

ORDINANCE NO.: _____

AN ORDINANCE AMENDING THE CITY OF FOLEY ZONING ORDINANCE
REGARDING WIRELESS TELECOMMUNICATIONS
TOWERS AND TALL STRUCTURES

WHEREAS, the City of Foley, Alabama, adopted Ordinance No. 387-87 on June 15, 1987, ordaining a Zoning Ordinance and Zoning Map for the City of Foley which has subsequently been amended from time to time, and

WHEREAS, the City of Foley Planning Commission has recommended changes within the current Zoning Ordinance, and the City Council of the City of Foley deems it necessary, for the purpose of promoting the health, safety, morals and general welfare of the City to amend said Ordinance, and

WHEREAS, all requirements to the laws of the State of Alabama, with regard to the preparation of the report of the Foley Planning Commission and subsequent action of the City Council have been met,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA, while in regular session _____, 2014, that the Foley Zoning Ordinance is hereby further amended as follows:

Section 1. Findings. The City Council regulates the heights and locations of tall towers and structures to protect the health, safety, welfare and aesthetics of the City. Wireless telecommunications facilities, and in particular the towers that elevate wireless telecommunications antennae, commonly known as cell phone towers, cannot be regulated in the same manner as other structures due to current federal laws and federal regulations. Special rules are needed for wireless telecommunications facilities to protect the public, to comply with federal law, and to allow for the orderly, safe, and reasonable construction, operation, and maintenance of wireless telecommunications facilities.

Section 2. That Article II, Definitions, is hereby amended to add the following definitions:

Co-location: The use of one wireless telecommunications tower by more than one wireless telecommunications provider.

Monopole: A type of wireless telecommunications tower that has one single, self-supporting metal tube securely anchored to a foundation that does not use guy wires. A monopole may have the antennas mounted on the outside of the structure.

Stealth Monopole: A monopole that does not have antennas mounted on the outside, but instead has them inside the monopole structure. These look like flagpoles.

Telecommunications: The technology which enables information to be exchanged through the transmission of voice, video, or data signals by means of electrical or electromagnetic systems.

Wireless telecommunications antenna: The physical device through which electromagnetic, wireless telecommunications signals authorized by the Federal Communications Commission are transmitted or received. Antennas used by amateur radio operators are excluded from this definition.

Wireless telecommunications facility: The equipment and structures located in one location that are involved in receiving telecommunications or radio signals from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines. This includes the tower, antennas, equipment shelter, and related equipment, fixtures, and structures.

Wireless telecommunications tower: A structure intended to support equipment used to transmit and/or receive telecommunications signals that exceeds thirty (30) feet in height.

Section 3. That Section 6.16 Telecommunications Towers, is hereby replaced and superseded with the following:

6.16 Wireless Telecommunications Facilities.

6.16.1 Purpose. The purpose of this section is to establish minimum standards for the location, design, construction, and maintenance of wireless telecommunications facilities to mitigate any adverse consequences to the health, safety, and general welfare of the community in general and the neighboring owners and occupants in compliance with federal and state laws.

6.16.2 Application Requirements. Applicants for a new or modified wireless telecommunications facility must apply for a plan review by the Community Development Department in addition to other required land disturbance permits, building permits, and other required approvals. Applicants proposing to erect new wireless telecommunication towers must also submit the following information as part of the review and permit process:

- a. Photo-simulations of the proposed wireless telecommunication tower taken from the property lines on at least four sides of the proposed tower and the nearest public right-of-way, plus whatever additional photo-simulations taken from additional or different angles, locations, or heights as requested by the Community Development Department;
- b. An affidavit of need from licensed RF engineer who is properly licensed stating that: (1) the proposed wireless telecommunications facilities (tower, antennas, and other components) are actually necessary based on

current needs of a particular wireless telecommunications provider; (2) the proposed wireless telecommunication tower is the minimum height necessary to address the current need; and (3) there are no existing telecommunication towers, buildings, or alternative structures available on which the wireless telecommunication provider could co-locate which would address the current need (or, if there are alternative existing towers or structures, what reasonable and diligent efforts have been made by the applicant to secure sufficient rights on such structure); and

c. An affidavit from the proposed operator of the wireless telecommunication facilities that its facilities will be operated in strict compliance with the Federal Communications Commission's rules, regulations, and standards concerning RF emissions.

d. A landscape plan.

If the application is complete and the facilities meet all applicable building codes, and other codes, and if the facilities comply with the standards in sub-section 6.16.3, then the Building Official shall approve the plans within thirty (30) days. If the application is incomplete or the proposed facilities do not meet the applicable codes or the standards in the 6.16.3, and if no variance has been secured, then the Building Official shall deny the application within thirty (30) days.

6.16.3 Permitted Locations for Wireless Telecommunications Facilities Meeting Certain Standards. Wireless telecommunications towers are allowed by right in Industrial zoning districts and in Agricultural-Open Space zoning districts in the City provided that they are not within a historic district and further provided that the wireless telecommunications facility meets the following minimum standards or conditions:

- a. The wireless telecommunications tower is no higher than one hundred twenty-five feet (125') above the ground;
- b. The wireless telecommunications facility is completely fenced and adequately secured to prevent unauthorized access by at least an eight foot (8') high fence;
- c. The wireless telecommunications facility must be landscaped on the outside of the fence to provide an effective, year-round natural vegetative buffer and visual screen to obscure or obstruct a view of the fence and the components inside the fence other than the tower;
- d. The wireless telecommunications tower must be set back from property lines, public rights of way, and all buildings a minimum distance of 125% of the height of the proposed wireless telecommunications tower;
- e. The wireless telecommunications tower must be of a monopole design, and for any proposed wireless telecommunication towers which would be visible at ground level from any portion of land then being put to any of the following land uses, such wireless telecommunication tower must be of a stealth monopole design:
 1. schools;

2. parks;
 3. public recreational facilities (excluding sidewalks and trails);
 4. historic districts;
 5. residential zoning districts; and
 6. residential areas of mixed use zoning districts.
- f. Any non-stealth wireless telecommunications tower must be designed to be capable of accommodating at least one additional set of wireless antennae by a different wireless telecommunications provider.
 - g. The wireless telecommunications facility must not interfere with the operation of any airport or aircraft, must meet all applicable FAA regulations and standards, must not be located in existing aviation easement areas, and must be equipped with such lights and other safety features as are reasonably requested by the operator of any nearby airports.

6.16.4. Wireless Telecommunications Facilities Prohibited. Any wireless telecommunications facilities that are proposed to be in any other location that permitted in Section 6.16.3, and/or any wireless telecommunications facilities that do not comply with the minimum conditions found in Section 6.16.3, are strictly prohibited. If an application is filed for a variance from any provision of the Zoning Code to allow any wireless telecommunications facility that does not fully comply with Section 6.16.3, and if such variance is granted in whole or in part, then the Zoning Board of Adjustments and Appeals shall also impose such additional, different, and supplemental conditions and requirements on the wireless telecommunications facility to carry out the intent and purpose of this Zoning Code.

6.16.5. Wireless Telecommunications Antennas on Existing Towers, Buildings, and Structures. Wireless telecommunications antennas may be added to or located on existing wireless telecommunications towers (co-location), and such antennas may be added to or located on alternative existing support structures like water towers, buildings, and similar facilities, in all zoning districts so long as the addition of the new wireless telecommunications antennas does not extend above the height of the existing telecommunications tower or does not extend more than ten (10) feet above the alternative support structure.

6.16.6. Aesthetics and Appearance. All wireless telecommunications facilities shall be designed, constructed, and maintained in such a manner to be as aesthetically pleasing as is reasonable and practicable to have the least negative visual impact on the surrounding area as practicable. Wireless telecommunications towers and wireless telecommunications antennas shall be painted a neutral or blending color so as to reduce visual obtrusiveness except as expressly prohibited by Federal Aviation Administration requirements. If a wireless telecommunications antenna is installed on a structure other than a tower, the antenna and supporting wireless telecommunications facilities must be of a color that is identical to, or closely compatible with, the color of the alternative supporting structure so as to camouflage the wireless telecommunication

facilities. No signage, symbols, or advertisements may be attached to a wireless telecommunications tower or antenna.

6.16.7. Obsolete towers. In the event that a wireless telecommunications facility ceases to be used for telecommunications by any wireless provided for the period of 180 days, the wireless telecommunications facility shall be deemed to be abandoned. Upon such abandonment, the owner of the wireless telecommunications facility or owner of the land shall have an additional 180 days within which to dismantle and remove the wireless telecommunications facility.

Section 4. That Section 6.18 is hereby added:

6.18 Maximum Structure Height. Unless addressed elsewhere in the Zoning Code, the “Maximum Building Height (feet)” shall be the maximum height in feet of any structure, including buildings, towers, and all other forms of structures.

Section 5. All prior ordinances in direct conflict with this ordinance are hereby amended or repealed as necessary to the extent of such conflict. All prior ordinances that are not directly or expressly amended or changed by this ordinance shall remain in full force and effect. This ordinance shall become effective immediately upon its publication.

PASSED, ADOPTED AND APPROVED this _____ day of _____.

PRESIDING OFFICER

ATTEST:

CITY CLERK

“I certify that the foregoing Ordinance was published in the Foley Onlooker, a newspaper of general circulation in the City of Foley, in its issue of _____.”

City Clerk