ORDINANCE NO. 342-2008

AN ORDINANCE AMENDING ORDINANCE NO. 51-96 OF THE CITY OF SPANISH FORT, ALABAMA

WHEREAS, the Planning Commission of the City of Spanish Fort, Alabama, held a meeting on May 12, 2008, and the City Council of the City of Spanish Fort held a meeting on July 7, 2008, for the purpose of receiving public comments on proposed amendments to the Zoning Ordinance of the City of Spanish Fort, Alabama; and

WHEREAS, the City Council of the City of Spanish Fort, Alabama, has determined that said Zoning Ordinance should be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

SECTION 1. Section 7.9 of Ordinance No. 51-96 of the City of Spanish Fort, Alabama, the Zoning Ordinance, is hereby amended to read in its entirety as follows:

7.9 RADIO, CELLULAR RADIO, CELLULAR TELEPHONE AND WIRELESS COMMUNICATIONS TOWERS, ANTENNAS, DISHES AND RELATED ACCESSORY STRUCTURES AND EQUIPMENT. The purpose of this Section is to establish minimum location requirements, citing criteria and development standards for wireless communications facilities consistent with the Federal Telecommunications Act of 1996, as amended. No radio, telephone or wireless communications or transmitting towers and antennas, or their associated structures or equipment, shall be erected or constructed without first complying with the provisions of this ordinance and all applicable State and Federal rules and regulations. The underlying principles of these standards are to: (1) achieve a balance among the number, height and density of wireless communications facilities that is appropriate for our community; (2) encourage and maximize the use of existing and approved towers, buildings and other structures to accommodate new wireless communications facilities; (3) ensure the compatibility of towers with, and avoid the adverse impacts to, nearby property; and (4) discourage the proliferation of towers throughout the City of Spanish Fort.

7.91 Definitions. The following definitions shall apply to the terms used in this Section:

Accessory Structure Compound. A fenced, secured enclosure in which a wireless communications facility and its equipment, buildings, access roads, parking areas and other accessory devices/auxiliary structures are located.

Alternative Support Structure. Any structure other than a wireless communications tower, which may include, but is not limited to, buildings, water towers, light poles, power poles, telephone poles and other essential public utility structures.

Antenna Support Structures. Any structure on which wireless communications antennas and cabling can be attached. (See also Communications Tower and Alternative Support Structure.)

Co-location. The placement of more than one wireless communications antenna by one or more service providers on a single existing or approved antenna support structure or communications tower.

Communications Antenna or Antenna. A device used to transmit and/or receive wireless communication services as authorized by the Federal Communications Commission, including all mounts and supporting structures. Communications antennas typically include:

a. Microwave dish -- parabolic antennas that emit microwave signals.

b. Panel antenna -- vertical and horizontal plane antennas that aim radio signals in specific directions. (Also referred to as sector antennas.)

c. Whip antenna -- cylindrical antennas which emit radio signals in a 360-degree horizontal plane and a compressed vertical plane. (Also referred to as stick, omni-directional or pipe antennas.)

Communications Tower or Tower: Any ground-mounted structure that is designed and constructed primarily for the purpose of supporting one or more communications antennas. Communications towers shall include:

a. Monopole towers -- cylindrical self-supporting towers constructed as a single spire.

b. Self-Supporting or Lattice towers -- self-supporting towers with multiple sides of open-framed supports.

c. Guyed towers -- towers anchored with guy wires.

d. Camouflaged towers -- self-supporting towers concealed such that they blend in with their surroundings. Such towers may be constructed to resemble objects, such as a tree or a street light, or may be concealed within another structure, such as a clock tower, church steeple, flag pole or lamp post.

Concealment or Camouflage Techniques. Design techniques used to blend a wireless communications facility, including any antennas thereon, unobtrusively into the existing surroundings so that the appearance is not of a wireless communications facility. Such structures shall be considered wireless communications facilities and not spires, belfries, cupolas or other appurtenances usually required to be placed above the roof level for purposes of applying height limitations. Due to their height, such structures must be designed with sensitivity to elements such as building bulk massing and architectural treatment of both the wireless communications facility and surrounding development. Concealed towers or communications antennas on developed property must be disguised to appear as either a part of the structure housing a principal use or an accessory structure that is normally associated with the principal use occupying the property. Concealed towers or communications antennas developed on unimproved property may be required to be disguised to blend in with existing vegetation. Example: A tower of such design and treated with architectural material so that the tower is camouflaged or disguised to resemble a woody tree with a single trunk and branches (also known as a "monopine").

F.A.A. the Federal Aviation Administration.

F.C.C. the Federal Communications Commission.

Height. When referring to a tower or alternative support structure, the distance measured from the ground level at the base of the tower or alternative support structure to the highest point on the tower or alternative support structure, including if said highest point is an antenna placed on said structure or tower.

Wireless Communications Facilities. Any and all buildings, improvements, structures, fixtures or other accessories (such as electrical boxes, equipment sheds, guy wires, etc.) installed, used or intended for use in conjunction with any of the following:

a. Cellular Communications Facilities -- low-powered transmitters used to transmit signals in a cell for cellular radio-telephone services (cellular phones), personal communication services (PCS), enhanced specialized mobile radios (ESMR), trunk mobile cellular radios, paging services and similar cellular-based communications to the general public, whether digital or analog based.

b. Commercial Satellite Facilities -- satellite earth stations which are greater than two (2) meters in diameter, and are used to send and/or receive satellite signals and similar communications.

c. Microwave Relay Facilities -- used to transmit radio signals between two or more fixed points by microwave antennas and similar transmission services.

7.92 General Standards and Requirements.

7.921 Permit Requirements. All wireless communications facilities are subject to the standards contained in this ordinance, and applicants or operators will be required to receive a Land Use Certificate from the Zoning Administrator prior to being granted a building permit or authorization to proceed with construction. Furthermore, the location of wireless communications equipment and related structures in all use districts shall be governed by Article VI, Table 6.4 (Table of Permitted Uses and Conditions).

7.922 Height.

a. Antennas located on alternative support structures shall not exceed fifteen feet (15') above the existing structure on which they are placed.

b. Tower height shall be limited to one hundred eighty feet (180').

7.923 Setbacks. Wireless telecommunications towers, guys and accessory facilities must satisfy the minimum yard requirements of the zoning district in which they are located. The use of concealment techniques may except a wireless telecommunications facility from any additional minimum yard requirements, subject to the approval of the Planning Commission. In addition, the minimum setback for all towers from adjacent property lines shall be the greater of the following:

a. one half (½) of the total height of the tower, including any appurtenances attached thereto; and

b. Towers must be placed no closer than a distance equal to the height of the tower to any residential structure, unless such residential structure is located upon and owned or occupied by the landowner of the property upon which the tower is to be located. If the proposed tower includes guy-wires, the distance to the nearest residential structure shall be measured from the closest guy-wire to that residential structure.

c. Where a communications antenna is to be installed within or on an existing structure in any business district, the setbacks shall be as required for the existing structure and the use district in which the structure is located, without regard to the antenna height.

7.924 Structural Design of Towers. Every new tower constructed shall be of monopole design, unless the applicant for good cause shown can demonstrate that the specific conditions require another tower type.

7.925 Aesthetics. The aesthetic properties of each individual wireless communications facility shall be approved as part of the site plan review process.

a. Towers and antennas. The design of the tower and antennas shall be of a type that has the least visual impact on the surrounding area. The following minimum requirements must be observed:

(1) Towers shall be of a galvanized finish or painted a neutral or blending color so as to reduce visual obtrusiveness, unless otherwise provided or required by any applicable standards or the Planning Commission. If an antenna is installed on a structure other than a tower, the antenna and supporting communications facility must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure, or as otherwise required by the Planning Commission.

(2) No signage, symbols or advertisements may be attached to the pole, tower or antenna, unless otherwise required by local, state or federal laws, rules or regulations.

(3) Towers camouflaged to resemble woody trees or indigenous vegetation in order to blend in with native landscape will be subject to review, as are other types of concealment techniques. (See Concealment or Camouflage Techniques.)

b. Accessory Structures.

(1) The design of the wireless communications facility and its accessory structures shall, to the extent possible, maximize the use of building materials, colors, textures, screening and landscaping that effectively blend the tower and wireless communication facilities with the surrounding natural setting and built environment.

(2) In or adjacent to developed properties, accessory structures must be aesthetically and architecturally compatible with the surrounding environment. Materials such as wood, brick and stucco should be used as appropriate. The use of metal or metallic-looking material shall be avoided as much as possible.

c. Non-vegetative screening.

(1) Non-vegetative screening will be required when it is necessary to reduce the visual impact of a wireless communications facility on adjacent public ways, properties or the neighborhood in which it is located. In or adjacent to developed properties, non-vegetative screening shall be provided in a manner that is compatible with the surrounding character of development, buildings, natural vegetation and landscaping. Such screening, as required, is subject to site plan review, shall have a minimum height of eight feet (8'), and may consist of one of the following: brick, masonry walls, solid wood fencing, berms or opaque barriers. All non-vegetative screening shall be properly maintained by the property owner or lessor.

(2) In certain locations where the visual impact of the tower would be minimal, such as remote, agricultural or rural locations, or developed heavy industrial areas, the non-vegetative screening requirement may be reduced.

(3) The screening requirements may be reduced on wireless communications facilities utilizing underground vaults rather than above ground equipment buildings.

d. Landscaping. In addition to the landscaping and buffer requirements set forth in Article VI and X, the following provisions shall also apply:

(1) Landscaping will be required to reduce the visual impact of the wireless communications facilities on adjacent public ways, properties or the neighborhood in which it is located. In or adjacent to developed properties, landscaping shall be provided in a manner that is compatible with the surrounding character of development, buildings and natural vegetation.

(2) The perimeter of the accessory structure compound shall be landscaped with a buffer of plant materials that effectively screen the view of the compound from adjacent property and public ways. The standard buffer shall consist of a landscaped strip of at least ten feet (10') wide outside the perimeter of the compound. In locations where the visual impact of the tower would be minimal, the landscaping requirements may be reduced.

(3) Where the property on which the wireless communication facility is located abuts, or is in close proximity to, a residential district or residential use, additional buffering may be required by the Zoning Administrator.

(4) A row of trees a minimum of eight feet (8') tall and a maximum of ten feet (10') apart shall be planted around the perimeter of the compound fence. A continuous hedge of at least thirty (30") inches high at planting and capable of growing to at least thirty-six (36") inches in height within eighteen (18) months shall be placed in front of the tree line.

(5) All landscaping shall be of the evergreen variety. All landscaping shall be xeriscape tolerant or irrigated and properly maintained by the property owner or lessor to ensure good health and variety.

7.926 Lighting Restrictions. There shall be no lighting on any towers unless required by the F.A.A. or other authority for safety purposes. In cases where the F.A.A. does require a tower to be lighted, only red blinking lights shall be used at night; white strobe lights will not be permitted for nighttime lighting. Written documentation of any F.A.A. directives to light a tower differently than provided herein must be submitted with the application.

Basic security lighting for the compound may be permitted, but shall not include any flashing lights or lights greater than twenty feet (20') in height. Security lighting shall be focused only on the wireless communications facility itself, excluding the tower and antennas, and shall be directed away from any adjacent property. A lighting photometrics plan will be required.

7.927 Lot Size.

(a) Lot size must conform to the minimum lot size required for the underlying use district in which the tower is located.

(b) In addition, lot size must adequate to accommodate all setbacks, buffered areas, ground mounted accessory structures, antenna support structures and related guy wires or cables and space for additional co-locating service providers.

(c) If only a portion of a parcel is being leased for a wireless communications facility, the leased parcel must be situated within the parent parcel so that the wireless communications facility complies with the applicable setback requirements contained herein.

(d) All buildings, structures, facilities and accessories associated with the proposed tower are to be wholly contained within the required security fence. (Guy anchors may be fenced separately from the main compound.)

7.928 Rezoning to T-1, Telecommunications Tower District. The City Council shall be entitled or authorized to rezone all or a portion of a parcel of property to the T-1 Zoning District. If only a portion of a parcel is rezoned to the T-1 Zoning District, the rezoned portion must be situated within the parent parcel so that the wireless communications facility complies with the applicable setback requirements contained herein.

7.93 Environmental Impact. All wireless communications facilities shall comply with the National Environmental Policy Act. If an environmental assessment is required by the Federal Communications Commission, a copy of the assessment with all documentation of the F.C.C's subsequent approval must be submitted prior to the commencement of construction and approved by the City Engineer.

7.94 Safety. The following safety information and requirements must be satisfied prior to receiving any approvals to locate a communications facility within the City of Spanish Fort:

a. Radio Frequency. The applicant shall be required to submit documentation that the proposed wireless communications facility complies with Federal Communications Commission standards for radio frequency emissions, as adopted by the F.C.C. on August 1, 1996, as amended.

b. Structural. A professional structural engineer registered in the State of Alabama shall certify that all antenna support structures and wireless communications equipment are erected and/or installed to comply with wind loading and other structural standards contained in the latest edition of the Standard Building Code as adopted by the City of Spanish Fort and with all applicable technical codes as established by the Electronic Industries Association (EIA/TIA 222-E "Structural Standards for Steel Antenna Supporting Structures") and the Telecommunications Industry Association. This applies to new and modified structures and facilities.

c. Electrical. Electrical installations shall be in accordance with the latest version of the National Electric Code as adopted by the City of Spanish Fort.

d. Site Security. Fencing shall be required to ensure that antenna support structures and their accessory buildings are fully secured. Sufficient anti-climbing measures must be incorporated into each facility, as needed, to reduce potential for trespass and injury. A sign shall be discretely placed on the outermost structural element indicating the name and telephone number of persons responsible for the safety and maintenance of the facility.

e. Access. Provisions shall be made to provide proper clearances for ingress and egress of emergency vehicles. Whenever a tower site does not have frontage on a public street from which it derives access, a permanent twenty foot (20') wide access easement shall be required.

7.95 Co-Location.

a. No new tower shall be permitted unless the applicant demonstrates that no existing antenna support structure or other structure can accommodate the applicant's needs.

b. Documentation that reasonable efforts have been made to achieve co-location shall be submitted with each application for a new antenna support structure. Applications for new antenna support structures or towers must include an affidavit from the applicant verifying that no existing sites are available for co-location. If the owner of an approved tower refuses to allow a co-location, an affidavit shall be required that states the reason for the refusal.

c. All towers constructed subsequent to the adoption of this section, and their accessory structure compounds, shall be designed and built to accommodate as many additional wireless communication service providers as possible based on the height of the tower. Monopole structures shall have the ability to accommodate at least one (1) additional set of antennas. Guyed towers and self-supporting towers shall have the ability to accommodate at least two (2) additional sets of antennas.

d. The owner of any existing communications tower that has space structurally and technically available for any additional communications antennas shall make such space reasonably and economically available to other providers.

e. The construction of towers capable of supporting multiple providers will take precedence over single use communications towers.

f. For any communications tower approved for shared use, the owner of the tower shall provide notice of the location of the communications tower to the City, and the owner shall agree to make such space reasonably and economically available to other providers.

7.95 Application. All wireless telecommunications facilities are subject to the standards contained in this section and will be required to receive a Land Use Certificate from the Zoning Administrator prior to being granted a building permit. For all wireless communication facilities which do not require the construction of a new tower, the Zoning Administrator shall have the authority to require any documentation or information with the application for Land Use Certificate deemed necessary to ensure compliance with this ordinance.

7.96 Application and Justification for Construction and Siting of a New Tower. Sufficient justification must be submitted and proved for the siting of all new communications towers in the City of Spanish Fort. Determination as to the adequacy of the justification for any new tower will be made as a part of the approval process and shall be based upon, along with other standard land use considerations for appropriateness, the review and evaluation of the application for the siting of a new communications tower. The following information and materials shall accordingly be considered the minimum application requirements when requesting approval of the siting of a new communications tower:

a. A detailed site plan showing, at a minimum, the following:

1. The conceptual layout of the facility, including the location and dimensions of all improvements, setbacks, accesses, security installations (including fencing), type and height of tower, guy anchors, vehicular parking and access, existing vegetation to be retained, topography of the site, adjacent land uses and current zoning, etc.;

2. A description and drawing or photo simulation of the visual aspects of the proposed facility;

3. A buffer plan showing the nature of the setback space, both as it presently exists and as it will be after installation of the proposed facilities; how it will address the requirements contained in Section 7.924;

4. A current U.S.G.S. quadrangle map (1:24,000) or equivalent showing the proposed site location and at least a two mile radius around the site;

5. A scaled elevation diagram of the facility, showing the type, height, finish, lighting, site improvements and other such details as necessary to convey an image of the facility at the proposed location; and

6. Any additional information as may be deemed necessary and required by the Zoning Administrator in order to conduct a proper evaluation of the proposed facility.

b. A study prepared by a radio frequency specialist that includes a mapped coverage analysis of the proposed facility and its relationship to the next nearest adjacent "cells" and an inventory and evaluation of existing towers, alternative sites and available structural facilities (e.g., buildings, billboards, water towers, etc., which could be used for support in lieu of a new tower) considered within a five-mile radius of the proposed location.

c. A one year facilities plan that shall include the information listed below.

1. A written description of the type of technology the company/carrier is providing to its customers on a current basis.

2. The radio frequencies to be used for each technology.

3. The types of services offered by the company/carrier on a current basis.

4. A list and map of the applicant’s wireless communications facilities (tower and antenna sites) within the City and up to one mile outside of the City.

5. A map of the "search area" for the proposed site, including: (a) address and parcel identification number for the proposed site; and (b) the projected elevation of the proposed antennas (above sea level).

d. Written documentation justifying the need for a new communications tower on the proposed site. This documentation must address, at a minimum, how the proposed tower is justified in relation to the following points:

1. A list, description and map of the potential co-location or alternative location sites that are located within the geographic service area of the proposed site;

2. Documentation that request for co-location has been made at least thirty (30) days prior to the filing of the application for the siting of a new communications tower;

3. A detailed explanation of why each such site was not technologically, legally or economically feasible, or why such efforts were otherwise unsuccessful;

4. An analysis of how and why the proposed site is essential to meet the service demands for the geographic service area and county-wide network;

5. A description of how the proposed site and facilities relate to the provider's one year plan; and

6. A signed affidavit from the applicant verifying the inability to locate the proposed antennas on existing towers or other structures accompanied by supporting documentation justifying the explanations given.

e. Registration of the name, address, telephone number of the officer, agent or employee who shall be authorized by the provider (who will be operating the wireless communications facility in question) as the single point of contact and party responsible for the accuracy of all information and certifications submitted, and for said provider's ongoing compliance with all of the provisions of this ordinance and any other applicable ordinances, codes or regulations. It shall further be the responsibility of the provider to ensure that the identity, legal status, address and telephone number of the responsible party registered with the City is complete, current and totally accurate at all times, unless and until the provider submits notice of its intent to cease the operation of the facility to the Zoning Administrator.

f. Certification by a professional structural engineer registered in the State of Alabama that the proposed communications tower and all components are structurally and technically designed and capable, and will be so constructed, to meet the requirements contained in this ordinance. Immediately upon completion of construction, certified as-built drawings of the same shall be submitted to the Zoning Administrator.

g. A fee of Five Hundred Dollars ($500.00) to cover the review costs incurred by reviewing the materials submitted as required herein. This fee shall be in addition to any and all other fees for processing the application as approved or required by the City Council.

7.97 Maintenance. The owner of a communications tower shall be responsible for maintaining the structural integrity, safety, appearance, screening, buffers, security and other installations required by this ordinance, and by any other applicable codes, ordinances, regulations, statutes or conditions of approval imposed by the City of Spanish Fort. The estimated life of the structure must be included as submittal data with the application for Land Use Certificate.

7.98 Abandonment. In the event the use of any wireless communications facility has been discontinued for a period of 180 consecutive days, the wireless communications facility shall be deemed to be abandoned. Determination of the date of the abandonment shall be made by the Building and Zoning Administrator, who shall have the right to request documentation and/or affidavits from the wireless communications facility owner regarding the usage of the communications facility. In addition, the owner of the facility shall provide the Zoning Administrator with a copy of the notice to the F.C.C. of the intent to cease operations, and said notice shall be deemed an abandonment. Upon abandonment, the owner/operator of the wireless communications facility shall have an additional 180 days in which to reactivate the use of the wireless communications facility or transfer the wireless communications facility to another owner/operator who makes actual use of the facility, or the owner/operator shall dismantle and remove the wireless communications facility. Written notification to the Zoning Administrator must be provided before the additional 180 day period has expired that either the facility has changed owners/operators or reactivation has occurred or dismantling of the tower has been accomplished.

Upon the failure of the owner/operator to reactivate the tower within the 180 day period set forth above or if the tower has been dismantled and removed, the approval for the operation of the wireless communications facility shall automatically expire.

7.99 Exemptions. The following wireless communication facilities and equipment are exempt from the requirements of this section except as otherwise indicated (however, such facilities shall only be permitted through administrative review and approval by the Building and Zoning Administrator):

a. Pre-Existing Towers. Any communications tower or communications antenna for which a permit has been properly issued shall hereafter be considered a legal non-conforming use subject to the provisions of Article 5, Section 5.4 of this Ordinance. However, given the purpose and intent of this Ordinance to minimize the proliferation of new towers and promote the co-location of new antennas onto existing towers, any communications antenna locating on a pre-existing, properly permitted communications tower subsequent to adoption of this section shall be exempt from the restrictions of Article 5, Section 5.4, of this ordinance, subject however to the provisions contained in Section 7.99(f) and any other applicable requirements of this ordinance.

b. Amateur radio antennas and receive-only antennas that are no more than 50 feet in height and satellite earth station antennas two meters or less in diameter, shall be exempt as provided for in the Federal Telecommunications Act of 1996 when no supportive tower is to be constructed.

c. Accessory facilities used exclusively for dispatch communications by public emergency agencies or government agencies.

d. Accessory facilities used exclusively for dispatch communications by private entities, provided such facilities do not exceed fifteen feet (15') in height above the rooftop of the building to which said facilities are accessory.

e. Communications towers, antennas and related necessary facilities used exclusively for internal communications by public utilities, provided that:

(1) such facilities are subordinate and incidental to approved nonresidential uses or structures on the same parcel;

(2) such facilities do not exceed twenty feet (20') in height above a structure or building when mounted thereto, or sixty feet (60') in height when ground-mounted; and,

(3) towers, poles or other support structures do not exceed thirteen (13) inches in diameter.

f. Communications antennas and related necessary facilities locating or co-locating on any pre-existing, properly permitted communications tower, provided that:

(1) no significant visible structural alterations to the existing tower will be necessary, and if structural strengthening is necessary to accommodate co-location, no increase in height or base area will be allowed;

(2) there will be no increase in the height or lighting of the facility, including the tower, antennas and all other associated facilities; and,

(3) all setback and buffer requirements applicable to the existing tower at the time a permit was issued can and will be complied with.

SECTION 2. Section 6.4, TABLE OF PERMITTED USES AND CONDITIONS of Ordinance Number 51-96 is hereby amended by adding the provisions contained in the attached Exhibit A.

SECTION 3. Ordinance No. 326-2007 is hereby repealed in its entirety. Except as expressly amended in this Ordinance, Ordinance No. 51-96, as amended, shall continue in full force and effect.

SECTION 4. If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue is full force and effect notwithstanding such holding.

SECTION 5. This Ordinance shall become effective upon its adoption or otherwise required by state law.

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