

AN ORDINANCE AMENDING ORDINANCE NO. 43, RELATING TO THE REGULATION OF TOWERS; MAKING FINDINGS AND CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; CONTAINING A SAVINGS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE, AND SEVERABILITY; CONTAINING A REPEALER; AND FOR POSTING.

WHEREAS, the City intends to regulate the location, fencing, screening, landscaping and related issues with respect to the construction, alteration or placement of certain towers and tower structures within the City; and

WHEREAS, the expansion of radio, television and wireless communication usage and services has increased the demand for tower sites within the City; and

WHEREAS, the location, safety, environmental impact, visual impact, and affect on property values of towers are of particular concern to residents of the City and City Council; and

WHEREAS, the preservation of the environment, public safety, harmonious appearance, appropriateness, good taste and beauty of residential neighborhoods is paramount to the continued vitality and health of the City's neighborhoods; and

WHEREAS, protection of property values, fostering contentment and happiness among residents is an appropriate purpose and basis for the exercise of the police power of the City; and

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

1.

That the findings and recitals contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

II.

REGULATION OF TOWERS

Section 1. Definitions. As used in this Ordinance, the following words and terms shall have the meanings ascribed below, unless the context of their usage clearly indicates another meaning:

- A. Alteration means any modification, replacement, or reconstruction that increases the height or materially increases the dimension of a tower structure.
- B. Antenna means a device or system of wires, poles, rods, dishes, discs or similar devices used for the transmission and/or receipt of electromagnetic waves.
- C. Building Official shall mean the Building Official of the City or his designee.
- D. Camouflage design or camouflage tower means 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, man-made trees, clock towers, bell towers, steeples, light poles, and similar alternative-design mounting structures.
- E. Chairman means the Chairman of the City Planning Commission.
- F. City shall mean the City of Pattison, Texas.
- G. City Council shall mean the governing body of the City of Pattison, Texas.
- H. Commission means the City Planning Commission.
- I. FAA means the Federal Aviation Administration.
- J. FCC means the Federal Communications Commission.
- K. 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 (5') feet from the building or structure.
- L. Height of the building means the vertical distance above a reference datum measured to the highest point of the coping of 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 (5') foot horizontal distance of the exterior wall of the building when the sidewalk or ground surface is not more than TEN (10') feet above the lowest grade.
- (2) An elevation TEN (10') feet higher than the lowest grade when the sidewalk or ground surface described in item (a) above is more than TEN (10') feet above lowest grade.

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

N. 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, including the antenna and fixtures, if any.

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

P. Historic district means a district so designated by City Council or an area for which an application for designation has been initiated thereunder and has not been disapproved by City Council.

Q. Landmark means a property so designated by City Council or a property for which an application for designation has been initiated thereunder and has not been disapproved by City Council.

R. 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.

S. 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 Public Utility Regulatory Act, telegraph services, television stations, radio stations, community antenna television services, 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.

T. Residence means any permanent building or structure containing habitable rooms for non-transient 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, town homes, patio-homes, duplexes, triplexes, quadraplexes, condominiums, and apartments. Multi-unit complexes shall be included as a ratio of one-eighth (1/8th) acre of land, or any fraction thereof, as being equivalent to ONE (1) residential tract. For purposes of calculating the ratio of multi-unit complex acreage to residential tracts, only that portion of the multi-unit complex acreage within the residential test area shall be considered. Hotels, motels, boarding houses, group houses, 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.

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

V. 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.

W. Residential restrictions means ONE (1) 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.

X. Residential area means the area around a proposed tower site that, within the residential test area, contains FIFTY (50%) percent or more tracts wholly or partially therein that are subject to residential restrictions or are in use of residential purposes.

Y. Residential test area means the circular area, as described herein, surrounding a

proposed tower structure. The radius of the circle shall be at least THREE HUNDRED SEVENTY-FIVE (375') feet and not more than EIGHT HUNDRED (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:

375 feet radius at a tower height of 60 feet or less.

Z. Scenic area means those areas of the City so designated by City Council, except that, for purposes of this Ordinance, any designated scenic area that has ONE (1) or more high mast light structures within its boundaries shall not be deemed a scenic area.

AA. 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 this Ordinance.

BB: Subdivision means all land encompassed within ONE (1) or more maps or plats of land within the City that is divided into TWO (2) 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.

CC. Tower or tower structure means a fixed, freestanding or guyed, uninhabitable structure, not designed as a shelter or to be occupied for any use. This definition includes, but is 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.

DD. Towers that are supported in whole or in part, by guy wires and ground anchors are not allowed in the City.

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

Section 2. Tower permit required.

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

B. A tower permit shall not be required for any tower repaired, replaced, or modified with no resulting increase in height or dimension and any tower repaired, replaced, or modified in order to comply with the requirements of any statute, regulation, order, or rule of the FCC, the FAA, or any other federal, state, or governmental agency or authority.

C. Notwithstanding any other provision of this Ordinance, the owner of any antenna tower for which a tower permit and building permit were issued prior to the effective date of this Ordinance, may, without obtaining a new permit, upon written notice to the Building Official, replace the tower with a new tower if the new tower structure complies with the requirements of this Ordinance and: (i) is specifically designed to accommodate additional antenna arrays, (ii) is not higher than the tower structure being replaced, (iii) is not more than FIFTY (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. The new tower structure shall be assigned the same permit number as the tower structure it replaces. A tower structure may be replaced only once under this subsection.

Section 3. Exemptions.

This Ordinance does not apply to the following structures:

- (a) Church bell towers and religious symbols associated with a place of worship;
- (b) Tower structures less than SIXTY (60') feet in height;
- (c) Tower structures used primarily for the support of amateur and citizens, band radio antennae;
- (d) 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 SIXTY (60') feet or the height of the building upon which the tower is constructed, whichever is less;
- (e) 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;
- (f) High mast light structures or antennas built on land on, along or adjacent to streets, roads, highways and bridges installed and maintained by the state or a political subdivision of the state;
- (g) 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; and

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

Section 4. 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. A tower permit shall not be approved for the construction or alteration of a tower structure in a residential area.

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.

D. A tower permit shall not be approved for the construction or alteration of a tower structure in a historic district, unless the proposed tower conforms to the requirements for camouflage design and the City has issued a certificate of appropriateness for the construction of the proposed tower.

E. In an area within ONE-QUARTER (1/4) mile of an historic district or landmark, a tower permit shall not be approved for the construction or alteration of a tower structure unless:

- (1) the proposed tower is located from the historic district or landmark, as applicable, a distance at least equal to the applicable setback area established by subsection (G), 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 historic district or landmark; and
- (2) ONE (1) 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 historic district or landmark, as applicable.

F. A tower permit shall not be issued for the construction or alteration of a tower structure in a scenic area, nor shall a tower permit be issued for the construction or alteration of a tower structure in a park or on a tract adjacent to a park.

G. 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 ONE AND ONE-HALF (1-1/2) times the height of the tower or tower structure and antenna. The foregoing measurement shall be made to the nearest point on the property line of the residential lot.

H. Safety issues will be fully addressed by applicants requesting a permit. Towers

should be located in such a manner that if the structure should fall along its longest dimension it will remain within the owned or leased property boundaries of the Service Provider and avoid habitable structures, public streets, utility lines and other antennas or towers unless support structures are of sufficient strength and design. If a proposed tower has a potential for affecting a nearby property or structure upon collapse or scattering of equipment debris, the situation must be addressed by applicant.

I. A tower permit shall not be approved for the construction or alteration of a tower structure within ONE THOUSAND (1,000') feet of an approved tower structure, other than a tower structure for which a permit would not be required under this Ordinance. For purposes of this requirement, a tower is considered to be "approved" when a tower permit has been issued pursuant to this Ordinance and the tower structure has been constructed or any building permit issued thereunder remains in effect. The City shall promulgate rules and procedures for establishing precedent to the extent of conflict between TWO (2) or more tower structures.

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

Section 5. Tower structure and Antenna.

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 (2) antenna arrays. This requirement shall not apply to a camouflage tower.

Section 6. 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) shall not be less than EIGHT (8") feet in height with no openings, holes or gaps larger than FOUR (4") inches measured in any direction. Gates and doors opening directly into the area enclosed by a fence, wall or barrier, closed 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 (6') feet in height.

Section 7. 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 (8') 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 EIGHTEEN (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 FOUR (4) times the height of the tower structure from all residential lots, 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 Sections 6 and 7 of this Ordinance are applicable, a single fence conforming to all applicable requirements of both sections may be provided.

Section 8. 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 (1) large evergreen shrub capable of reaching a minimum height of FOUR (4') feet for each FOUR (4) linear feet of required screening fence; provided that not less than EIGHT (8) 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 by Section 7 of this Ordinance. All shrubs provided pursuant to this subsection shall be installed at the tower site along the exterior side of the screening fence required in Section 7 of this Ordinance.

C. At a minimum, a tower site shall have ONE (1) evergreen tree, with a minimum caliper of FOUR (4") inches, for each FIFTY (50') linear feet of required screening fence; provided that not less than ONE (1) such tree shall be provided for each public right-of-way or private street which borders the tract upon which such tower is located.

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 7 of this Ordinance shall also be excluded from the landscape requirements of this Section for which any amount of linear footage of screening fence is required.

Section 9. 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 FCC regulations regarding tower registration or other applicable law.

B. A tower or tower structure shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required by law or regulation, a design that reasonably minimizes disturbance to any adjacent residences or landmark shall be utilized.

Section 10. Application procedures for a tower permit, fees.

A. An application for a tower permit shall be submitted to the City. The applicant shall, with the filing of the completed tower permit application, submit payment of the appropriate tower permit fees established by the City Council that are calculated to reasonably cover the expenses of administering the provisions of this Ordinance.

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 Building Official. Each application for a tower permit or for a waiver shall include envelopes addressed to the owners and a complete list of these 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. In the event that 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 shall issue a permit for construction, placement or alteration of a tower only if it meets the requirements of this Ordinance.

E. On or before the SIXTIETH (60th) calendar day following the filing of the required application, the Building Official 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 13 of this Ordinance, 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.

Section 11. Notice of pending application.

A. The notice requirements of this Section apply only to applicants for tower permits for the construction, placement or alteration of towers subject to the requirements of this Ordinance and for waivers from the requirements of this Ordinance. 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 best efforts to maintain a sign on the subject tower site for a minimum of THIRTY (30) calendar days beginning no later than the SIXTH (6th) calendar day following the date of the filing of the required completed application with the City. The sign shall be posted no more than FIFTEEN (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 (4') feet by EIGHT (8') feet in size, with lettering that complies with specifications promulgated by the City. The sign shall contain at a minimum the following items of information:

- (1) 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 City;
and
- (4) The telephone number at the City 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 Building Official, compliance with the requirements of this section is insufficient to provide adequate notification of the pending tower permit application, the Building Official 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 herein, 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 4 of this Ordinance, as is 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 City in a manner prescribed by the City. Notice to all owners of record and civic organizations registered with the City 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 and shall be mailed no later than the TENTH (10th) calendar day following the filing of the required and completed application. The written notice shall include a map showing the proposed tower site and the surrounding residential test area or setback areas, as possible.

E. Written notice shall be published at least once in the official City newspaper not later than the SEVENTH (7th) 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 City.

F. The written notice required in subsection (D) above all 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.

G. The applicant shall be responsible for paying all costs associated with the giving of notice under this Ordinance.

Section 12. 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 Ordinance 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 may elect to submit a written application for a waiver to the City or may appeal the denial of the permit as provided in Section 13 of this Ordinance. An application for a waiver from the requirements of this Ordinance 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 shall be submitted not later than 2:00 o'clock P.M. on the SEVENTH (7th) calendar day following issuance of the notice of disapproval. The Building Official may 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 citing the specific provisions of this Ordinance 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 Ordinance, following a public hearing, when the City Council finds that each of these conditions exist:

- (1) That a literal application of this Ordinance 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 Ordinance;
- (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 zoning regulation or the location of a tower in a park.

E. A waiver from the requirements of Section 4 of this Ordinance for an antenna tower shall not be granted unless, in addition to finding that each of the conditions expressed in subsection (D) above 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 ONE THOUSAND (1000') feet of the proposed tower will not meet the applicant's engineering requirements;
- (2) The approved tower or tower structure located within ONE THOUSAND (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 ONE THOUSAND (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 ONE THOUSAND (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 ONE THOUSAND (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 ONE THOUSAND (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 ONE THOUSAND (1,000') feet of the proposed tower is not available for co-location 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 ONE THOUSAND (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 subsections (C) and (D) of Section 13 of this Ordinance shall govern the hearing required on an application for a waiver.

Section 13. Protest and appeal; hearing procedures.

A. Any property owner, association or group with 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 the specific grounds relied upon and be presented to the Building Official no later than 2:00 o'clock P.M. on the THIRTY-SEVENTH (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 Building Official has until 2:00 o'clock P.M. on the SEVENTH (7th) calendar day following the issuance of a notice of disapproval to file a written notice of appeal to the City. The Building official may waive this requirement upon a finding of good cause.

C. Notice of the time, place and location of the public hearing at which the protest or appeal is to be presented must be given by the City Secretary before the TENTH (10th) day before the date of the hearing by:

(1) Publication in the official City newspaper;

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

Mail

(3) By written notice delivered to each property owner, association or group the United States mail, first class postage; and registered with the City having an interest in property within the setback area. The written notice shall be served by depositing the same, 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 Council 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) 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 or zoning regulation; or
- (3) The information contained in the application is erroneous or the Building Official's analysis of the permit application is based on erroneous information.

F. The City Council, following a public hearing, is authorized to deny a tower permit that is the subject of an appeal under subsection (b) upon finding, based on substantial evidence, that the decision of the Building official to deny the tower permit is erroneous or the Building Official'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 THIRTY (30) 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.

Section 14. Tower permit requirement and plan review.

A. A tower permit obtained pursuant to the provisions of this Ordinance shall become invalid after the passage of ONE HUNDRED EIGHTY (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 ONE HUNDRED EIGHTY (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 Building Official; provided that the regulation or rules are consistent with the provisions of this Ordinance.

Section 15. 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 Ordinance, 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 Ordinance, the Fire Code, the Building Code, this Code or any other applicable regulation, rule or Ordinance.

Section 16. Removal of towers.

Any antenna or tower that is not operated for a continuous period of SIX (6) months shall be considered abandoned, and the owner of the antenna or tower shall remove same within NINETY (90) days of receipt of notice from the Building Official notifying the owner of the abandonment. If the antenna or tower is not removed within the NINETY (90) days, the City may remove the antenna or tower at the owner's expense. If there are TWO (2) or more users of a single tower, then this provision shall not become effective until all users cease using the antenna or tower.

Section 17. Deed restriction affidavit.

A. Every applicant for a tower permit or a waiver shall furnished to the City a Title

Report and 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 Title Report and 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.

Section 18. Permitted hours for construction and maintenance.

Construction, placement, removal and maintenance of, the alternations or modifications to, a tower or equipment storage facility for a tower shall not be performed except between the hours of 7:00 o'clock A.M. and 9:00 o'clock 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 o'clock P.M. through 7:00 o'clock A.M. as long as it does not create an unreasonable noise.

Section 19. Enforcement and penalties.

A. Violation of this Ordinance is unlawful. Failure of any person to comply with any provision of this Ordinance shall be punishable upon conviction by a fine of not less than FIVE HUNDRED AND NO/100 (\$500.00) DOLLARS or more than TWO THOUSAND AND NO/100 (\$2,000.00) DOLLARS. Each day the violation continues shall constitute a separate offense. All authority granted to the City Attorney and the City and their designees under this Ordinance 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 Ordinance, the City 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.

Section 20. Cumulative effect.

This Ordinance 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 Ordinance shall not excuse compliance with the building code, including permits required thereunder.

Section 21. 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 Ordinance. All authority granted to the City Attorney under this Ordinance 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 Ordinance.

Section 22. Transitional provision.

The provisions of this Ordinance shall apply only to towers constructed, placed, or altered after the effective date of this Ordinance or amendments thereto, as applicable, except for the fencing requirements of Sections 6 and 7 of this Ordinance which shall be applicable to all towers subject to this Ordinance.

Section 23. Planning Commission review.

The Chairman of the City Planning Commission shall provide to the Mayor or City Council within ONE HUNDRED EIGHTY (180) days following the effective date of this Ordinance a report of his recommendations with respect to the desirability of requiring the filing of an Annual Plan by tower owners and operators and the use of public facilities and public rights-of-way for the siting of towers and tower structures as defined herein. The Chairman of the City Planning Commission shall provide to the Mayor and City Council ONE (1) year following the effective date of this Ordinance a report describing technological developments that could affect the City's strategies for the regulation of towers

III.

This Ordinance shall take effect from and after the date of its passage, and all Ordinances or portion of Ordinances heretofore passed in conflict with the terms hereof are specifically repealed.

IV.

If any provision, section, subsection, sentence, clause, phrase of this Ordinance, or the

application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion thereof or provision, or regulation contained herein, shall become inoperative or fail by reason of any unconstitutionality of any other portion hereof and all provisions of this Ordinance are declared to be severable for that purpose.

V.

The City Secretary is instructed to post and publish notice of this Ordinance as required by law,

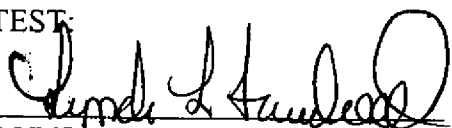
by publishing only the descriptive caption.

PASSED AND APPROVED this 13 day of January, 2004.

THE CITY OF PATTISON, TEXAS

By: 
BILL MATTHEWS, Mayor

ATTEST:

By: 
LYNDA FAIRCHILD
City Secretary

ALDERMEN VOTING:

LYNN T. BELL	<u>Absent</u>
ROY TAYLOR	<u>Absent</u>
KATHRYN WILSON	<u>Yes</u>
PAT BUFKIN	<u>Yes</u>
LARRY SABRSULA	<u>Yes</u>