

ORDINANCE NO. 2006-022

ANTENNA FACILITIES ORDINANCE

AN ORDINANCE OF THE VILLAGE OF WIMBERLEY, TEXAS, AMENDING AND SUPPLANTING SECTION NO. 151.35 AND ESTABLISHING REGULATIONS FOR ANTENNA FACILITIES, INCLUDING PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; A PURPOSE; DEFINITIONS, DISTRICT REGULATIONS; BUILDING PERMITS; CONDITIONAL USE PERMITS; CONSTRUCTION REQUIREMENTS; DENIAL OF PERMIT APPLICATIONS; COLOCATION REQUIREMENTS; RECEIVE-ONLY ANTENNA FACILITIES; AMATEUR WIRELESS FACILITIES; VARIANCES; ADDITIONAL REQUIREMENTS; AN EFFECTIVE DATE; ENFORCEMENT CLAUSE INCLUDING INJUNCTIVE RELIEF, A FINE NOT TO EXCEED \$2,000, AND A CIVIL PENALTY NOT TO EXCEED \$1,000; A REPEALER; A SEVERABILITY CLAUSE; AND PROPER NOTICE AND MEETING.

WHEREAS, the City Council seeks to provide for the orderly development of land and use of property within its corporate limits; and

WHEREAS, the City Council finds that the improper siting, placement, construction and modification of antenna facilities poses a substantial threat to human health and property, obstructs the line of sight for pedestrians and automobile operators, clutters the rural landscape, adversely affects the naturally scenic views and native environment, and decreases property values; and

WHEREAS, the City Council seeks to promote the health, safety and general welfare of the community by enacting regulations providing for the appropriate siting, placement, construction and modification of antenna facilities so as to avoid interference with police, fire and emergency services communications, minimize adverse visual impacts, avoid potential damage to adjacent properties from tower failure and falling debris, maintain the public rights-of-way, preserve property values, maximize the use of new or existing towers to discourage the undue proliferation of towers and antennas, and preserve human health by ensuring compliance with federal requirements; and

WHEREAS, the City Council has the general authority to regulate land use and development and nuisances pursuant to the Texas Constitution, the Village's police power and the Texas Local Government Code, Chapters 51, 54, 211, and 217; and

WHEREAS, the City Council's authority regarding the placement, construction and modification of antenna facilities has been expressly preserved by federal and state law (*See* 47 U.S.C. § 332(c)(7)), and Texas Local Government Code § 250.002); and

WHEREAS, the City Council seeks to facilitate the provision of wireless communication services and support the maintenance of a national network of capable amateur communications stations especially for the purposes of emergency communications; and

WHEREAS, the City Council finds that the following regulations do not unreasonably discriminate among providers of functionally equivalent services and do not prohibit or have the effect of prohibiting the provision of personal wireless services; and

WHEREAS, the City Council finds that the following regulations reasonably accommodate amateur radio communications and represent the minimal practicable regulation to accomplish the Village's legitimate purpose.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE VILLAGE OF WIMBERLEY, COUNTY OF HAYS, STATE OF TEXAS:

I. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the Village of Wimberley and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

II. PURPOSE

This Ordinance is adopted so that the City Council may promote the public health, safety, morals and general welfare within the Village through the regulation of antenna facilities. The purpose of this Ordinance is to provide for the orderly siting, placement, construction and modification of antenna facilities within the city limits of the Village. This Ordinance is intended to serve as a comprehensive Ordinance that will adequately and equitably regulate antenna facilities.

III. DEFINITIONS

In this Ordinance, the terms listed below shall be defined as follows:

- (a) **Alternative Tower Structure** means clock towers, bell steeples, light poles, and similar alternative antenna mounting structures, except for residential structures. The Alternative Tower Structure may be either a primary or an accessory use on any tract of land. This term includes buildings or other independent support structures such as water towers, church steeples, and utility poles.
- (b) **Amateur Radio and Amateur (Ham) Radio** mean radio operations in the amateur service and as regulated by the FCC under 47 CFR Part 97.

- (c) **Antenna** means any fixed exterior apparatus designed for wireless radio, television, microwave or telephonic communication through the sending and/or receiving of electromagnetic waves.
- (d) **Antenna Array** means a single or group of Antennas and their associated mounting hardware, transmission lines, or other appurtenances that share a common attachment device such as a mounting frame, mounting support, or Antenna-supporting Structure.
- (e) **Antenna-supporting Structure** means a vertical projection composed of metal or other substance with or without a foundation that is for the express purpose of accommodating antennas at a desired height above grade. Antenna-supporting Structures do not include any device used to attach Antennas to an existing building, unless the Village of Wimberley Antenna Facilities Ordinance device extends above the highest point of the building by more than ten (10) feet.
- (f) **Antenna Facilities** means any Antenna-supporting Structures, its Antenna, and any Personal Wireless Service Facilities, and Unmanned Equipment Buildings. This term includes Amateur Radio Towers and Receive-only Antennas.
- (g) **City Council** means the governing body of the Village of Wimberley.
- (h) **Commercial Mobile Service** means any mobile service (as defined by 47 U.S.C. § 153) that is provided for profit and makes interconnected service available:
 - (1) to the public; or
 - (2) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the FCC.
- (i) **Emergency** means a declaration of a state of emergency by a public official or other appropriate local, state or federal governmental authority.
- (j) **FAA** means Federal Aviation Administration or successor agency having jurisdiction over Antenna Facilities.
- (k) **FCC** means the Federal Communications Commission or successor agency having jurisdiction over Antenna Facilities.
- (l) **Height** means, when referring to an Antenna Facility, Tower or other structure, the distance measured from the finished grade of the structure to the highest point on the Tower or structure, including the base pad and any

Antenna, and if the Antenna is retractable, its Height is the height when fully extended.

- (m) **Non-Conforming Use** means an Antenna Facility that lawfully predated the adoption of this Ordinance and any accompanying regulations that prohibit or restrict such use or structure. (See Section IV(B)).
- (n) **OSHA** means the federal Occupational Safety and Health Administration or successor agency having jurisdiction.
- (o) **Person** means any human individual or corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.
- (p) **Personal Wireless Services** means Commercial Mobile Services, Unlicensed Wireless Services, and common carrier wireless exchange access services.
- (q) **Personal Wireless Service Facilities** means facilities for the provision of Personal Wireless Services.
- (r) **Receive-only Antenna** means any Tower or Antenna that is used exclusively for reception only, including local television broadcast reception antennas, direct satellite antennas, or multichannel multipoint distribution services.
- (s) **Tower** means any structure that is designed and constructed primarily for the purpose of supporting one or more Antennas, including the following Antenna-supporting Structures:
 - (1) **Monopole Antenna Structure:** a self supporting pole type structure with no guy wire support, tapering from base to top and so designed to support fixtures which hold one or more antennas and related equipment for wireless telecommunication transmission.
 - (2) **Lattice Antenna Structure:** a steel lattice, self-supporting structure with no guy wire support, so designed to support fixtures which hold one or more antennas and related equipment for wireless communication transmission.
 - (3) **Guyed Lattice Antenna Structure:** a steel lattice, guy wire supported structure, so designed to support fixtures which hold one or more Antennas and related equipment for wireless communication transmission.

- (t) **Unlicensed Wireless Service** means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in 47 U.S.C. § 303(v)).
- (u) **Unmanned Equipment Building** means an accessory building housing electronic and communication equipment as an associated and permitted part of a Wireless Communication System.
- (v) **Village** means the duly incorporated municipality of the Village of Wimberley, located in the County of Hays, State of Texas.
- (w) **Wireless Communication System** means an Antenna-supporting Structure for mobile and land based telecommunication facilities, including Antennas, whip antennas, panel antennas, microwave dishes and receive-only satellite dishes, cell enhancers and related equipment for wireless transmission from a sender to one or more receivers, such as for mobile cellular telephones, mobile radio systems facilities, commercial mobile radio service and radio or television (commercial only) broadcasting towers and transmitting stations. This definition is inclusive of the placement of the above-referenced equipment on a monopole tower, a lattice antenna structure, Tower, guyed steel lattice tower and any other Tower which does or does not utilize guy wire support in addition to related buildings or other independent support structures. This system shall also allow as one of its components an Unmanned Equipment Building.

IV. APPLICABILITY

- A. **New Towers and Antennas.** All Antenna Facilities constructed or erected after the effective date of this Ordinance within the corporate limits of the Village shall be subject to these regulations, except as provided in Section IV(B) below.
- B. **Pre-existing Towers or Antennas.** Antenna facilities, including co-locations, lawfully constructed prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance unless they become more than fifty percent (50%) damaged or modifications exceed fifty percent (50%) of the value of the antenna or tower. Pre-existing Antenna Facilities that do not comply with this Ordinance shall be regarded as Non-conforming Uses.

V. DISTRICT REGULATIONS

- A. Antenna facilities shall be subject to all restrictions applying to the relevant zoning districts in which the antenna facilities are located.

- B.** Antenna facilities shall be conditional uses in all zoning districts except for noncommercial, Amateur (Ham) Radio or citizen's band radio antenna-support structures, antennas or antenna arrays. Antenna Facilities shall be treated as accessory uses requiring a Conditional Use Permit, except as otherwise provided by this Ordinance.

VI. BUILDING PERMITS

- A. Building Permits Required.** It shall be unlawful for any person, firm, or corporation to erect, construct in place, place or re-erect, or replace any antenna facility without first making application to the Village and securing a Building Permit as provided by Village ordinances.

- B. Exceptions.** Building Permits are not required for:

- (1) Adjustment, replacement or repair of the elements of an Antenna Array affixed to an Antenna Facility.
- (2) Antenna Facilities erected temporarily after an officially declared emergency for emergency communication or for broadcast remote pick-up operations. Antenna Facilities erected under this subsection must be removed within seventy-two (72) hours from the date that the emergency is over.
- (3) Receive-only Antenna twenty-five (25) feet in height, or less.
- (4) Non-commercial, Amateur (Ham) Radio or citizen's band radio Antenna-supporting Structures, Antennas or Antenna Arrays twenty-five (25) feet in height, or less.
- (5) Co-location of additional Antennas on existing Antenna Facilities that have obtained the necessary permits.

VII. CONDITIONAL USE PERMITS

- A. Conditional Use Permits Required.** It shall be unlawful for any person, firm, or corporation to erect, construct in place, place or re-erect, or replace any Antenna Facility without first making application to the Village and securing a Conditional Use Permit as hereinafter provided.

- B. Exceptions.** Conditional Use Permits are not required for:

- (1) Adjustment, replacement or repair of the elements of an Antenna Array affixed to a Tower or Antenna, provided that replacement does not reduce the safety factor.

- (2) Antenna Facilities erected temporarily for emergency communication or for broadcast remote pick-up operations. Antenna Facilities erected under this subsection must be removed within seventy-two (72) hours from the date that the emergency is over.
- (3) Non-commercial, Amateur (Ham) Radio or citizen's band radio Antenna-supporting Structures, Antennas or Antenna Arrays.
- (4) Receive-only Antennas less than twelve (12) feet above the peak of the roof of a building.
- (5) Co-location of additional Antennas on existing Antenna Facilities that have obtained the necessary Village permits or are Non-conforming Uses.

C. Conditional Use Permit Applications. The applicant shall provide at the time of application sufficient information to indicate that construction, installation, and maintenance of the Antenna Facility will not create a safety hazard or damage to the property of other persons. In addition to the information required elsewhere in this Ordinance, Conditional Use Permit applications for Antenna Facilities shall include the following information:

- (1) A report from a qualified and licensed professional engineer which:
 - (a) describes the Antenna Facility height and design including a cross section and elevation;
 - (b) documents the height above grade for all potential mounting positions for co-located Antenna Facilities and the minimum separation distances between Antenna Facilities;
 - (c) describes the Antenna Facility's capacity, including the number and type of Antennas that it can accommodate;
 - (d) includes an engineer's stamp and registration number;
 - (e) includes other information necessary to evaluate the request; and,
 - (f) Prior to the installation of a roof-mounted Antenna, the Village shall be provided with an engineer's certification that the roof will support the proposed Antenna Facility and associated roof-mounted equipment or that adequate modifications will be made to reinforce the roof.

- (2) For all Towers proposed for commercial use, a letter of intent committing the Tower owner and his or her successors to allow the shared use of the Tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use and shared use will not unreasonably interfere with use by the existing user.
- (3) Before the issuance of a Conditional Use Permit, the following supplemental information shall be submitted:
 - (a) Proof that the applicant has obtained the necessary authorization from the FAA and FCC, as applicable.
 - (b) A report from a qualified and licensed professional engineer that demonstrates the Antenna Facility's compliance with the aforementioned structural and electrical standards and Article IX below.
- (4) Documentation of applicant's mitigation plan, which at a minimum shall include proposed landscaping, screening and security measures.
- (5) Lists of other Tower facilities owned or operated by the applicant within the Village.
- (6) Such other information as may be required by the applicable provisions of the Zoning Ordinance.

D. Application, Inspection, and Engineering Fees. The fee to be paid for Conditional Use Permit Applications and Inspections is that prescribed by ordinance of the City Council. In addition to the fee specified above, the applicant shall reimburse the Village for the actual cost to the Village for the services of an engineer should one be required to review the application and provide engineering expertise to the Village, up to a maximum of five thousand dollars (\$5,000).

VIII. DENIAL OF PERMIT APPLICATIONS

In the event that the City Council ultimately denies an application for a building permit and/or a conditional use permit under the provisions of this Ordinance, the Council will provide the applicant with a written record of such denial supported by substantial evidence.

IX. CONSTRUCTION REQUIREMENTS

A. General. Except as provided in sections XI and XII hereof, all Antenna Facilities erected, constructed, placed or sited within the Village, and all wiring therefore, shall comply with the following requirements:

- (1) All applicable provisions of this Ordinance and other applicable ordinances of the Village.
- (2) Antenna Facilities shall be certified by a qualified and licensed professional engineer to conform to the latest structural standards and wind loading requirements of the Village's Commercial Building Code.
- (3) Antenna Facilities shall be designed to conform to accepted electrical engineering methods and practices and to comply with the provisions of the Village's Electrical Code.
- (4) All signal and remote control conductors of low energy extending substantially above the ground, between an Antenna Facility and a structure, or between Towers, shall be at least eight (8) feet above the ground at all points, unless buried underground.
- (5) Every Tower affixed to the ground shall be protected to discourage climbing of the Antenna Facility by unauthorized persons. Such protection may include but is not limited to security fencing.
- (6) All Antenna Facilities shall be constructed to conform with requirements of the federal Occupational Health & Safety Act.

B. Number of Antenna Facilities. Only one Tower shall exist at any one time on any one lot or parcel located in a residential zoning district, as established by the Village's comprehensive zoning ordinance.

C. Design Requirements. Proposed or modified Towers and Antennas shall meet the following design requirements:

- (1) A site plan demonstrating the surrounding topography and existing structures, tree cover, and vegetation. The site plan shall also include proposed landscaping and screening measures designed to minimize the adverse impacts of the Antenna Facility on adjacent properties and scenic views.
- (2) Design plans explaining the applicant's plans to construct, paint, or architecturally camouflage the Antenna Facility so to minimize the adverse impacts of the Antenna Facility on adjacent properties and scenic views.

D. Antenna Facility Setbacks. Antenna Facilities shall conform with each of the following minimum setback requirements:

- (1) Except as allowed pursuant to subsection (4), the required setback for Antenna Facilities not rigidly attached to a building, shall be equal to the cumulative height of the Antenna Facilities.
- (2) No Antenna Facilities shall be in excess of a height equal to the distance from the base of the Antenna Facility to the nearest overhead electrical power line which serves more than one dwelling or place of business, less five (5) feet.
- (3) At a minimum, Antenna Facilities shall meet the setbacks of the underlying zoning district with the exception of industrial zoning districts, where Towers may encroach into the rear setback area, provided that the rear property line abuts another industrially zoned property and the Tower does not encroach upon any easements.
- (4) Antenna Facilities shall be set back from the planned public rights-of-way as shown on the most recently adopted master street plan of the Village by a minimum distance equal to one half of the height of the Tower including all Antennas and attachments.
- (5) Antenna Facilities shall not be located between a principal structure and a public street, with the following exceptions:
 - (a) In industrial zoning districts, Towers may be placed within a side yard abutting an internal industrial street.
 - (b) On sites adjacent to public streets on all sides, Antenna Facilities may be placed within a side yard abutting a local street.
 - (c) An Antenna Facility's setback may be reduced or its location in relation to a public street varied, at the sole discretion of the Village, to allow the integration of a Tower into an existing or proposed structure such as a church steeple, light standard, power line support device, or similar structure.

E. Antenna Facility Height. All proposed Antenna Facilities shall comply with the following height restrictions:

- (1) In all overlay zoning districts, the maximum height of any Antenna Facility shall be twenty-five (25) feet;
- (2) In all residential zoning districts not within an overlay district, the maximum height of any Antenna Facility shall not exceed one (1) foot for each four (4) feet the tower is set back from adjoining residential property up to a maximum height of sixty (60) feet.

- (3) In all other zoning districts, the maximum height of any Antenna Facility, including all Antenna and other attachments, shall not exceed one (1) foot for each two (2) feet the Tower is set back from residential property up to a maximum height of one hundred fifty (150) feet.

F. Tower Illumination. No Antenna Facilities in any residential zoning district shall have affixed or attached in any way except during time of repair or installation any lights, reflectors, flashers, or other illuminating device, except as required by the FAA, nor shall any Tower have constructed thereon, or attached thereto, in any way, any platform, catwalk, crow's nest, or like structure, except during periods of construction or repair.

G. Signs and Advertising.

- (1) The use of any portion of an Antenna Facility for signs other than identification, warning or equipment information signs is prohibited.
- (2) All Antenna Facilities must bear a sign identifying the owner of the antenna facility and providing an emergency telephone number. The sign must be no smaller than one (1) square foot and must be located outside the facility in a location clearly visible from adjacent public right-of-way.

H. Accessory Utility Buildings. All utility buildings and structures necessary to an Antenna Facility shall be architecturally designed to blend in with the surrounding environment and shall meet the minimum setback requirements of the underlying zoning district. Ground mounted equipment shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood.

I. Abandoned or Unused Towers or Portions of Towers. All abandoned or unused Antenna Facilities and associated facilities shall be removed within twelve (12) months of the cessation of operations at the site unless a time extension is approved by the Village. A copy of the relevant portions of a signed lease that requires the applicant to remove the Tower and associated facilities upon cessation of operations at the site shall be submitted at the time of application for a conditional use permit. In the event that a Tower is not removed within twelve (12) months of the cessation of operations at a site, the Tower and associated facilities may be removed by the Village and the costs of removal assessed against the property.

J. Antennas Mounted on Roofs, Walls, and Existing Towers. The placement of wireless telecommunication Antennas or Antenna Facilities on roofs, walls, and

existing Towers may be approved by the Village provided the Antenna Facilities meet the requirements of this Ordinance.

- K. Inspections.** All Antenna Facilities may be inspected at least once each year by a designated official of the Village to determine compliance with original construction standards. Deviation from original construction for which a permit is obtained constitutes a violation of this Ordinance.

X. CO-LOCATION REQUIREMENTS

- A.** An application for a Conditional Use Permit for a new Antenna Facility shall not be approved unless the Village finds that the equipment planned for the proposed Antenna Facility cannot be accommodated on an existing or approved Tower or building within a one mile search radius [one-half mile search radius for Towers under one hundred twenty (120) feet in height, one-quarter mile search radius for Towers under eighty (80) feet in height] of the proposed Tower due to one or more of the following reasons:
- (1) The planned equipment would exceed the structural capacity of the existing or approved Antenna Facility or building, as documented by a qualified and licensed professional engineer, and the existing or approved Antenna Facility cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.
 - (2) The planned equipment would cause interference, materially impacting the usability of other existing or planned equipment at the Antenna Facility or building as documented by a qualified and licensed professional engineer, and the interference cannot be prevented at a reasonable cost.
 - (3) Existing or approved Towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer.
 - (4) Other unforeseen reasons that make it unfeasible to locate the planned equipment upon an existing or approved Tower or building.
- B.** Any Tower proposed for commercial use shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's Antennas and comparable Antennas for at least two additional users if the Tower is over one hundred (100) feet in height or for at least one additional user if the Tower is over sixty (60) feet in height. Towers must be designed to allow for future rearrangement of Antennas upon the Tower and to accept Antennas mounted at varying heights.

XI. RECEIVE-ONLY ANTENNA FACILITIES

Receive-only Antennas shall be considered as permissible accessory uses in all zoning districts.

XII. AMATEUR WIRELESS FACILITIES

- A. Exemption for certain amateur wireless facilities.** All non-commercial, Amateur (Ham) Radio or citizen's band radio Antenna Facilities that are less than forty (40) feet in height in residential, neighborhood service districts and overlay districts and sixty-five (65) feet in height in all other zoning districts are exempt from the provisions of this Ordinance except as provided below, and in Article VI, Building Permits, notwithstanding any other provision(s) contained in zoning codes of the Village of Wimberley; however, any person constructing and/or operating an Antenna-supporting Structure, Antenna or Antenna Arrays less than the heights enumerated above shall, upon request from the village building official, provide evidence of a valid FCC amateur radio license, or other authorization for operation of an Amateur Radio facility. Failure to demonstrate a valid license upon request shall be cause for issuance of a code violation citation in accordance with the provisions of section XVI of this Ordinance, and the person shall either furnish evidence of a valid FCC license or remove the Antenna-supporting Structure, antenna or Antenna Arrays within fifteen (15) days of the issuance of the aforementioned citation. Non-commercial, Amateur (Ham) Radio or citizen's band Antenna-supporting Structures, Antennas or Antenna Arrays with heights greater than as provided above shall be regulated in accordance with section XII(B).
- B. Requirements for amateur wireless facilities in excess of forty (40) feet in residential and neighborhood service districts or in excess of sixty-five (65) feet in all other zoning districts.** An applicant proposing an amateur wireless facility in excess of forty (40) feet in residential neighborhood service districts and overlay districts or in excess of sixty-five (65) feet in all other zoning districts shall be required to obtain a special permit.
- (1) Application requirements:
 - (a) Site plan application in accordance with the site plan requirements, Section 46 of the Village's Comprehensive Zoning Ordinance;
 - (b) Applicant's copy of current, valid FCC Amateur Radio license, or other authorization for operation of an Amateur Radio facility; and
 - (c) Site plan sketch showing all proposed structures (e.g., support structures, anchorage) and setbacks from such structures to property boundaries.

(2) Approval criteria:

- (a) Said facility shall be accessory to a legal, principal use on site (e.g., a residence);
- (b) Antenna Facilities shall meet the setback requirements for accessory uses for the zoning district in which the proposed facility shall be located, but in all events the setback requirements for (i) fixed Antenna Facilities shall be at least 110% of the Antenna Facilities' height.
- (c) Applicant shall commit in writing and demonstrate to the Building Inspector that the facility will be erected in accordance with manufacturer's recommendations;
- (d) If more than two hundred twenty (220) volts are present in the ground grid or in the Tower, the Building Inspector shall require the attachment of a sign to the Tower that shall display in large bold letters the following: "HIGH VOLTAGE--DANGER";
- (e) Applicant shall comply with the requirements of sections IX(F), IX(G)(l), IX(I), and IX(K);
- (f) Applicant shall furnish evidence that the proposed facility meets or exceeds FCC Guidelines for radio frequency radiation exposure;
- (g) All applications for new or expanded amateur wireless facilities must be accompanied by a sworn certification that the proposed facility complies with applicable deed restrictions (*i.e.*, restrictive covenants) if any [NOTE: Council may wish to delete this subparagraph (g) to avoid entanglement with private deed restrictions.];
- (h) No antenna over 120 feet shall be allowed and any antenna over 60 feet in residential districts or over 75 feet in all other districts shall be constructed unless the antenna is retractable to 60 feet or less in residential districts or 75 feet or less in all other districts. All retractable antennas must be retracted when not in use; and
- (i) Certification by a qualified and licensed professional engineer that the amateur antenna facility complies with the latest structural standards and wind loading requirements of the Village's Commercial Building Code.

XIII. VARIANCES

A. Criteria for variances. In order to reasonably accommodate new antenna facilities, the Village Board of Adjustment is authorized in specific cases to issue a variance from the strict and literal terms of this Ordinance if the Board finds as follows:

- (1) the variance is not contrary to the public interest;
- (2) due to special conditions, a literal enforcement of the Ordinance would result in unnecessary hardship;
- (3) the spirit of the Ordinance will be observed and substantial justice will be done; and
- (4) strict application of the regulation would prohibit or have the effect of prohibiting personal wireless services as defined by federal law, or unreasonably fail to accommodate amateur radio communications.

B. Procedure for appeals to the Board of Adjustment. Any entity that desires to erect or use antenna facilities that would be prohibited by this Ordinance or other regulations of the Village dealing with zoning and land use may apply for a variance according to the following procedures:

- (1) **Application and fee.** An application for a variance by the Board of Adjustment shall be made in writing using forms prescribed by the Board and shall be accompanied by an application fee, a site plan and/or additional information as the Board may require in order to properly review the application. Such information may include, but is not limited to, plat plans, site building plans, photographs, topographic contour maps, and/or other similar documents.
- (2) **Review and report by the Village.** The Mayor or the Mayor's designee shall visit the site where the proposed variance will apply and the surrounding area and shall report his/her findings to the Board.
- (3) **Notice and public hearing.** The Board of Adjustment shall hold a public hearing for consideration of the variance request no later than forty-five (45) days after the date the variance request is filed. Notice of the public hearing shall be provided to all property owners within two hundred feet (200') of the affected property at least ten (10) days prior to the public hearing and also published in the official local newspaper at least ten (10) days prior to the public hearing.

- (4) **Action by the Board of Adjustment.** The Board of Adjustment shall not grant a variance unless it finds, based upon compelling evidence, that the applicant has established each of the conditions in section XIII(A). The Board may impose such conditions, limitations, and safeguards as it deems appropriate upon the granting of any variance. Violation of any such condition, limitation or safeguard shall constitute a violation of this Ordinance.
- (5) **Finality of Decisions; Judicial Review.** All decisions of the Board are final and binding. However, any person aggrieved by a decision of the Board may present a verified petition to a court of record that states that the decision of the Board is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition must be presented within ten (10) days after the decision is filed with the City Secretary. Subject to the provisions of Section 211.011 of the Texas Local Government Code, only a court of record may reverse, affirm or modify a decision of the Board.

XIV. ADDITIONAL REQUIREMENTS

The provisions of this Ordinance are to be cumulative of all other Ordinances or parts of Ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior Ordinances or parts of Ordinances that are inconsistent with or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

XV. EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

XVI. ENFORCEMENT

- A. Civil and Criminal Penalties.** The Village shall have the power to administer and enforce the provisions of this ordinance as provided by governing law. Any person violating any provision of this ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this ordinance is hereby declared to be a nuisance.
- B. Criminal Prosecution.** Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding \$2,000.00. Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.
- C. Civil Remedies.** Nothing in this Ordinance shall be construed as a waiver of the Village's right to bring a civil action to enforce the provisions of this Ordinance

and to seek remedies as allowed by law, including, but not limited to the following:

- (1) injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance;
- (2) a civil penalty up to \$1,000.00 a day when it is shown that the defendant was actually notified of the provisions of the ordinance and, after receiving notice, committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance; and
- (3) other available relief.

D. Affirmative Defense. It shall be an affirmative defense to prosecution for a violation of this Ordinance that compliance with the provision would prohibit or have the effect of prohibiting the provision of personal wireless services as defined by federal law or failing to reasonably accommodate amateur radio communications.

XVII. REPEALER

All Ordinances or parts of Ordinances in force when the provisions of this Ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

XVIII. SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

XIX. PROPER NOTICE AND MEETING

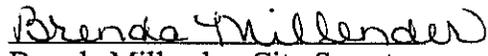
It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapters 52 and 211 of the Texas Local Government Code.

APPROVED by the Village of Wimberley City Council at its first reading on December 12, 2006; and **PASSED AND APPROVED** by the Village of Wimberley City Council at its second reading on January 18, 2007 by a vote of 5 (Ayes) 0 (Nays) 0 (Abstain).

VILLAGE OF WIMBERLEY

By 
Tom Haley, Mayor

ATTEST:


Brenda Millender, City Secretary

APPROVED AS TO FORM:


Patty Akers, City Attorney