he could see the State putting in significant lights along SH 105 and FM 149. Mr. Foerster said that he was not sure that the City's ordinance could override the State's right to put the best lighting for traffic purposes. Carol Langley asked if Section 98-383(1) traffic control signals and devices, would not be enough since they were talking about lighting along those roads, so she agreed that they needed to add "State activities." Mr. Foerster said that he thought what he had seen on the Interstate was a type of cut off fixture put up by the State. Mr. Fleming said that was correct. Mr. Solomon said that Section 98-381(b)(2) has a height restriction of 25 feet for street lighting. Mr. Solomon said that all the decorative street lights in the Historic District, adding any new fixtures would be against the ordinance. Mr. Yates said that there are fixtures that cap the light making it like a full cut off light. Mr. Fleming said that the Historic District is treated differently, so they might want to add a section for that District. Mr. Foerster asked if they wanted to change Section 98-381(6) Municipal Activities by changing it to read "State and Municipal Activities" as being exempt. The Commission concurred that would be the easiest way to change it.

Carol Langley asked about Section 98-384(a) that says the ordinance shall be enforced by the Planning and Zoning Commission and the City. Mr. Yates said that it should be the City Administrator. Mr. Foerster said that they would add "or his/her designee" that would allow Rick Hanna or any of the other Code Enforcement Officers to be delegated by the City Administrator to do that.

Chairman Cox asked if they would send this proposed ordinance to City Council for approval, with the changes that have been made. Mr. Yates said that was correct if that was what they wanted to do.

Mr. Foerster reviewed the changes that were to be made as follows:

- Add definition for cut off;

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- Add definition for luminous flux;
- Remove 98-382.(c)(d) totally;
- Add “State and Municipal Activities” to 98-381(6); and
- Remove Planning and Zoning Commission from Section 98-384(a) and add City Administrator or his/her designee.

Jeffrey Waddell moved to recommend the Lighting Ordinance, with the noted changes, to the City Council. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

9. Report regarding tree ordinance

Mr. Yates advised that this information was based on the information from the City of Oak Leaf, which is south of Dallas. Mr. Yates said that the ordinance does require a tree replacement plan for all properties with 5 acres of property and does not include current subdivided property. Mr. Yates said that the premise of the ordinance is that you can still cut down trees, you just have to replace them with an equal amount of coverage of the canopy. Mr. Yates said that what he would like to do is show this ordinance to a couple of the local developers and get their comments before he recommends it to the Commission or City Council. Mr. Foerster said that he was not sure that they would be able to apply this information to the extra territorial jurisdiction of the City, it would only apply the City limits.

Carol Langley asked about Section 3.1804, and whether the Police Chief was still the Emergency Management Coordinator or was it the City Administrator. Mr. Yates said that he would get that information. Carol Langley asked when they would see a fee schedule and how does it work. Mr. Yates said that it would be part of the ordinance, which he would get for probably next month. Mr. Yates said that he also had obtained a list of approved trees from the City of Conroe that fits our area better. Carol Langley asked if Mr. Yates had seen the fee schedule and whether it was reasonable. Mr. Yates said that he

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had seen it. Mr. Yates said that he thought the plan review was \$150 dollars and the trees are \$6 dollars per 2 inch caliper, so he felt that it was very reasonable.

Carol Langley said that ordinance was a very thorough, and somebody has really got to be on their toes, and who would that be. Mr. Yates said that the City would have to hire an arborist, which the fees would cover. Mr. Yates said that he will have to speak to an arborist to get pricing. Carol Langley said that the arborist for Cedar Brake Park was not cheap. Mr. Fleming said that as they move forward, developers will have to set up an escrow account, but they need to determine a dollar amount possibly \$5,000, \$10,000 or \$15,000, depending on the acreage of the development. Mr. Fleming said that the Code was very specific about all the expenses incurred by the City on the behalf of the development including, legal, engineering, plan and plat reviews, code review, code enforcement, etc., is to be covered by and reimbursed by the developer. Mr. Fleming said that they are trying to make that process as easy as possible by establishing an escrow account upfront and then all fees would be pulled directly from that account. Mr. Fleming said that as long as this is clearly worded and incorporated into the ordinance, in his mind, this is just one more review fee or expense that the City can incur on behalf of the development, thereby pulled from the escrow account. Jeffrey Waddell said that it helps if everything is all very clear up front.

Mr. Foerster said that they are going to want to have a public hearing on both the lighting ordinance and the tree ordinance and City Council will need to conduct a public hearing so they can all get input from people to see if there is something that they are missing. Carol Langley said that she had people call her on the lighting ordinance and they were going to come to the meeting but they did not show up at the meeting.

10. Discuss take action regarding authorizing the purchase of tablets to convert to paperless agendas for Planning and Zoning Commission meetings

Mr. Yates stated that the City Council and the MEDC has already approved this item. Mr. Yates said that they would be receiving a \$200 tablet that each member would be assigned



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and they would receive their agenda packs via email, except for oversized plats, which would be delivered to them. Mr. Yates said that he was kind of concerned with how he would learn the tablet, but it only took him about five minutes and it is very simple. Mr. Yates said that this would save quite a bit of staff time and police time to deliver the packets. Mr. Yates said that he thought it would actually be easier for the Commission because the tablets are large enough to be read easily.

Susan Hensley, City Secretary advised that she was getting City emails set up for everybody and that is where the agenda pack will be sent. Ms. Hensley advised that the tablet will have Word, Excel, PowerPoint and Adobe Reader. Ms. Hensley stated that at the last City Council Meeting she had the tablets set up and ready and the Council members used the tablets for the meeting and it went very well. Mr. Yates advised that he would be putting his notes with each individual item instead of at the front of the packet. Ms. Hensley stated that the tablets would be set up and ready to use, with a Bluetooth keyboard case so you can use the keyboard or touchscreen. Chairman Cox asked if Ms. Hensley would be able to give instruction on the tablet. Ms. Hensley advised that she would be more than glad to assist with the tablets. Ms. Hensley said that the tablets can be ordered in the morning and she will receive them in a couple of days. William Simpson asked if each meeting will be saved on the tablet so they can go back and look at them. Ms. Hensley said that she will email the packet and they will open them in Adobe and it will save them onto their computer. Carol Langley asked if they would have to sign for the tablets. Ms. Hensley advised that they would have to sign for them and everything would be logged.

Arnette Easley moved to accept this great technology and all these fine findings. Jeffrey Waddell seconded the motion, the motion carried unanimously. (5-0)

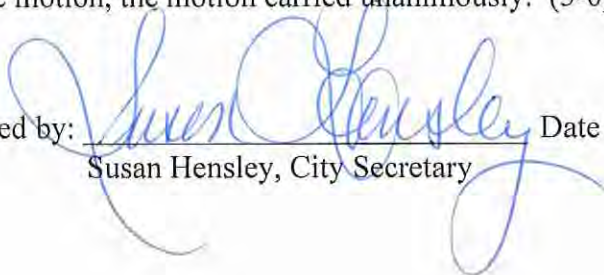
Mr. Fleming stated that a copy of the memo that he had delivered to the MEDC a week ago as an update to them. Mr. Fleming advised that McCoy's development is moving forward and wrapping up their request for rezoning, and the construction drawings are on his desk. Mr. Fleming said that one of the things that they identified from the very beginning was that water service was already available to them, but they were going to need an extension

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of the City's sanitary sewer to reach their tract. Mr. Fleming said that McCoy's has indicated to them from the very beginning that in order to guarantee their own timeline for construction and to adhere to their opening date, which they are hoping to make late spring of 2017, they would be willing to fund the entirety of that construction cost upfront. Mr. Fleming said that while they only need an 8 inch line to serve them, which is about 2,100 feet, and there is an item in the City's Code that offers a mechanism for the City if they deem it prudent from a future planning perspective to fund the cost associated with upsizing the line larger than what a particular development needs. Mr. Fleming said that in this case McCoy's only needs an 8 inch line to serve them, however, from a future planning perspective it would make very good sense for the City to consider upsizing that line to a 12 inch line. Mr. Fleming said that would guarantee that they would collect all the future development along the southern right of way of SH 105, possibly even divert or limit one or two existing lift stations in the process. Mr. Fleming said that his recommendation to the MEDC last week was that this is something that they definitely want to consider. Mr. Fleming said that he did not have real hard numbers on it right now, but based on current bids that they have seen it could be a difference of \$18 - \$22 per linear foot, so he would expect the cost with engineering and contingencies would probably be in the neighborhood of a \$50,000 contribution. Mr. Fleming said that this is going to be coming up pretty quickly for consideration in the next 30-60 days.

**ADJOURNMENT**

William Simpson moved to adjourn the meeting at 8:14 p.m. Arnette Easley seconded the motion, the motion carried unanimously. (5-0)

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

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

Item #1

MINUTES OF SPECIAL MEETING

June 6, 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 6:35 p.m.

Present: William Simpson, Nelson Cox and Carol Langley  
Absent: Arnette Easley and Jeffrey Waddell  
Also Present: Jack Yates, City Administrator  
Larry Foerster, City Attorney

**CONSIDERATION AND POSSIBLE ACTION**

1. Discuss/take action regarding special use permit to Verizon Tower for a Special Use Permit to allow a radio station and tower to be located on a 0.05474 acre tract of land situated in the John Corner survey, abstract number eight, Montgomery County, Texas, and being out of a called 108.89 acre tract (tract one) conveyed to LaFevre Development Inc., (property is immediately east of Rampy Lake and west of Lone Star Pkwy.)

Chairman Cox advised that he was going to allow the landowner to speak regarding this matter.

Mr. Phillip LeFevre stated that he felt that the City needed to have a consistent policy regarding this matter, so that if they say yes to this request, then they need to be willing to say yes to everybody unless the City has a definitive plan. If you say no, the City needs to be consistent and say no to other people rather than being selective. Mr. LeFevre said that he would support whatever decision the Commission makes. Mr. LeFevre said that the City could even consider a compromise where the person requesting the tower would get approval from everyone within 500 feet. Mr. LeFevre said that he did not want to profit at the expense of their neighbors, so if they have any neighbors who feel that this will hurt the value of their property they certainly

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intend to take that into consideration. Mr. LeFevre said that whatever the Commission decides will be good with him and he was sure that they would make the right decision.

Mr. Cody Cargill, representing Verizon, said that he knew there has been discussions about the tower reducing property values, radiation and the tower falling over. Mr. Cargill said that all those arguments could be made about everything, including a gas station or a phone pedestal being placed in a front yard. Mr. Cargill said that the towers do not fall, but said that the Exxon sign or telephone poles or any aspect of things could fall over onto a road. Mr. Cargill said that, in his opinion, none of the arguments are really viable because you have these type of situations everywhere. Mr. Cargill said that it just comes down to whether the City wants that tower at that location. Mr. Cargill said that right now the City is fine, but as that intersection gets developed, there will not be enough circuits for service to be able to handle holiday and weekend traffic, and there will just be busy circuits. Mr. Cargill said that when they go to use their phone for an emergency such as a heart attack or accident, they won't be able to get through. Mr. Cargill said that they are not wanting that tower to make money, because it is costing them money with rent, materials and maintenance to have the tower. Verizon is doing this because it is a need for the public. Mr. Cargill said that more people are going away from landlines and just using cell phones.

Mr. Cargill stated that an alternate location had been suggested, but it was too far away and would not work.

Carol Langley asked about the height of the tower from the ground to the top. Mr. Cargill advised that from the ground to the top of the steel would be 171 feet, and then there will be a thin lighting rod that is an additional 5 to 10 feet. Mr. Cargill said that he thought that this tower would have a 10 foot tall lighting rod, which would be a total of 181 feet from ground elevation. Carol Langley asked if she would see the lighting rod if she was coming into the City of Montgomery, she would see the 171 foot tower. Mr. Cargill said that was correct. Carol Langley asked how far away from the new Kroger store would the tower be located. Mr. Cargill said that he was sorry but he did not know how far it would be, because when he first went out there the Kroger store was not being constructed. Carol Langley said that she wanted

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to know if she was going to see the Kroger store or would she see the 171 foot tower. Mr. Fleming advised that the tower will be the tallest structure at that location. Mr. Yates said the tower would be located approximately 500 feet from the corner of the Kroger property. Carol Langley asked if the tower would be visible at night. Mr. Cargill said that it would not be visible at night and would not have a light.

Mr. Cargill said that if you were to drive into Houston, you would probably never see a cell tower, because you are not looking for them. Carol Langley said that she is trying to determine if when she is coming into Montgomery whether she will see the cell tower or Kroger. Carol Langley said that she is trying to say yes to the tower, because she really and truly thinks that with the Kroger being in front and with all the lights she might not see the tower, but she had not come to that conclusion yet. Mr. Cargill said that the tower would be far enough behind the businesses that the City is going to have on either side of Lone Star Parkway and SH 105 that you will not even recognize the tower once everything is built out. Mr. Cargill advised that he was an independent consultant and did not work for Verizon.

Carol Langley asked if Verizon wants to come to Montgomery, who else is going to want to come to Montgomery. Mr. Cargill said that there could be others, such as AT&T, Sprint, etc. and they could attach to the tower. Mr. Cargill said that before any other things are attached to the tower they are required to have a profession analysis done by a State engineer. William Simpson asked what else could be put on the tower. Mr. Cargill said that other companies could put something on the tower, up to three different companies, which is pretty common.

Carol Langley asked about the ordinance and whether other companies that would want to go on this tower, would they have to go through this same process, since this ordinance was for Verizon. Mr. Cargill said that typically they did not because they are not adding another tower. Mr. Yates said that there was an Exhibit "D" to the ordinance that has the technical specifications, which could give permission regarding adding two more companies. Mr. Yates said that there is probably a technical standard that they could place in that Exhibit about the quality of the construction. Mr. Yates said that he would advise City Council that if they are prone to approve the tower, he would say that it could be contingent upon Exhibit "D" because

it would include the technical specifications for the tower itself, which he would work with Mr. Cargill and the technical personnel.

After discussion, William Simpson moved to recommend to City Council to deny the Special Use Permit for the Verizon tower to be located on a 0.05474 acre tract of land situated in the John Corner survey, abstract number eight, Montgomery County, Texas, and being out of a called 108.89 acre tract (tract one) conveyed to LaFevre Development Inc. Nelson Cox seconded the motion.

Discussion: Mr. Cargill asked about the grounds for denial of the permit. William Simpson said that what he had stated at the last meeting was the visibility of the tower and the time that they have spent on the tree, lighting and sign ordinances. William Simpson said that SH 105 was a very visible location and at this point, in his opinion, he does not want to see the tower. William Simpson said that there were people that spoke at the last meeting that have development proposed directly across the street from the tower location, and they are trying to keep Montgomery as quaint as possible. William Simpson said that you might not see the tower coming from Conroe, but you will see it going towards Conroe as soon as you get past the fire station, the tower is what you are going to see, which is why he is against the tower. William Simpson said that he was speaking for the people that spoke at the last meeting and for people in the community. Chairman Cox advised that their action would be a recommendation to City Council. Mr. Cargill said that it comes down to aesthetics rather than safety, which is all he wanted to know.

The motion carried unanimously. (3-0)

## ADJOURNMENT

Carol Langley moved to adjourn the meeting at 6:55 p.m. William Simpson seconded the motion, the motion carried unanimously. (3-0)

Item #1

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

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



June 22, 2016

The Planning and Zoning Commission  
City of Montgomery  
101 Old Plantersville Rd.  
Montgomery, Texas 77316

8701 New Trails Drive, Suite 200  
The Woodlands, Texas 77381-4241  
Tel: 281.363.4039  
Fax: 281.363.3459  
www.jonescarter.com

Re: Request for Variance-Rear Yard, Vegetative Setback/Visual Barrier  
SH-105 Retail Center  
City of Montgomery

Commission Members:

Sec. 78-162(a) of the City of Montgomery Code of Ordinances specifies a vegetative setback of 25-feet in width shall be maintained at all times where commercial, multifamily, industrial, church, public building, or school properties abut any single-family residential property or adjacent acreage that may in the future become single-family residential.

Sec. 78-162(b) of the City of Montgomery Code of Ordinances specifies a vegetative setback of 15-feet in width will be required for commercial property that abuts any existing multifamily tract. All multifamily tracts shall have a vegetative barrier of at least 10-feet within their property lines on all multifamily projects that abut multifamily or commercial zoning.

Sec. 78-162(c) of the City of Montgomery Code of Ordinances specifies the vegetative setback must also provide a visual barrier.

Per the enclosed letter the Developer is requesting a waiver of the visual barrier requirement based upon an assumption the adjacent property will, in the future, remain zoned District "B" Commercial and developed as such.

We recommend you consider denying the requested variance and requiring installation of a visual barrier as defined in the City's Code of Ordinances. Approximately 30-feet north of the tract in question is the existing City Limit. Beyond that lies land which is currently located in the unzoned extraterritorial jurisdiction of the City. We have received numerous requests for information pertaining to the availability of utilities to serve potential commercial, mixed use commercial, multifamily, and single family development on this acreage.

If you have any questions or comments, please contact, Glynn Fleming and or myself.

Sincerely,

Ed Shackelford, P.E.  
Engineer for the City





Item #2

May 12, 2016

RE: Montgomery Retail Center - Variance Request

To: Planning Commission and City Council

The City has requested a 25' building and Vegetation Barrier along the north line of the proposed plat of Montgomery Retail Center. The developer would like to request a variance to remove the 25' Vegetative Barrier.

The ordinances intent was to partition commercial property from residential property. It is anticipated that the property bordering this plat will be Commercial.

The developer plans to leave the 25' building line on the proposed plat as requested by the City.

Respectfully

David J. Strauss  
Town and Country Surveyors – A Landpoint Company  
2219 Sawdust Road, Suite 2003  
Spring TX 77380  
281-465-8730 Phone



*Item # 3*

June 22, 2016

The Planning and Zoning Commission  
City of Montgomery  
101 Old Plantersville Rd.  
Montgomery, Texas 77316

8701 New Trails Drive, Suite 200  
The Woodlands, Texas 77381-4241  
Tel: 281.363.4039  
Fax: 281.363.3459  
www.jonescarter.com

Re: Request for Variance-Side Yard Setback and Driveway Spacing  
McCoy's Building Supply  
City of Montgomery

Commission Members:

Sec. 78-133(a)(1) of the City of Montgomery Code of Ordinances specifies adjacent left, right, and opposite right corner clearance and commercial driveway spacing is determined by the classification of the street as follows (where raised medians are present, the spacing can be reduced by 20 percent):

- Major Streets, 275-feet, 220-feet with raised medians
- Commercial Streets, 230-feet, 185-feet with raised medians
- Secondary Streets, 185-feet, 150-feet with raised medians

The Developer is requesting a waiver of the driveway spacing requirement in order to facilitate placement of a third point of egress onto Buffalo Springs. The proposed driveway would serve Restricted Reserve "C".

We recommend you consider denying the requested variance given the proximity of this proposed driveway to the intersection of SH-105 and Buffalo Springs as well as its potential impact on future traffic patterns on Buffalo Springs.

Sec. 98-155(a)(2) of the City of Montgomery Code of Ordinances specifies a side yard of not less than 15-feet in width shall be provided on the side of a lot adjoining a minor street (not including easements). A side yard not less than 25-feet in width shall be provided on the side of a lot adjoining an R or PD district. Otherwise a side yard of ten feet is required. No parking, storage, or similar use shall be allowed in any required side yard or in any required side street adjoining an R or PD district, without proper enclosure.

Recall the adjacent property is currently zoned in part, R-1 Single family, R-2 Multi-family, and B Commercial. Additionally, both the Commission and City Council have requested we prioritize comprehensive rezoning along the SH-105 corridor. The Developer is requesting a reduction in the required side yard setback abutting the R-1 zoning in order to facilitate creation of a uniform 15-foot setback along the western property line.



*J. Fleming*

3

We offer no objection to the requested variance and should it receive approval we will coordinate with Eckermann Engineering to ensure it is platted properly and adhered to during the design and construction phases.

If you have any questions or comments, please contact, Glynn Fleming and or myself.

Sincerely,

Ed Shackelford, P.E.  
Engineer for the City

EHS/gef:lr2

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Enclosure:

McCoy's Building Supply – Site Plan

cc/enc:

The Honorable Mayor and City Council – The City of Montgomery

Mr. Jack Yates – City of Montgomery, City Administrator

Ms. Susan Hensley – City of Montgomery, City Secretary

Mr. Larry Foerster– Darden, Fowler and Creighton, LLP, City Attorney

TREE ORDINANCE – GENERAL DESCRIPTION

Tree Protection Plan—a plan submitted by property owner, providing Protected Trees exist, with the method of protecting trees, and tree removal during construction in accordance with methods in the Urban Forest Technical Manual (UFTM)

Tree Replacement Plan – a plan submitted by property owner, providing the method of replacement for the trees removed during construction.

Urban Forest Consultant -- means a private resource consultant with expert expertise and care, maintenance and preservation using urban forestry management standard practices as a guide.

Tree Ordinance applies to: all real property on which protected trees exist, (excluding R-1 and R-2 present subdivided lots) all vacant and undeveloped property, all new subdivisions, any new commercial development.

Terms of Ordinance are:

- Unlawful to damage/remove a tree having, at least, ten inches caliper, except with permit,
- Removal of a diseased tree allowed- with permit,
- All Permits and Plans are reviewed by City Administrator or his designee, the Urban Forest Consultant,
- Replacement trees required when sites Canopy Area is reduced by 20%,
- Tree protection during construction is required, a plan is required,
- Replacement trees must be minimum of 3" caliper and 10' high and otherwise comply with UFTM,
- Ordinance does not apply to utility companies needing to remove trees for lines,
- Fees/bond paid to city at time of Tree Replacement Plan at time of plan to assure replacement of trees, with 5% paid to city for administration of Plan(s),
- A Tree Fund shall be established from fees collected to be used for purchasing, installing trees on public r-o-w, forestry management services and administering the Tree Fund,
- An approved tree list is provided as an attachment to the ordinance

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE REGARDING AN ADDITION TO THE ZONING ORDINANCE REGARDING TREE REPLACEMENT, REMOVING, DEFINITIONS, TREE PRESERVATION AND PROTECTION, MAINTENANCE FEES AND IMPLEMENTATION, ENFORCEMENT AND PENALTIES, REPEALING CLAUSE, SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City Council of the City of Montgomery has determined that it is necessary to adopt new regulations for tree protection and preservation in order to better protect the interests of the City and its citizens,

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

**AN ADDITION TO CHAPTER 3 - TREE PRESERVATION AND REPLACEMENT ORDINANCE: ARTICLE 3.1800**

**Sec. 3.1801 INTENT**

The intent of this ordinance is to preserve existing trees of certain species, and to provide for the replacement of trees that are necessarily removed during construction or development. No clear-cutting of land is allowed in the City or on land under the City's jurisdiction.

**Sec. 3.1802 APPLICABILITY**

This section applies to all tracts of land within the City of Montgomery and its extra-territorial jurisdiction area, as well as any area subsequently annexed by the City with the following exceptions:

- (a) Previously platted residential lots
- (b) Any unplatted parcel, less than five (5) acres, that contains an occupied building which has a valid Certificate of Occupancy
- (c) All licensed tree nurseries only in relation to those trees planted and growing on the premises that are for sale or intended sale to the general public in the ordinary course of such licensed business
- (d) All easements and rights-of-way, other than drainage easements, that are on a recorded plat approved by the City and filed in the plat records of Montgomery County.

**Sec. 3.1803 DEFINITIONS**

- (a) Caliper - The average diameter of the trunk of the tree as measured at 42" above natural grade. On multi-trunk trees, the caliper of the largest trunk, plus % of each additional trunk's caliper shall be added to determine the caliper.
- (b) Clear-Cutting - The indiscriminant removal of protected trees from a parcel or tract of land.
- (c) Critical root zone - An area extending five (5) feet beyond the outermost drip line of the tree.
- (d) Principal Building - For the purposes of this ordinance, any building which is the first building permitted for construction on a lot or tract of land, or any subsequent building which shall *serve* as the primary residence or occupied building on the lot or tract of land.
- (e) Tree survey date - For purposes of establishing the age of the tree survey, the first date that field observations were made by the Preparer.
- (f) Protected tree -
  - (1) Any tree with a caliper of 12" or greater of any species, or
  - (2) Any tree with a caliper of 6" or greater of any species that is not one of the following: mesquite, bois d'arc, thorny honey locust, hackberry, cottonwood, cedar, chinaberry (common), native black willow, native red or white mulberry.

**Sec 3.1804 TREE PRESERVATION AND PROTECTION**

- (1) No person, directly or indirectly, shall cut down, destroy, remove or move, or effectively destroy through damaging, any protected tree regardless of whether the protected tree is on private property or the abutting public right-of-way, as described in Section 3.1802, APPLICABILITY, with the following exceptions:
  - (a) During a period of emergency, such as a tornado, storm, flood or other act of God, the requirements of this ordinance may be waived as may be deemed necessary by the City of Montgomery designated Emergency Management Coordinator (EMC) or, if unavailable, by the EMC equivalent from the Federal, State of Texas, or Montgomery County Governments.
  - (b) If any protected tree is determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety, and requires immediate removal without delay, authorization for removal may be given by the Montgomery City Emergency Management Coordinator or other designee of the City, and such a protected tree may

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then be removed without obtaining a written permit as required in this ordinance and the fees, restitution, and penalties will not apply.

- (c) Utility service providers may do routine maintenance that is necessary for insuring reliable transmission and delivery service within their approved easements, and, or right-of-ways.
- (2) No clear-cutting of land is allowed.
- (3) A tree preservation plan must be submitted with all request to plat new subdivisions or developments, and again with all requests for permits for any type of construction. If the site of development or construction does not contain any protected trees, a verification letter of no protected trees shall be submitted to the City that attests, that protected trees are not on the property and that the person making this determination is qualified to do so. Persons who may prepare the tree preservation plan or verification letter include registered surveyors, professional engineers, architects, landscape architects, arborists, or other qualified licensed professional(s). The letter must contain a statement affirming the author is qualified to prepare such document and listing his/her State License Number or other certificates of documentation. The tree preservation plan or verification letter of no protected trees must be submitted to and approved by the City prior to the removal of any trees on the site. If there are no trees present of any type in the area of construction on previously platted residential lots, making no expertise necessary for determining the type and size of trees, landowners may submit a verification letter of no protected trees on their own behalf.
- (4) The tree preservation plan must include a site map including, but not limited to the following information:
  - (a) Delineation of site boundaries.
  - (b) Location of all existing or proposed structures, construction activities and improvements (e.g., streets, alleys, easements, building lines, drainage ways, major grade changes, etc.).
  - (c) Location, species and caliper of all trees within 100' of any proposed construction activities which *have* a caliper of 6" or greater, except species may be omitted if all trees over 6" will be protected.
  - (d) Trees proposed for preservation.
  - (e) Trees proposed for *removal*.
  - (f) Tree replacement proposal.
  - (g) Location of any existing or proposed utility lines.

The tree preservation plan must be based upon a tree survey, which is less than two years old at the time of submittal for platting and subdividing permits. Requests for building permits may use an existing City-approved tree survey, which is up to

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*five* years old at the time of the building permit application submittal, if available.

- (5) Trees to be preserved must be protected during construction activities by the following measures:
  - (a) No grade changes, or trenching, shall be allowed within the critical root zone without prior City approval.
  - (b) For trees within 50' of a construction area, temporary barriers shall be erected to protect the critical root zone.
  - (c) No construction or waste materials shall be stored,
  - (d) No asphalt, concrete or other impervious material shall encroach within the critical root zone, except, when necessary, and with prior City approval, these materials may be placed within 5 feet of the trunk so long as at least 2/3rds of the critical root zone remains undisturbed.
  - (e) No parking or vehicular traffic shall be allowed within the critical root zone. This restriction does not apply to the clearing of underbrush or of approved construction activities within the critical root zone.

### **Sec. 3.1805 REMOVAL, MAINTENANCE AND REPLACEMENT OF TREES**

- (1) Dead trees may be removed at any time, and shall not be considered in the tree preservation plan. This shall not require City approval under this Ordinance.
- (2) Any tree may be reasonably pruned for aesthetic, maintenance, disease control, or safety reasons. This shall not require City approval.
- (3) No protected tree shall be pruned in a manner that significantly disfigures the tree or in a manner that would reasonably lead to the death of the tree.
- (4) Trees, which are to be removed for disease or safety reasons, shall be approved by the City prior to cutting. Factors to be considered include, but are not limited to, the overall health of the tree, the potential for adverse impacts of both leaving and removing the tree, and aesthetic value. This requirement shall not apply to any trees included in the percentage of trees allowed to be removed in accordance with paragraphs 5 and 6 of this section.
- (5) Up to 20 % of the total caliper inches of existing, protected trees may be proposed for removal during the development process (i.e., the grading, road, drainage and utility construction of the subdivision) without replacing any trees. Any tree 12" caliper or greater may not be included in the 20% exemption.
- (6) Up to 20 % of the total caliper inches of existing, protected trees on each lot may be proposed for removal during the construction of a new dwelling or other building without replacing any trees. Any tree 12" caliper or greater may not be included in the 20% exemption.



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- (7) Removal of a greater percentage of trees than that allowed above shall require the planting of new trees on a 100 % replacement rate. That is, for each caliper inch of protected trees removed (in excess of the allowed percentages), new trees with an equivalent aggregate total number of caliper inches must be replanted. Multiple trees may be used to achieve the required total number of caliper inches, but replacement trees must be at least 2" each, except, when replacing a protected tree which had a caliper greater than 16", at least two 5" trees shall be included in the total. New trees must be chosen from the list of protected species in the ACCEPTABLE REPLACEMENT TREE APPENDIX of this Ordinance. (All caliper measurements are at 42 inches above grade.)
- (8) For the purpose of replacement trees, existing non-protected trees which meet minimum size requirements may be preserved instead of planting replacement trees. Species protected by this ordinance which are between 3" and 6" shall count 100 % (i.e., inch-for-inch). Unprotected species shall be a minimum of 6" caliper and count only 50 % (i.e., a 6" unprotected tree will count as a 3" replacement tree).
- (9) At the request of the applicant, replacement trees may be planted on city property in lieu of the property under construction/development, with prior city approval.
- (10) A tree identified on the tree preservation plan that is replaced but dies within one year of the date it was planted must be replaced in accordance with the provisions of this ordinance.
- (11) All replacement trees must be of a species included in the Approved Replacement Tree List in Appendix A.

### Sec. 3.1806 FEES AND IMPLEMENTATION

- (1) **New Development.**  
Review and verification of tree preservation plans shall be performed by the City's consulting engineering firm in conjunction with other portions of the application. Fees shall be billed to the applicant as per APPENDIX A, FEE SCHEDULE. Any cost incurred by the City for review, oversight, and verification in excess of Collected Fees as established in the FEE SCHEDULE, will be the responsibility of the applicant and must be reimbursed to the City. Final Plat approval shall not be granted until all fees have been paid in full by the applicant and, if applicable, all Penalties and any required restitution has been satisfied as well. The City may also withhold construction permits and occupancy permits if necessary until payment is made in full.

- (2) Residential Building Permits.  $\beta$   
A fee, as prescribed in APENDIX ~~A~~, FEE SCHEDULE, shall be assessed per individual platted lot for the City's costs incurred including the initial review and field verification of tree preservation plans required for the issuance of a Residential Building Permit. Each subsequent revised submittal shall be charged a reduced fee equivalent to the "Re-Inspection Fee". Fees are due at time of submittal. If no trees are going to be affected by construction as defined in Section 3.1804, a letter certifying no trees will be affected may be submitted with the accompanied reduced fee equal to the "Re-Inspection Fee".
- (3) Non-Residential Building Permits.  $\beta$   
A fee, as prescribed in APENDIX ~~A~~, FEE SCHEDULE, shall be assessed per acre for Non-Residential Building Permits for the City's costs incurred including the initial review and field verification of tree preservation plans required for the issuance of a Non-Residential Building Permit. Each subsequent revised submittal shall be charged a reduced fee equivalent to the "Re-inspection Fee." Fees are due at time of submittal. If no trees are going to be affected by construction as defined in Section 3.1804, a letter certifying no trees will be affected may be submitted with the accompanied reduced fee.
- (a) Letters of No Protected Trees. Fees shall be assessed at the reduced fee rate shown in ARTICLE 2.000, SECTION 2.100 (3) (J), for review and field verification of "No Protected Tree Letters" when submitted.

### Sec. 3.1807 ENFORCEMENT AND PENALTIES

- (1) No plat for new developments or subdivisions of property shall be approved, nor any building or construction permit issued, without an approved tree preservation plan or a verification letter of no protected trees. Permanent Certificate of Occupancy shall not be issued nor valid without all submittals, fees, and approval and, if applicable, all Penalties and Restitution being satisfied.
- (2) Cutting down, destroying, removing, moving or pruning that significantly disfigures or pruning in a manner that significantly disfigures the tree in a manner that would reasonably lead to the death of any tree shall be subject to fines as established in ARTICLE 2.000, SECTION 2.400 entitled TREE PRESERVATION AND ENFORCEMENT RELATED FEES.
- (3) Each individual tree damaged or removed in violation of this Ordinance shall constitute a separate offense and Restitution shall be made fully, as well as payment of penalties up to the applicable amounts in ARTICLE 2.000, Section 2.400 shall be required.

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**Sec. 3.1808 SAVINGS/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.

**Sec. 3.1809 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 of Montgomery 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.

**Sec. 3.1810 EFFECTIVE DATE**

The provisions of this Ordinance will become effective immediately upon adoption by the Montgomery City Council. 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 by the City Council of the City of Montgomery, Texas on this the \_\_\_\_ day of \_\_\_\_\_ 2016.

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

ATTEST:

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

APPROVED AS TO FORM:

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

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## APPENDIX A

### List of Approved Trees for Planting In the City of Montgomery

#### LARGE TREES – EVERGREEN (50' + HT.)

Common Name	Scientific Name	Recommended Size Min - Max	Recommended Uses
Southern Magnolia	<i>Magnolia grandiflora</i>	3" – 6" Caliper	Accent
Loblolly Pine	<i>Pinus taeda</i>	3" – 6" Caliper	Group planting
Live Oak	<i>Quercus virginiana</i>	3" – 6" Caliper	Group planting

#### MEDIUM TREES – EVERGREEN (25' – 50' HT.)

Common Name	Scientific Name	Recommended Size Min - Max	Recommended Uses
Dahoon Holly	<i>Ilex cassine</i>	3" – 4" Caliper	Accent
American Holly	<i>Ilex opaca</i>	3" – 4" Caliper	Accent
East Palatka Holly	<i>Ilex x attenuata</i>	3" – 4" Caliper	Accent
Savannah Holly	<i>Ilex opaca x attenuata</i>	3" – 4" Caliper	Accent
Eastern Redcedar	<i>Juniperus virginiana</i>	3" – 4" Caliper	Screen
Cherry Laurel	<i>Prunus caroliniana</i>	3" – 4" Caliper	Screen

#### SMALL TREES – EVERGREEN (Under 25' HT.)

Common Name	Scientific Name	Recommended Size Min - Max	Recommended Uses
Youpon Holly	<i>Illex yomitoria</i>	3" – 4" Caliper	Screen
Southern Wax Myrtle	<i>Myrica ceirfera</i>	3" – 4" Caliper	Screen
Loquat	<i>Eriobotrya japonica</i>	3" – 4" Caliper	Accent
Little Gem Magnolia	<i>Magnolia grandiflora</i> 'Little Gem'	3" – 4" Caliper	Accent
Texas Mountain Laurel	<i>Sophora secundiflora</i>	3" – 4" Caliper	Accent

#### LARGE TREES – DECIDUOUS (50' + HT.)

Common Name	Scientific Name	Recommended Size Min - Max	Recommended Uses
Pecan	<i>Carya illinoensis</i>	3" – 4" Caliper	Street
Bald Cypress	<i>Taxodium distichum</i>	3" – 6" Caliper	Specimen, Groups
Sweetgum	<i>Liquidambar styraciflua</i>	3" – 6" Caliper	Street, Fall color
Mexican Sycamore	<i>Platanus mexicana</i>	3" – 6" Caliper	Plaza, Street, Parking lot
Southern Red Oak	<i>Quercus falcata</i>	3" – 6" Caliper	Fall color, Street
Water Oak	<i>Quercus nigra</i>	3" – 6" Caliper	Street, Parking lot
Willow Oak	<i>Quercus phellos</i>	3" – 6" Caliper	Plazas
Shumard Oak	<i>Quercus shumardi</i>	3" – 5" Caliper	Groups, Fall color
Bur Oak	<i>Quercus macrocarpa</i>	3" – 6" Caliper	Street
Chinquapin Oak	<i>Quercus muehlenbergii</i>	3" – 6" Caliper	Specimen
Cedar Elm	<i>Ulmus crassifolia</i>	3" – 6" Caliper	Group planting
Chinese Pistache	<i>Pistacia chinensis</i>	3" – 6" Caliper	Accent
Chinese Elm	<i>Ulmus parvifolia</i>	3" – 6" Caliper	Accent
Montezuma Cypress	<i>Taxodium mucronatum</i>	3" – 6" Caliper	Accent

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Red Maple	<i>Acer rubrum</i>	3" – 6" Caliper	Accent
Green Ash	<i>Fraxinus pennsylvanica</i>	3" – 6" Caliper	Accent
White Oak	<i>Quercus alba</i>	3" – 6" Caliper	Accent
Sawtooth Oak	<i>Quercus acutissima</i>	3" – 6" Caliper	Accent
Laurel Oak	<i>Quercus laurifolia</i>	3" – 6" Caliper	Accent
Overcup Oak	<i>Quercus lyrata</i>	3" – 6" Caliper	Accent
Nuttall Oak	<i>Quercus nutallii</i>	3" – 6" Caliper	Accent
Monterrey Oak	<i>Quercus polymorpha</i>	3" – 6" Caliper	Accent

MEDIUM TREES – DECIDUOUS (25' – 50' HT.)

Common Name	Scientific Name	Recommended Size Min - Max	Recommended Uses
River Birch	<i>Betula nigra</i>	3" – 6" Caliper	Accent
Brandford Pear	<i>Pyrus calleryana</i>	3" – 6" Caliper	Accent
Aristocrat Flowering Pear	<i>Pyrus calleryana</i> 'Aristocrat'	3" – 6" Caliper	Accent
Golden-Rain Tree	<i>Koelreuffria paniculata</i>	3" – 6" Caliper	Accent

SMALL TREES – DECIDUOUS (Under 25' HT.)

Common Name	Scientific Name	Recommended Size Min - Max	Recommended Uses
Redbud	<i>Cercis canadensis</i>	3" – 4" Caliper	Accent
Fringe Tree	<i>Chionanthus virginicus</i>	3" – 4" Caliper	Accent
Dogwood	<i>Cornus florida</i>	3" – 4" Caliper	Accent
Parsley Hawthorn	<i>Crataegus marshalli</i>	3" – 4" Caliper	Accent
Crape Myrtle	<i>Lagerstroemia spp.</i>	6' – 10' HT.	Grouping
Mexican Plum	<i>Prunus mexicana</i>	3" – 4" Caliper	Accent
Purple Leaf Plum	<i>Prunus cerasifera</i>	3" – 4" Caliper	Accent
Saucer Magnolia	<i>Magnolia soulangiana</i>	3" – 4" Caliper	Accent

ORDINANCE \_\_\_\_\_

AN ORDINANCE REGARDING TELECOMMUNICATIONS TOWERS, DEFINITIONS, EXCEPTIONS, ENFORCEMENT AND PENALTIES, CUMULATIVE EFFECT CITY ATTORNEY AUTHORIZED TO FILE SUIT TO ABATE, PERMITS REQUIRED, APPLICATION PROCEDURES, NOTICE OF PENDING APPLICATION, WAIVER, PROTEST AND APPEAL HEARING PROCEDURES, BUILDING PERMIT REQUIRED, TOWER PERMIT FEES, PROVIDING RELATIONS REGARDING LOCATION OF TOWERS, TOWER STRUCTURE, SECURITY FENCE, SCREENING FENCE, LANDSCAPING, SIGNS AND LIGHTS, MAINTENANCE AND INSPECTION, REMOVAL OF TOWERS, DEED RESTRICTION AFFIDAVIT, PERMITTED HOURS FOR CONSTRUCTION AND MAINTENANCE, SEVERABILITY CLAUSE, PROOF OF PUBLIC MEETING, PROVIDING AN EFFECTIVE DATE

**Chapter 98 - TELECOMMUNICATIONS TOWERS<sup>[1]</sup>**

**ARTICLE I. - IN GENERAL**

**Sec. 98-1. - Definitions.**

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

*Alteration* means any modification, replacement, or reconstruction that increases the height or materially increases the dimension of a tower structure.

*Antenna* means a device or system of wires, poles, rods, dishes, dishes or similar devices used for the transmission and/or receipt of electromagnetic waves.

*Camouflage design and camouflage tower* mean the design of a tower or tower structure that blends into the surrounding environment and is visually unobtrusive. Examples of a camouflage design or tower are architecturally screened, roof-mounted antenna/array/equipment, building-mounted antenna/array/equipment that is painted and treated as an architectural element to blend with the existing building, designs that conceal the antenna/array/equipment, manmade trees, clock towers, bell towers, steeples, light poles, and similar alternative-design mounting structures.

*City Administrator* means the person designated by the city Council as the city administrator of the city or his designee

*Department* means the department of the City Administrator.

*Downtown district* means the central business district bounded on the west by Frazier Street, on the north by Phillips Street, on the east by the Union Pacific Railway, and on the south by the Burlington Northern and Santa Fe Railway.

*FAA* means the Federal Aviation Administration.

*FCC* means the Federal Communications Commission.

*Grade* means the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building or structure and a line five feet from the building or structure.

*Height of the building* means the vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the

highest gable of a pitched or hipped roof. The reference datum shall be selected by either of the following, whichever yields a greater height of the building:

(1) The elevation of the highest adjoining sidewalk or ground surface within a five-foot horizontal distance of the exterior wall of the building when the sidewalk or ground surface is not more than ten feet above the lowest grade.

(2) An elevation ten feet higher than the lowest grade when the sidewalk or ground surface described in subsection (1) of this definition is more than ten feet above lowest grade.

The height of a stepped or terraced building is the maximum height of any segment of the building.

*Height of the tower* means the vertical distance between the finished grade at the base of the tower or the lowest point of contact with the building, and the highest point of the tower structure, excluding the antenna, if any.

*High mast light structure* means a fixed, freestanding uninhabitable structure of a minimum height of 100 feet, specifically designed to carry light fixtures that is built on land on, along or adjacent to streets, roads, highways and bridges maintained by the state or political subdivision of the state.

*Park* means any property of the state or political subdivision thereof that is designated for and restricted to use by the public for park purposes.

*Public utility* means any person, company, corporation, cooperative corporation, partnership, or any combination thereof, that is subject to both a municipal franchise agreement and the comprehensive regulatory system established by and defined in the Texas Public Utility Regulatory Act that owns or operates for compensation equipment or facilities for:

(1) Producing, generating, transmitting, distributing, selling, or furnishing electricity; or

(2) The conveyance, transmission, or reception of communications over a telephone system as a dominant carrier.

The term "public utility" shall not include, as is defined in the Texas Public Utility Regulatory Act, telegraph services, television stations, radio stations, community antenna television service, general radio-telephone services, or radio-telephone services authorized under the Public Mobile Radio Services rules of the Federal Communications Commission or private water companies.

*Residence* means any permanent building or structure containing habitable rooms for nontransient occupancy, designed and used primarily for living, sleeping, cooking and eating, which is intended to be used or occupied as a dwelling place for residential purposes, whether or not attached, including homes, townhomes, patio-homes, duplexes, triplexes, quadraplexes, condominiums and apartments. Multiunit complexes shall be included at a ratio of one-eighth acre of land, or any fraction thereof, as being equivalent to one residential tract. For purposes of calculating the ratio of multiunit complex acreage to residential tracts, only that portion of the multiunit complex acreage within the residential test area shall be considered. Hotels, motels, boarding houses, group homes, half way houses, nursing homes, hospitals, nursery schools, schools, and child care facilities shall not be considered residences. A building or structure located on a lot or tract of land used as the site of a tower shall not be considered a residence so long as its primary use is to contain, house, store, and protect materials or equipment directly related to the purpose and use of the tower.

*Residential* means pertaining to the use of land for a residence as is defined in this section.

*Residential area* means the area around a proposed tower site that, within the residential test area, contains 50 percent or more tracts wholly or partially therein that are subject to residential restrictions or are in use for residential purposes.

*Residential lot* means:

(1) A lot which is included within a recorded residential subdivision subject to any enforceable, valid and unexpired residential deed restrictions upon which a residence exists or may be constructed pursuant to those valid and applicable deed restrictions; or

(2) An unrestricted lot upon which a residence exists.

*Residential restrictions* means one or more restrictive covenants limiting the use of the property to residential purposes that are contained or incorporated by reference in a properly recorded map, plat, replat, declaration, deed, judgment or other instrument filed in the county real property records, map records or deed records.

*Residential test area* means the circular area, as described in this definition, surrounding a proposed tower structure. The radius of the circle shall be at least 375 feet and not more than 800 feet, and the center of the circular area shall correspond to the center of the base of the proposed tower structure. The radius of the circular area shall conform to the following ratios:

Three hundred seventy-five feet radius at a tower height of 100 feet or less.

Six hundred feet radius at a tower height of more than 100 feet but not more than 150 feet.

Eight hundred feet radius at a tower height of more than 150 feet.

*Setback area* means the circular area surrounding a proposed tower structure and which delineates the area between the site of the proposed tower and the nearest residential structure or residential restricted tract of land as established in section 98-71(f).

*Subdivision* means all land encompassed within one or more maps or plats of land within the city that is divided into two or more parts and are recorded in the deed, map or real property records of the county or counties in which the land covered by the map or plat is located.

*Tower* and *tower structure* mean a fixed, freestanding or guyed, uninhabitable structure, not designed as a shelter or to be occupied for any use. The terms "tower" and "tower structure" include, but are not limited to, any such structure supporting antennae that transmit or receive any portion of the electromagnetic spectrum of radio waves. The following are, by way of example but not limitation, towers or tower structures: guyed or freestanding monopole structures, lattice or open framed structures, antennae supports, water towers, and other similar self-supporting, trussed, or open framed structures.

*Tract* means a contiguous parcel of property under common ownership.

#### **Sec. 98-2. - Exemptions.**

This chapter does not apply to the following structures:

- (1) Church bell towers and religious symbols associated with a place of worship;
- (2) Tower structures less than 60 feet in height;
- (3) Tower structures used primarily for the support of amateur and citizens' band radio antennae;
- (4) Tower structures that are attached to, placed upon, or constructed on top of a building provided that the height of the tower structure does not exceed 60 feet or the height of the building upon which the tower is constructed, whichever is less;
- (5) Tower structures on real property owned, leased, held or used, or dedicated for use by a public utility for rendering its service, such as tower structures used primarily for the transmission of electrical power by a public utility or the conveyance of communications over a telephone wire-line system operated by a public utility;
- (6) High mast tower structure or antennas built on land on, along or adjacent to streets, roads, highways and bridges maintained by the state or a political subdivision of the state;
- (7) Tower structures constructed or placed on land or other structures owned, leased, held or dedicated for use by the state or federal government or any political subdivision thereof, which land or other structures are used by the governmental entity primarily for rendering fire, police or other public protection services or utility services, whether or not the tower structure is used jointly by the governmental entity and any other public or private person or entity for other and additional public or private purposes;
- (8) A water tower which does not support an antennae or other array designed or intended to transmit or receive any portion of the electromagnetic spectrum of radio waves; and



(9) Temporary tower structures used as or in conjunction with construction cranes.

**Sec. 98-3. - Enforcement and penalties.**

Violation of this chapter is unlawful. Failure of any person to comply with any provision of this chapter shall be punishable as provided in section 1-13. Each day the violation continues shall constitute a separate offense. All authority granted to the city attorney and the city administrator and their designees under this chapter shall be exercised uniformly on behalf of and against all citizens and property of the city. Prior to the issuance of a citation under this chapter, the city administrator shall furnish notice to the last known address of the tower owner of the alleged violation and shall afford the owner a reasonable opportunity to cure the violation, consistent with the risks posed by the violation and the efforts that would be required to cure it.

**Sec. 98-4. - Cumulative effect.**

This chapter is cumulative of other requirements imposed by ordinances and regulations of the city. To the extent of any inconsistency, the more restrictive provision shall govern. Without limitation, the issuance of a permit under this chapter shall not excuse compliance with the building code, including permits required thereunder.

**Sec. 98-5. - City attorney authorized to file suit to abate violation.**

The city attorney is hereby authorized to file suit on behalf of the city in any court of competent jurisdiction to enjoin or abate a violation of this chapter. All authority granted to the city attorney under this chapter shall be exercised uniformly on behalf of and against all citizens and property in the city. This authorization shall be cumulative and in addition to any other civil or criminal penalty provisions. The city, acting through the city attorney or any other attorney representing the city, may file an action in a court of competent jurisdiction to recover damages from the owner or the agent of the owner of a tower or tower structure in an amount adequate for the city to undertake any activity necessary to bring about compliance with this chapter.

**Sec. 98-6. - Transitional provisions.**

The provisions of this chapter shall apply to towers constructed, placed or altered after the effective date of the ordinance from which this chapter derived.

**Secs. 98-7—98-30. - Reserved.**

**ARTICLE II. - PERMITS**

**Sec. 98-31. - Tower permit required.**

(a) An application for a tower permit shall be submitted to the department and approved in accordance with the provisions of this chapter prior to the construction, placement or alteration of any tower or tower structure, as defined in this chapter and not specifically excluded herein, that is located within the boundaries of the municipality.

(b) Except for routine maintenance, a tower permit shall be required in order to repair, modify or replace any existing tower. Regardless of the tower's location the city administrator shall not deny a permit for repairs, modifications or replacements which do not increase the height or dimension of the tower and which are necessary to comply with the requirements of any statute, regulation, order, or

rule of the Federal Communications Commission, the Federal Aviation Administration, or any other federal, state or governmental agency or authority.

(c) Regardless of its location, the owner of an antenna tower existing on or before date of adoption may obtain a permit to replace the tower with a new tower if the new tower structure complies with the requirements of sections 98-73 through 98-76 and (i) is specifically designed to accommodate additional antenna arrays, (ii) is not more than 20 feet higher than the tower structure being replaced, (iii) is not more than 50 feet from the location of the tower structure being replaced and (iv) the center of the tower structure is no closer to the nearest residence than the center of the tower structure it replaces.

**Sec. 98-32. - Application procedures for a tower permit.**

(a) An application for a tower permit shall be submitted to the department in the time and manner prescribed by the city administrator. The applicant shall, with the filing of the completed tower permit application, submit payment of the appropriate tower permit fees established by the city administrator and approved by city council that are calculated to reasonably cover the expenses of administering the provisions of this chapter.

(b) The application shall not be considered complete unless accompanied by any drawings, descriptive data, filing fees, ownership information, and other pertinent data that may be required by the city administrator. Each application for a tower permit or for a waiver shall include envelopes addressed to the owners and a complete list of those owners, as is indicated by the most recently approved tax rolls, of all properties within the residential test area of the proposed tower site.

(c) If any of the required documentation, data, reports or drawings contain any false or erroneous information known to the applicant, then any permit issued pursuant to that false or erroneous information shall be void with the same force and effect as if it had never been issued.

(d) The city administrator shall issue a permit for construction, placement or alteration of a tower only if it meets the requirements of this chapter, and any other applicable regulations of the city.

(e) On or before the 30th calendar day following the filing of the required application, the city administrator shall issue to the applicant a written notice of disapproval or preliminary approval of the tower permit. Any notice of disapproval of a tower permit application must include a written report explaining in detail the reasons for disapproval. Any preliminary approval shall be subject to the protest provisions of section 98-35, and, if no protest is timely filed thereunder, shall become a final approval on the business day next following the close of the protest period. The issuance of a written notice to the applicant shall be complete upon the deposit of the properly addressed notice in the United States mail, first class postage paid.

**Sec. 98-33. - Notice of pending application.**

(a) The notice requirements of this section apply only to applications for tower permits for the construction, placement or alteration of towers subject to the requirements of this chapter and for waivers from the requirements of this chapter. When an application for waiver is not filed as part of the original application for a tower permit, the notice requirements of this section apply separately to the waiver application.

(b) The applicant for a tower permit must post and use reasonable efforts to maintain a sign on the subject tower site for a minimum of 30 calendar days beginning no later than the sixth calendar day following the date of the filing of the required completed application with the department. The sign shall be posted no more than 15 feet from the public right-of-way that is used as access to the tower site. The sign shall face each public right-of-way bordering the tower site and the lettering on

the sign shall be legible from the public right-of-way. Each sign shall be a minimum of four by eight feet in size, with lettering that complies with specifications promulgated by the city administrator. The sign shall contain at a minimum the following items of information:

- (1) That this is the proposed site of a tower;
- (2) The proposed maximum height above grade of the proposed tower;
- (3) The tower permit application number assigned to this project by the department; and
- (4) The telephone number of the department where additional information concerning this project may be obtained. The applicant shall remove the sign from the subject tower site after (i) the permit is obtained or (ii) the appeals process is complete.

(c) If, in the opinion of the city administrator, compliance with the requirements of this section is insufficient to provide adequate notification of the pending tower permit application, the city administrator may require additional signs to be erected at locations as he deems advisable.

(d) Written notice of the filing of each application for a tower permit or an application for a waiver, as provided for in this chapter, shall be given to all property owners within the boundaries of the residential area or setback area, as applicable, determined in accordance with the provisions of section 98-71(f), as indicated by the most recently approved tax rolls. Notice shall also be given to any civic organization, property owners association, or any other interested group, with identifiable boundaries, provided that the organization, association or group is registered with the department in a manner prescribed by the city administrator. Notice to all owners of record and civic organizations registered with the department shall be deemed given if properly addressed and deposited in the United States mail, with first class postage paid. The required written notice shall be in a form prescribed by the city administrator and shall be mailed no later than the tenth calendar day following the filing of the required completed application. The written notice shall include a map showing the proposed tower site and the surrounding residential test area or setback area, as applicable.

(e) Written notice shall be published at least once in a local newspaper of general circulation by the department not later than the seventh calendar day following the date of filing of the required completed application. The notice shall be published in the section of the newspaper in which other legal notices are commonly published, and shall be headed with the following words (or their reasonable equivalent), in conspicuous type: "NOTICE OF PROPOSED TOWER CONSTRUCTION." The notice shall state the height and location of the proposed tower site, describe the intended use of the tower, and advise that additional information may be obtained by writing or calling the office of the city administrator.

(f) The "written notice" required in subsection (d) of this section shall include at a minimum the following:

- (1) The name, address, and telephone number of the person or entity that will own the proposed tower structure;
  - (2) The name, address, and telephone number of the applicant if different from the owner of the proposed tower;
  - (3) The approximate proposed location of the tower structure including the street address (or nearest street intersection) and the name of the subdivision or survey if there is no recorded subdivision;
  - (4) The proposed use of the tower structure and site;
  - (5) The proposed maximum height above grade of the proposed tower structure; and
  - (6) That additional information may be obtained by writing or calling the office of the city administrator.
- (g) The applicant shall be responsible for paying all costs associated with the giving of notice under this chapter.

**Sec. 98-34. - Waiver.**

(a) An application for a tower permit shall not be approved for a tower that is not in conformance with the regulations prescribed in this chapter unless a written application for a waiver has been submitted to and approved by the City Council.

(b) An applicant for a tower permit who receives written disapproval from the city administrator may elect to submit a written application for a waiver to the City Council or may appeal the denial of the permit as provided in section 98-35. An application for a waiver from the requirements of this chapter may be filed simultaneously with the filing of the application for a tower permit. An application for a waiver made after the disapproval of the tower permit by the city administrator shall be submitted not later than 2:00 p.m. on the seventh calendar day following issuance of the notice of disapproval. The city administrator shall waive this deadline upon a finding of good cause.

(c) An application for a waiver shall be submitted in the manner prescribed by the city administrator citing the specific provision of this chapter from which a waiver is desired, the extent of the waiver sought, and the specific facts or reasons why the waiver is necessary along with all supporting information or documentation.

(d) The City Council is authorized to consider and grant a waiver from the provisions of this chapter, following a public hearing, when the city Council finds that each of these conditions exist:

(1) That a literal application of this chapter will result in undue and unnecessary hardship to the applicant, taking into account any federal or state licenses the applicant may have received to conduct its business;

(2) The waiver, if granted, will not be contrary to the public interest as implemented in this chapter;

(3) Consistent with the city's police power authority over towers, the waiver, if granted, will not be detrimental to the public health, safety, or welfare;

(4) The waiver, if granted, will not result in a violation of any other applicable ordinance, regulation or statute enforceable by the city; and

(5) The waiver, if granted, will not result in the violation of any applicable deed restriction or the location of a tower in a park.

(e) A waiver from the requirements of section 98-71(g) for an antenna tower shall not be granted unless, in addition to finding that each of the conditions expressed in subsection (d) of this section is satisfied, the City Council, after public hearing, finds that no approved tower or tower structure can accommodate the applicant's proposed antenna because the applicant has demonstrated any of the following:

(1) The approved tower or tower structure located within 1,000 feet of the proposed tower will not meet the applicant's engineering requirements;

(2) The approved tower or tower structure located within 1,000 feet of the proposed tower is not of sufficient height to meet the applicant's specific engineering requirements;

(3) The approved tower or tower structure located within 1,000 feet of the proposed tower does not have sufficient structural strength and cannot reasonably be reinforced to provide sufficient structural strength;

(4) The antenna array of the approved tower or tower structure located within 1,000 feet of the proposed tower would cause electromagnetic interference with the antenna array of the proposed tower, or the antenna on the proposed tower or tower structure to be located within 1,000 feet of the approved tower would cause interference with the antenna array of the approved tower;

(5) The approved tower or tower structure located within 1,000 feet of the proposed tower is not adaptable to accommodate additional antenna arrays or the costs required to share or adapt the approved tower or tower structure are unreasonable;

(6) The approved tower or tower structure located within 1,000 feet of the proposed tower is not available for collocation because the owner of the approved tower or tower structure or the owner of the tract on which the approved tower or tower structure is located refuses to agree to reasonable

terms necessary to accommodate the requirements for the proposed antenna; or

(7) The approved tower or tower structure located within 1,000 feet of the proposed tower is not suitable for the specific requirements for the proposed antenna due to other factors as demonstrated by the applicant, taking into account any federal or state licenses the applicant may have received to conduct its business.

(f) The procedures prescribed in sections 98-35(c) and (d) shall govern the hearing required on an application for a waiver.

**Sec. 98-35. - Protest and appeal; hearing procedures.**

(a) Any property owner, association or group within the residential area or setback area, as applicable, who has reasonable grounds to believe that approval of an application for a tower permit, the granting of a waiver, or the proposed construction will violate any applicable restriction, rule, regulation or ordinance may request a hearing before the City Council to protest and present evidence establishing their allegations. The hearing request must state that specific grounds relied upon and be presented to the office of the city administrator no later than 2:00 p.m. on the 37th calendar day following the date of filing of the required completed application for a tower permit or waiver, as applicable. Copies of all supporting documents, instruments, or other materials that are to be presented to the City Council shall accompany the hearing request and shall be available for inspection and photocopying.

(b) An applicant for a tower permit that has been denied by the city administrator has until 2:00 p.m. on the seventh calendar day following the issuance of a notice of disapproval to file a written notice of appeal in the manner prescribed by the city administrator. The city administrator shall waive this requirement upon a finding of good cause.

(c) Notice of the time, place and location of the hearing at which the protest or appeal is to be presented must be given by the department before the tenth day before the date of the hearing by:

(1) Publication in a newspaper of general circulation in the city and county in which the land that is the subject of the waiver is located;

(2) By written notice delivered to the applicant, which shall be served by depositing the notice, properly addressed and postage paid, in the United States mail, first class postage; and

(3) By written notice delivered to each property owner, association or group registered with the department in the manner prescribed by the city administrator, within the setback area. The written notice shall be served by depositing the notice, properly addressed and postage paid, in the United States mail, first class postage.

(d) All properly filed appeals and protests concerning the approval or disapproval of an application for a tower permit or the granting or refusal of an application for a waiver for a particular project shall be considered by the City Council in a single public hearing. The public hearing shall be scheduled by the city administrator at the next available City Council meeting, assuming that proper notice has been given.

(e) The City Council, following a public hearing, is authorized to deny a tower permit that is the subject of a protest under subsection (a) of this section upon finding, based on substantial evidence, any of the following:

(1) The tower permit, if granted, will result in the violation of an applicable rule, regulation or ordinance enforceable by the city;

(2) The tower permit, if granted, will result in the violation of an applicable deed restriction; and

(3) The information contained in the application is erroneous or the department's analysis of the permit application is based on erroneous information.

(f) The city Council, following a public hearing, is authorized to approve a tower permit that is the subject of an appeal under subsection (b) of this section upon finding, based on substantial evidence,

that the decision of the city administrator to deny the tower permit is erroneous or the department's analysis of the tower permit application or information therein is erroneous.

(g) If the City Council denies the appeal of the denial of an application for a tower permit, a waiver or otherwise refuses to approve a tower permit as a result of a protest, the City Council shall issue a written report explaining in detail the reasons for the rejection, disapproval or refusal. The written report shall be issued not later than 30 calendar days from the date the decision was made.

(h) The decision of the City Council concerning the issuance or denial of a tower permit or the granting or refusal of a waiver shall be the final administrative determination of the issue presented.

**Sec. 98-36. - Building permit requirement and plan review.**

(a) A tower permit obtained pursuant to the provisions of this chapter 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.

(b) The construction, placement or alteration of a tower is subject to any plan review, permitting requirement 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 chapter.

**Sec. 98-37. - Tower permit fees.**

Pursuant to section 98-32(a), the fees authorized with a permit application under this chapter for the following:

(1) Towers having a height of 100 feet or less, the fee shall be \$2,000;

(2) Towers having a height of more than 100 feet but not exceeding 150 feet, the fee shall be \$2,500; and

(3) Towers having a height in excess of 150 feet, the fee shall be \$3,500.

**Secs. 98-38—98-70. - Reserved.**

**ARTICLE III. - REGULATIONS**

**REGULATIONS**

**Sec. 98-71. - Location of towers.**

(a) 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.

(b) In a residential area, a tower permit shall not be approved for the construction or alteration of a tower structure.

(c) 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 (f) of this section.

(d) In an area within one-quarter mile of the downtown district a tower permit shall not be approved for the construction or alteration of a tower structure unless the proposed tower is:

(1) Located from the district a distance at least equal to the applicable setback area established by subsection (f) 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

(2) 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.

(e) 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.

(f) 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  $1\frac{1}{2}$  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:

(1) 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

(2) 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.

(g) 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 chapter. For purposes of this requirement, a tower is considered to be "approved" when a tower permit has been issued pursuant to this chapter 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.

(h) Property uses and distances referred to in this section shall be determined as of the date and

**Sec. 98-72. - Tower structure.**

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.

**Sec. 98-73. - Security fence.**

(a) 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.

(b) The fence, wall or barrier required by subsection (a) 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.

(c) The requirements of this section do not apply to:

(1) 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

(2) Existing tower sites having security fences at least six feet in height.

**Sec. 98-74. - Screening fence.**

(a) 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.

(b) 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.

(c) The requirements of this section do not apply to:

(1) 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

(2) 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.

(d) When both section 98-73 and this section are applicable, a single fence conforming to all applicable requirements of both sections may be provided.

**Sec. 98-75. - Landscaping.**

(a) 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.

(b) 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 98-74.



(c) 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.

(d) 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.

(e) Any tower site that is excluded from the screening requirements of section 98-74(c) shall also be excluded from the landscape requirements of this section for which any amount of linear footage of screening fence is required.

#### **Sec. 98-76. - Signs and lights.**

(a) 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.

(b) 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 residence shall be utilized.

(c) A sign identifying the tower operator's address and an emergency phone number must be posted upon each gate of the enclosure.

#### **Sec. 98-77. - Maintenance and inspection.**

(a) 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 building code, 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.

(b) By applying for a tower permit under this chapter, 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 chapter, the fire code, the building code, this Code or any other applicable regulation, rule or ordinance.

#### **Sec. 98-78. - 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. 98-79. - Deed restriction affidavit.**

(a) 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.

(b) 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. 98-80. - 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. 98-32. - Building permit requirement and plan review.**

(a) A tower permit obtained pursuant to the provisions of this chapter 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.

(b) The construction, placement or alteration of a tower is subject to any plan review, permitting requirement 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 chapter.

SEVERABILITY CLAUSE

PROOF OF PUBLIC MEETING CONSIDERATION

EFFECTIVE DATE CLAUSE

PASSED AND APPROVED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_

Mayor Kirk Jones

ATTEST:

\_\_\_\_\_

City Secretary Susan Hensley

ORDINANCE \_\_\_\_\_

AN ORDINANCE REGARDING TELECOMMUNICATIONS FACILITIES,  
PROVIDING DEFINITIONS, HEIGHT STANDARDS, DISTANCES  
FROM RESIDENTIAL USES, LANDSCAPING, APPLICATION  
REQUIREMENTS, APPLICATION FEES, SEVERABILITY  
CLAUSE, PROOF OF PUBLIC MEETING AND  
PROVIDING AN EFFECTIVE DATE

**Sec. 78-5.4.5.1. - Telecommunications facilities.**

In all districts in which telecommunications facilities are authorized by Specific Use Permit the following standards and procedures apply to consideration of such uses.

*(a) 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 below grade foundations 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.

*(b) Height and setback standards for telecommunications 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) 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 guys and guy anchors shall be set back a minimum of twenty (20) feet from any property line.
- h. The tower shall be erected and operated in compliance with current Federal Communication Commission and other applicable federal and state standards.

(2) The height limitations in section 23-5.4.5.1(b)(1) 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:
  - i. 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
  - ii. 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 set forth in section 78-5.4.5.1(b)(2) subsections a., b., and c., the term "residential use" has the meaning set forth in section 78-4.1.2, use charts, but excludes property that is:

- a. 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.

*Building-mounted facilities.*

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.

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.

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.

*Landscaping.* 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.

*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.

*Inspections.* The city reserves the right to make inspections of any telecommunication facility within 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.

*Application requirements.* 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 detailed herein.

Name of applicant.

Address of applicant.

Location of proposed site.

Type of support structure and antenna and height.

Photos and/or drawings of all equipment, structures and antennas.

Names and addresses of telecommunication providers or users of the proposed tower or antenna.

Applicants master antenna/tower plan for the city and surrounding area, if necessary.

Detailed account of co-location efforts.

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.

Any other requirement of this chapter.

Application fee. The city will charge an application fee of five hundred dollars (\$500.00) for telecommunications towers located within the corporate city limits of the city, in addition to the Special Use Permit fee.

Severability clause

Proof of public meeting consideration clause

Providing effective date clause

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

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

ATTEST:

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