

Ordinance No. 051820

An ordinance of the City of Poth establishing standard rules and guidelines for the installation, placement, and location of cell towers, establishing a permit application process, providing penalty for violation; providing for a severability clause; and providing an effective date of this ordinance.

The purpose of this ordinance is to establish general guidelines for the siting of wireless communications facilities (WCF). The goals of this ordinance are to:

- (1) Accommodate the communication needs of residents and business while protecting the public health, safety, and general welfare of the community;
- (2) Facilitate the provision of wireless telecommunication services to the residents and businesses of the city;
- (3) Minimize averse visual effects of WCFs through careful design and siting standards;
- (4) Avoid potential damage to adjacent properties from WCF failure through structural standards and setback requirements;
- (5) Maximize the use of existing and approved WCFs and buildings to accommodate new wireless telecommunication antennas in order to reduce the number of WCFs needed to serve the community; and
- (6) Be in accordance with all aspects of the Federal Telecommunications Act of 1996.

DEFINITIONS.

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

Administrative Review means those processes set forth in Approval Procedures

Antenna array means one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (rod), directional antenna (panel) and parabolic antenna (disc). The term "antenna array" does not include the term "support structure" defined in this section.

Attached wireless communications facility (attached WCF) means an antenna array that is attached to an existing building or structure (attachment structure), which structures shall include, but not be limited to, utility poles, signs, water towers, with any accompanying pole or device (attachment device) which attaches the antenna array to the existing building or structure and associated connection cables, and an equipment facility which may be located either inside or outside of the attachment structure.

Collocation/site sharing means use of a common WCF or common site by two or more wireless license holders or by one wireless license holder for more than one type of

communications technology and/or placement of a WCF on a structure owned or operated by a utility or other public entity.

Development standards means those standards set forth herein.

Equipment facility means any structure used to contain ancillary equipment for a WCF which includes cabinets, shelters, a buildout of an existing structure, pedestals, and other similar structures.

Height , when referring to a WCF, means the distance measured from ground level to the highest point on the WCF, including the antenna array.

Lattice tower means a self-supporting three- or four-sided, open steel frame structure used to support telecommunications equipment.

Minor modification means any routine repair or maintenance the value of which does not exceed fifty (50) percent of the value of the tower.

Major modification means any repair or maintenance the value of which exceeds fifty (50) percent of the value of the tower.

Monopole means a structure composed of a single spire used to support telecommunications equipment.

Residential district means any section of the city zoned for Single-family (R-1), (R-4), Single-family/Manufactured Housing designated on site plan as residential use.

Setback means the required distance from the property line of the parcel on which the WCF is located to the support structure.

Support structure means a structure designed and constructed specifically to support an antenna array, and may include a monopole, self-supporting (lattice) tower, guy-wire support tower and other similar structures. Any device (attachment device) of a maximum of 20 feet in height which is used to attach a WCF to an existing building or structure (attachment structure) shall be excluded from the definition of and regulations applicable to support structures .

Temporary wireless communications facility (temporary WCF) means a WCF to be placed in use for 120 or fewer days.

Tower means a stand-alone structure consisting of a support structure, antenna and associated equipment. The support structure may be a wooden pole, monopole, lattice tower, light standard, or other vertical support.

Wireless communications means any personal wireless services as defined in the Telecommunications Act of 1996, which includes FCC licensed commercial wireless

telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that currently exist or that may in the future be developed.

Wireless communications facility (WCF) means any unstaffed facility for the transmission and/or reception of wireless telecommunications services usually consisting of an antenna array, connection cables, an equipment facility, and a support structure to achieve the necessary elevation.

PURPOSE AND GOALS.

Applicability and Severability

A) *Pre-existing WCFs.* WCFs for which a permit has been issued prior to the effective date of the ordinance from which this article is derived shall not be required to meet the requirements of this

B) *Exclusion for amateur radio facilities.* This article shall not govern the installation of any amateur radio facility that is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive only antennas.

C) *Relationship to other ordinances.* This article shall supersede all conflicting requirements of other codes and ordinances regarding the locating and permitting of WCFs.

D) *If any section , subsection, sentence, clause, phrase or portion of this ordinance,* is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of remaining portion thereof.

Development standards for WCFs.

A) *WCFs and antennas are a permitted use.* In any manufacturing or heavy manufacturing zoned district if the following requirements are satisfied:

1. The WCF is a minimum of 200 feet from any residential zoning district.
2. WCF height, excluding antenna array, does not exceed:
 - a. 100 feet, if the WCF is at least 200 up to 250 feet from any residential district.
 - b. 125 feet, if the WCF is at least 250 up to 540 feet from any residential district.
 - c. 150 feet, if the WCF is 540 feet or more from any residential district.
3. The antenna array does not exceed WCF height by more than 20 feet.

4. All guys and guy anchors are set back a minimum of 20 feet from any property line.
5. The WCF is erected and operated in compliance with current Federal Communication Commission and other applicable federal, state and county standards.
6. The WCF is of monopole construction if located within 540 feet of any residential district.

B) Temporary WCF's, for emergency purposes, for a term not to exceed 120 days, with a possible 60 day extension with approval of the chief building official, are permitted outright.

C) Setbacks.

1. WCFs shall be located so as to provide a minimum distance from the tower to all property lines equal to 20 percent of the height of the tower.
2. WCFs shall be set back a minimum of 50 feet from any existing or planned street right-of-way line.

D) Fencing and landscaping.

1. All WCFs and support facilities shall be surrounded by a solid concrete fence eight feet in height from finished grade. Access to the WCF shall be through a locked gate. Barbed wire may be allowed along the top of the fence if it is necessary to preclude unauthorized access to the WCF.
2. The fence shall be landscaped along the perimeter by drought tolerant plants or shrubbery or plants native to the South Texas Region.

E) Additional uses permitted on lot. WCFs may be located on lots containing another principal use, and may occupy a leased parcel on a lot meeting the minimum lot size requirement of the district in which it is located. Towers and their associated equipment shall be separated from other structures on the lot by a minimum distance of six feet.

F) Required off-street parking. One parking space is required.

G) Radio frequency emissions. The Federal Telecommunications Act of 1996 (FTA) gives the Federal Communication Commission (FCC) sole jurisdiction of the field of regulation of radio frequency (RF) emissions and WCFs which meet the FCC standards shall not be conditioned or denied on the basis of RF impacts.

Approval procedures.

A) Permit.

1. **Application requirements.** Any person, firm, corporation, or other entity desiring to build a telecommunication facility within the corporate city limits

must obtain a building permit, pay appropriate fees and submit a signed application that includes all materials and information detailed herein.

- a. Name of applicant.
- b. Address of applicant.
- c. Vicinity map to illustrate location of proposed site.
- d. Description of support structure and antenna height.
- e. Photos and/or drawings of all equipment, structures and antennas.
- f. Names and addresses of telecommunication providers or users of the proposed WCF or antenna.
- g. Applicant's master WCF plan for the city and surrounding area, if necessary.
- h. Detailed account of collocation efforts.
- i. If a new WCF is allowed, the owner must certify in writing a willingness to allow collocation at the new site.
- j. Proof of contract for anchor tenant.
- k. Carrier height requirement for antenna array.
- l. Any other information as necessary for the City Council to make a determination for permit issuance.

B) Inventory of existing sites. Each application of the one or more towers shall provide to the City an inventory of its existing towers, including specific information about the location, height, and design of each tower.

C) Availability of suitable existing towers or other structures. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the City that no existing tower or structure can accommodate the applicants proposed antenna. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antenna may consist of any of the following:

1. No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements
2. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements
3. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment and cannot be reinforced to provide sufficient structural strength.
4. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna of the existing towers or structures would cause interference with the applicant's proposed antenna
5. The fees or cost required to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs below new tower development are presumed reasonable.
6. Property owners or owners of existing towers or structures are unwilling to accommodate the applicant's needs.

7. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

D) Site Plan. Each applicant requesting a permit under this section shall submit a scaled site plan and a sealed elevation view and other supporting drawings, calculations, and other documentation, signed and sealed by appropriate professional engineers, showing the location and dimensions of all improvements, including information concerning topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses, and other information necessary to assess compliance.

E) Residential setback. Towers must be set back a distance equal to the height of the tower from any off-site residential structure.

F) Aesthetics Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted sky blue or gray, so as to reduce visual obtrusiveness. At a tower site, the design of the buildings and related structures shall to the extend possible, use materials, colors, textures screening, and landscaping that will blend the tower facilities to the natural setting and building environment. If an antenna is install on a structure other than a tower the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible. Property shall be maintained to be clear of an accumulation of weed growth, rubbish, trash, debris or manmade material that creates a fire hazard to adjacent properties or adversely affects or impairs the economic welfare of adjacent properties.

G) Federal requirements All towers must meet or exceed current standards and regulations of the FAA and FCC, and any other agency of the federal government with the authority to regulate towers and antennas governed by this section shall bring such towers and antennas into compliance with such revised standards and regulation within six months of the effective date of such standard and regulations

H) Building codes, safety standards. To ensure the structural integrity of tower, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for tower that are published by the Electronic Industries Association, as amended from time to time. If upon inspection the tower fails to comply with such codes and standards and constitute a danger to persons and property, then upon notice being provided to the owner of the tower, the owner shall have thirty days to bring such tower into compliance with such codes and standards. If the owner fails to bring such tower into compliance within the 30 days, the city may remove such tower or cause such tower to be removed at the owner's expense.

I) Administrative review

Prior to the City Council, considering action to approve any WCF Site Application within the City, the City Council shall conduct a public Hearing, notice of which shall be mailed to each property owner within two hundred (200) feet of the proposed tower site at least

fourteen (14) days in advance of said hearing. Additionally, notice of the Public Hearing shall be posted in keeping with the requirements of Chapter 551 of the Tx Gov Code.

Following a Public Hearing, the City Council may consider approval of the Tower Site Application. The City may impose conditions in any permit issued hereunder to ensure conformity with the purposes of this Ordinance and the City of Poth Planning & Zoning Ordinance.

J) Review Guidelines. In addition to any requirements imposed through any associated zoning or special use permits, the City Council will be guided in its considerations by the following standards:

1. Height of proposed tower or other structure does not exceed that which is essential for its intended use and public safety.
2. Proximity of tower to residential development or zones does not create undue impact on the value or use of property (ies) in such areas
3. Nature of uses on adjacent and nearby properties and the degree of incompatibility of the proposed construction or activity with such adjacent and nearby uses.
4. Surrounding topography of the proposed site and the degree to which any specific topographical feature render the proposed site incompatible with the purposes of this Ordinance, or required special consideration(s) as to drainage, erosion and sedimentation control.
5. Surrounding tree coverage and foliage and the extent to which the proposed site or construction would disturb or diminish such coverage and foliage, or require special consideration(s) as to landscaping or buffering.
6. Design of the tower, antenna, or facility with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness including the need for landscaping or other site improvement (s).
7. The safety and utility of any proposed ingress and egress to the site.
8. Availability of suitable existing towers and other alternative tower structures or locations.
9. Visual impacts on view sheds, ridge lines, and other impacts resulting from tower location, tree and foliage clearing and placement of incidental structures, powerlines and access roads.
10. Visual impacts on the view from any public park, natural scenic vista, historic building or major view corridor.
11. That the proposed facility/tower/antenna/dish be constructed in a such a manner not to result in needless height, mass, and guy-wire supports with documentation having provided and review regarding the design capacity and/or the remaining co-location capacity of the tower/facility.
12. The proposed facility will minimize potential effects on wildlife.

SHARED FACILITIES AND COLLOCATION POLICY.

FCC licensed wireless communication providers are encouraged to construct and site their WCFs with a view towards sharing facilities with other utilities, to collocation with other existing WCFs and to accommodating the future collocation of other future WCFs, where technically, practically, and economically feasible. The city reserves the right to notify other registered wireless communication providers of new WCF applications to promote collocation.

REMOVAL OF ABANDONED WCFs.

Any WCF that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such WCF shall remove same within 90 days of notice to the chief building official that the WCF is abandoned. If such WCF is not removed within said 90 days, the chief building official may remove or cause to be removed such WCF at the owner's expense. If there are two or more users of a single WCF, then this provision shall not become effective unless all users cease using the WCF.

NONCONFORMING WCFs.

WCFs in existence on the date of the adoption of the ordinance from which this article is derived, which do not comply with the requirements of this article (nonconforming WCFs) are subject to the following provisions:

- A) Nonconforming WCFs may continue in use for the purpose now used, but may not be expanded without complying with this article, except as further provided in this section.
- B) Nonconforming WCFs which are hereafter damaged or destroyed no more than 50 percent or greater, due to any reason or cause, may be repaired and restored to their former use, location and physical dimensions subject to obtaining a building permit therefor, but without otherwise complying with this article.
- C) The owner of any nonconforming WCF may replace, repair, rebuild and/or expand such WCF in order to improve the structural integrity of the facility, to allow the facility to accommodate collocated antennas or facilities, or to upgrade the facilities to current engineering, technological or communications standards, without having to conform to the provisions of this article, so long as such facilities are not increased in height by more than 20 feet and/or setbacks are not decreased by more than ten percent.

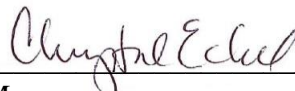
MODIFICATIONS TO EXISTING FACILITIES OR PRE-EXISTING FACILITIES WHICH MEET THE REQUIREMENTS OF THIS ORDINANCE.

- A) Minor modifications to WCFs permitted shall be approved under an administrative review.
- B) Major modifications to WCFs permitted under this ordinance shall be subject to all terms of this ordinance.

PENALTY

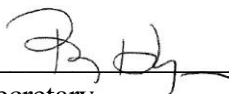
Pursuant to Local Government Code Section 54.001, violations of this ordinance shall be punishable by a fine or penalty not to exceed \$500 unless related to zoning in which instance violations of this ordinance shall be punishable by a fine or penalty not to exceed \$2000. Each day that a violation continues shall constitute a separate offense.

Passed and Approved on this 8th day of June 2020.



Mayor

Attest:



City Secretary