

- x. Integrated planters or wing walls that incorporate landscaped areas or seating areas.

d. **Multiple Buildings in Commercial Centers**

In order to achieve unity between all buildings in a commercial development consisting of more than one building, all buildings in such a development, including pad site buildings, shall employ a consistent architectural style or theme, be constructed of similar exterior materials, and feature similar colors.

5. **Outdoor Display and Sales**

Outdoor display and/or sales may be allowed subject to compliance with Section 3.3.D.2. In addition, no outdoor display and/or sales shall be visible from the limited access highway.

6. **Screening of Loading and Refuse Collection**

All loading and refuse collection facilities shall be screened pursuant to Section 5.2.D., *Screening*.

7. **Utilities**

Unless a waiver is authorized by the City Council, all electrical and telephone lines and wires including, but not limited to, street lighting, shall be placed underground. Feeder and other major transmission lines may remain overhead. All utility installation shall conform to the City's adopted Technical Standards and Specifications.

5.9 TELECOMMUNICATION TOWERS

A. **Purpose**

The City Council finds that towers and other supporting structures present land use concerns that should be dealt with by protecting residential uses, encouraging collocation, minimizing the number of towers in a manner that does not discourage market access or competition, and preventing or limiting adverse effects on off-site premises. The intent of these provisions is to provide for the continued establishment of new wireless communication providers and the expansion of existing wireless telecommunication services within the City, while simultaneously protecting neighborhoods, all through minimizing adverse visual and operational effects of facilities through careful design, sighting, screening, camouflage, and collocation requirements encouraging creative design and camouflage measures.

B. **Towers Fifty Feet or Greater are Prohibited Without a Permit**

No person or entity shall hereafter construct, own, or operate any communication tower in excess of fifty feet (50') in height above the mean elevation of the ground on which it is built, unless said person has obtained a building permit to construct from the City of Broken Arrow.

C. **Towers on Government Land**

Towers located on property owned, leased, or otherwise controlled by the governing authority of any city, county, public school district, state, or by any agency of the United States of America, will be exempt from the remaining requirements of this Section if in compliance with Sections 5.9. E through J inclusive and no more than one hundred

twenty feet (120') in height; provided that such exemption will only be available if a commercial lease or license authorizing such antenna or tower has been approved by the applicable governing body. The tower owner shall file a permit application with the City of Broken Arrow for purposes of keeping a complete record of towers within the City; the permit shall be issued administratively. The City Council expressly finds that governmental controls through proprietary devices such as a commercial lease are an adequate substitute for governmental control through regulatory devices.

D. Towers of Limited Height on Residential Land

1. No tower shall be constructed in excess of fifty feet (50') in height above mean ground elevation on any property actually used for a single-family residential purpose, or any vacant land that is intended for residential use on the Comprehensive Plan (Level 1 and Level 2), or that actually has any "R" district classification and use.
2. Any tower constructed as an accessory use on residentially zoned land that is developed and utilized for institutional purposes shall not be constructed in the front yard or within the minimum side yard requirements for the applicable zoning district. However, a camouflaged tower that does not exceed one hundred feet (100') may be placed in the front yard if concealment of both the tower and the equipment structures are accomplished (e.g., a tower disguised as steeple or comparable building element at a site for a place of worship, or a flagpole design at a public school, or an obelisk at other institutions).

E. Application Requirements

1. Each applicant for a permit to build a tower shall provide to the Development Services Department an inventory of all the existing and approved towers or permits for other locations that are within one-half mile of the site applied for. The inventory shall include specific information about the location, height, and design of each tower.
2. If the towers within the applicant's inventory have been designed for co-location, a description of the facilities and heights for the possibility of co-location shall be included within the inventory. Copies of the standard co-location lease shall also be provided, with appropriate blanks for physical dimensions and price, but including all standard terms and conditions. Said inventories and form contracts may be shared with other applicants applying for any approvals under this Ordinance; provided that the City does not warrant the accuracy of any such information shared with other applicants.
3. The applicant for a permit shall also provide the description, identity, and contact for the backhaul network provider who will serve that site.
4. Applicants for permits involving collocation shall specify in the application the features of the tower that adapt it for collocation, such as the number and location of portholes for cables, the proposed ground footprint of multiple equipment sheds and cabinets, and related items.
5. The application shall also include elevations of all proposed shielding, screening, and the details of materials and color for the facility.

6. A nonrefundable fee shall accompany each application.

F. Construction Standards

1. The tower shall either maintain a galvanized steel finish, or be painted a uniform neutral color (unless color is governed by applicable standards of Federal Aviation Administration), so as to reduce visual intrusiveness. Cabling shall be contained interior to the structure of the tower, or wrapped in a cover with a matching color scheme to the tower. The use of camouflage technology so that the tower appears to be a part of the primary building on site is also acceptable. The design and maintenance of the equipment, buildings, cabinets, or related structures shall use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting or the built environment of the primary use.
2. If an antenna or series of antennas are installed 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 visually unobtrusive.
3. Towers shall not be artificially lighted, unless such lighting is required by the Federal Aviation Administration or other applicable authority.
4. All towers, antenna, and related equipment shall meet or exceed current standards and regulations of the Federal Aviation Administration and the Federal Communications Commission, together with the regulations of any other agency of the federal government with the authority to regulate towers and antennas.
5. Antennas and associated supports, cables, brackets, and related equipment shall not be mounted on any tower or other supporting structure by any method of punching, drilling, or other means that may weaken the tower or supporting structure.
6. All tower sites shall be served by a driveway from a public street and said driveway shall be paved with an all-weather surface. However, sites in areas of restricted street access may be served by driveways from paved public or private parking lots. The Engineering Department must approve the size of "tin horns" or other drainage structures prior to the start of construction.
7. All towers and all antenna support structures that are between fifty-one feet (51') and one hundred feet (100') in height (inclusive) shall be constructed to support a minimum of two (2) antenna arrays with the cabling interior to or otherwise concealed within the structure. All towers that are in excess of one hundred feet (100') in height shall be constructed to support a minimum of four (4) antenna arrays with the cabling interior to or otherwise concealed within the structure.
8. Construction must otherwise comply with the current requirements of the Broken Arrow Building Code.
9. Any information of an engineering nature that the applicant submits to the City, whether civil, electrical, structural or mechanical, shall be certified in writing, by an Oklahoma licensed, professional engineer. Such information shall include (but not be limited to) anticipated tower height, tower type, construction materials, declared

wind speed in mph, ice load in inches, anticipated antennae loading for the design, and engineered appurtenance loading.

G. Maintenance, Operation, and Removal

The owner of the tower shall ensure that it is maintained in compliance with the standards contained in the applicable local building codes and the applicable standards for towers established by the electronic industries association, as amended from time to time, in order to ensure the structural integrity of the tower. The failure to maintain structural integrity through compliance with these standards is hereby declared a public nuisance and the towers may be abated, including the removal of the tower under authority of and in compliance with the City Council's powers to declare and abate public nuisances. No antenna may be used which, by design or by actual operation, causes interference on any frequency actually used by any police, fire, or public ambulance services having authority or jurisdiction over any portion of the City of Broken Arrow. Each tower owner shall provide a maintenance bond to assure the maintenance of the equipment building(s) and the support or tower structure, including the costs of removal in the event the facility is abandoned for more than one (1) year.

H. Site Plan

Each applicant requesting a permit under this Section shall submit a scaled site plan, lighting plan, and scaled elevation view together with other supporting drawings, calculations, and documentation, all signed and sealed by appropriate licensed engineers or other appropriate professionals, showing the location and dimensions of all improvements proposed for the site. This information shall include existing and proposed topographical and planimetric drawings and all significant features that support collocation (e.g. provisions for interior cabling, portholes, the footprint for multiple equipment sheds and cabinets, etc.).

I. Administrative Approval of Permits

The Director may administratively approve the installing of antenna on:

1. CG, CH, and Industrial Districts

- a. Towers are lawful uses permitted administratively when located as accessory uses on any land in industrial zoning districts, or any developed land in CG zoning districts or CH zoning districts that are equal to or larger than two and one-half (2½) acres.
- b. Such towers shall be set back from any existing adjacent residential lot boundary equal to two hundred percent (200%) of the total height of the tower or other supporting structure, shall not exceed two hundred feet (200') in height as to industrial property or one hundred twenty feet (120') in commercial property, and shall comply with the terms of this Ordinance and any future amendment thereto. Such towers on commercial property must also use camouflage technology such as flagpoles, obelisks or other approved "stealth" coverings. Such towers on industrial property must meet the front and side yard setback requirements for the subdivisions.

2. All Commercial and Industrial Districts: Existing Structures 60 Feet or Greater

Antennas may be installed on existing structures other than a tower (such as commercial or industrial buildings, billboard sign, power transmission tower, water tower, or other free standing nonresidential structure,) that is sixty feet (60') in height or greater, if and only if the additional antennas or supports create a new structure with a cumulative height not to exceed one hundred twenty feet (120') from the mean ground elevation.

3. All Commercial and Industrial Districts: Existing Structures Less than 60 Feet

Antennas may be installed on an existing structure other than a tower (such as a building, sign, light pole, water tower, or other free standing, nonresidential structure) that is less than sixty feet (60') in height so long as such addition does not add more than twenty feet (20') to the height of the existing structure

4. Existing Towers and Poles

Antennas may be installed on any existing communication tower or light pole of any height, so long as the addition of said antennas add no more than twenty feet (20') cumulative to the height of the existing tower or light pole. Any associated equipment building must be located in conformity with the generally applicable setback requirements of the zoning district and appropriately screened or landscaped. Said installation adding twenty feet (20') of height may occur no more than one (1) occurrence per tower or light pole. For equipment compounds that are served by a dirt road or drive, the new equipment owner shall pave at least the first twenty feet (20') of the dirt road or drive that is adjacent to the street.

5. Non-commercial or Non-industrial Land

Antennas may be installed on existing structures on agricultural, residential, or office land through an administrative permit under the following conditions:

- a. On an existing structure other than a communications tower (such as a building, sign, light pole, water tower, or other free standing, nonresidential structure that is less than sixty feet (60') in height, so long as such addition does not add more than twenty feet (20') to the height of the existing structure;
- b. On an existing tower of any height, and further including the placement of additional buildings or other supporting equipment used in connection with said antenna, so long as the addition of said antenna cumulatively adds no more than twenty feet (20') to the height of the existing tower and the tower remains set back from any existing adjacent residential lot boundary equal to one hundred twenty percent (120%) of the total new height of the tower;
- c. On certain developed public properties, including but not limited to water towers, water treatment plants, sewer treatment facilities, police stations, fire stations, ambulance stations, equipment maintenance facilities, and lighted and enclosed sports facilities such as football stadiums, baseball and softball parks, but not practice facilities at unlighted or unsecured locations that may be temporarily used for sporting events, nor in any open parks or greenbelts;

- d. On the roofs of public high schools, intermediate high schools, middle schools, elementary schools, and office buildings, so long as such addition does not add more than thirty feet (30') to the height of the existing structure; or
- e. On an existing billboard located within the limited access highway corridors so long as the total height does not exceed one hundred twenty feet (120'); provided that if the support for the billboard lacks sufficient strength for the new height, then the billboard may be removed and adequate support for both structures may be made, and a billboard of the same or smaller size be reinstalled at the former height. Existing billboards that are outside of the limited access highway corridor may be used, so long as the addition adds no more than twenty feet (20') to the height of the billboard; for purposes of this section, the limited access highway corridors shall be defined as the Broken Arrow Expressway within Tulsa County, the Creek Turnpike, the Muskogee Turnpike and any land within one hundred fifty feet (150') on either side, but said definition shall exclude State Highway 51 in Wagoner County and all spurs or older routings.

6. Other Industrial Land

The Director may also approve tower construction if: the new tower to be constructed is within an industrially zoned area, the industrial district is at least ten acres in size, the tower location is no closer than three hundred fifty feet (350') feet to a residential structure, and the tower is no greater than one hundred feet (100') in height; or, on an existing tower or supporting structure as a co-location.

7. Temporary Antennas

Temporary antennas shall only be allowed in the following instances:

- a. In conjunction with a festival, carnival, or other activity requiring a special event permit from the City; and the antennas shall only be allowed commencing from one week prior to the event and be removed one week after the event; or
- b. In conjunction with a natural calamity such as a storm or other emergency as declared by the City's Police or Fire Departments, which calamity has damaged or destroyed the regular facilities, and the temporary facilities are needed to restore service until the damage can be repaired or replaced. The facility owner or the service provider shall notify the City within twenty-four (24) hours of the outage, and must receive an Administrative Permit if the temporary facility will be required for more than seven (7) days. Further, any temporary facilities that remain in place for in excess of six months must receive a permit from the City Council for the period in excess of six (6) months.

8. Screening and Landscaping

Landscaping and fencing requirements on existing towers and equipment facilities must be properly maintained prior to the administrative permit being issued by the Director, but new or additional requirements shall not be added for purposes of collocation.

J. Council Permits for Towers

If the tower or antenna may not be permitted administratively as described above in subsection i., then no tower may be constructed without securing a permit from the Broken Arrow City Council.

1. Applications for a tower permit from the City Council shall first obtain a specific use permit from the Planning Commission pursuant to Section 6.5 of this Ordinance.
2. The City Council may impose conditions that it, in good faith, believes is reasonably necessary to minimize any adverse effect of the proposed tower on adjoining properties, and that foster competition by encouraging multiple uses on co-location structures. For purposes of evaluation of the application, the use of a billboard as a basis for a tower shall be considered co-location, even if only one (1) antenna array is to be placed thereon.
3. The City Council may require particular evidence or special conditions in the event the Council determines the proposal may potentially contaminate water supplies, contaminate surface waters or soil, interfere with drainage, or interfere with the primary use of the public property.
4. All sized freestanding towers are prohibited in A-1 and RE zoning districts, including areas that are in fact used as agricultural or residential estate areas even though zoned at more intense levels. Towers in excess of 100 feet are prohibited in R1, RS-1, R2, RS-2, R3, and RS-3 zoning districts. Applicants in such areas shall be required to establish the necessity of the tower and all elements of the application by clear and convincing evidence.
5. When an applicant for a tower permit works with a developer of residential land, and designs a subdivision that uses a flagpole and guard house (or comparable camouflage) as elements within the design of the subdivision entrance or private park reserve, the approval of the final plat shall include the permit for the tower at a height not to exceed eighty feet (80') and used as the flagpole, and an equipment cabinet within the guardhouse.

K. Factors Considered for City Council Approval

The City Council shall consider the following factors in determining whether or not to issue a permit for a tower, although Council may modify one or more of these criteria if, in the particular circumstances of the application, Council concludes that the goals and intent of this Ordinance are better served by such modification. Factors to be considered are:

1. Height of the proposed tower;
2. Proximity of the tower to residential structures and adjacent residential lot boundaries;
3. Nature of uses on adjacent and nearby properties;
4. Surrounding topography;

5. Surrounding tree coverage and foliage;
6. Design of the tower, with particular reference to those design characteristics, which have the effect of reducing or eliminating visual obtrusiveness, or providing camouflage;
7. Proposed routes of ingress and egress;
8. Whether or not the tower is constructed so as to be available for co-location in the future; and
9. Whether or not there are suitable, existing towers or other supporting structures capable of meeting the technological needs of the applicant.

L. Evidence of Capacity

All evidence relating in any manner that in essence indicates that the application location is needed to improve the capacity of the system and is to address a specific and local geographic problem must be submitted in writing, and signed and sealed by an engineer, licensed in the State of Oklahoma.

M. Warning Sirens

All applications for new towers shall include an examination of the City's Emergency Warning Siren Location Map. If the new tower site is in a location where the Emergency Warning Siren Location Map indicates that a siren is proposed, then the permit may be conditioned on the granting of permission for the City of Broken Arrow to place and operate a storm siren warning system on the completed tower, at a height to be mutually agreed, but typically between twenty feet (20') and thirty feet (30') above the mean lot elevation, unless such location would create a technical problem for the applicant's system. Costs of the installation and operation of the warning siren shall be solely the responsibility of the City. Applicant shall advise at the time of the application what costs, rental, or other fees will be required for the placement of the warning siren.

N. Radius Report

If the application is for a tower in excess of two hundred feet (200') in industrial areas or if in excess of one hundred twenty (120') in any other zoning district, and Council action is required, then the applicant must provide a list of property owners within a three hundred foot (300') radius of the perimeter of the lot on which the tower is proposed, and the City shall notify the persons on the list by mailing notice of the hearing, all at applicant's expense.

O. Collocation Contracts

Any applicant who claims that a proposed tower will be used for collocation shall provide a form contract, which will be used for collocation for at least five years after construction. The contract shall only have blanks for the name of the lessee, date, location and size of the equipment shed, height of the antenna array and final price.

P. Effect of Existing Tower Availability

No new towers should be permitted by the Council unless the applicant demonstrates to the City Council's reasonable satisfaction that no existing tower or other structure can

accommodate the applicant's proposed antenna. Evidence of this unavailability 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, capacity, or technical requirements;
2. Existing towers or structures are not of sufficient height or structural strength to meet the applicant's engineering, capacity, or technical requirements;
3. Applicant's proposed antenna would cause electromagnetic interference with existing antenna on existing towers or structures, or the existing antennas on the existing towers or structures would cause electromagnetic interference with applicant's proposed antenna;
4. The fees, costs, or contractual provisions required by the owner of the existing tower in order to share said tower structure are unreasonable. (In this regard, eight-year rental costs exceeding the costs of site acquisition and tower construction including engineering and design fees, are presumptively unreasonable); and
5. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

Q. Setbacks and Security

All towers must be set back a minimum distance of one hundred twenty percent (120%) of the total height of the tower and structure from any adjacent residential lot boundaries unless a greater setback is required by other provisions of this Ordinance. The location of towers, guy wires, and accessory facilities shall meet the minimum zoning district setback requirements and shall not be in the front yard of the principal use. Towers shall be enclosed by security fencing not less than eight feet (8') in height together with such appropriate anti-climbing devices as may be best utilized by the type of tower involved; provided the Council may waive security fencing requirement if other features of the site provide adequate substitute security. Camouflage technology may be used to justify a reduction or elimination of front yard setbacks as to the tower.

R. Screening and Landscaping

1. Screening

Tower facilities shall be visually buffered by a hedge of low-maintenance evergreen plant materials and approved opaque screening materials, which effectively screen the view of the tower compound and accessory facilities.

2. Landscaping

Existing trees and natural landscape and elevations around the site shall be preserved to the maximum extent possible. Shrub planting materials that are used for screening must be a minimum five (5) gallon evergreen; the evergreens must be capable of reaching the full height of the fencing materials at full growth. Trees shall be at least two inches (2") in caliper. Plant materials that die or do not effectively buffer the fencing materials shall be replaced. The landscaping plans shall include provisions for irrigation of all new materials proposed to be planted, or the landscape maintenance shall be bonded by insurance or other

surety company licensed to do business in Oklahoma; provided that a single bond in an adequate amount may be used for multiple sites.

3. Fencing

The privacy fencing or similar approved opaque screening materials shall be a minimum of eight feet (8') in height; a greater height of fencing shall be used as necessary to screen taller equipment sheds within the compound. Provided that equipment sheds which are adjacent to and camouflaged to resemble a structural element of the primary building on site do not have to be fenced.

4. A landscaping plan shall be included with the application and shall include operational information on how the planting materials will be maintained, irrigated, and fertilized.
5. Where a new application is made for an existing site at which the landscaping and screening has not been maintained, the issuance of the permit may be conditioned on the completion of the needed corrective action.

S. Billboards

No billboards may be added to communication towers except under 5.9(l)(5).

T. Written Decision

Any decisions to deny an application for the placement, construction, modification of towers for cellular or personal communication service, or specialized radio mobile service shall be conveyed to the applicant in writing, together with the summary of the evidence which supports a denial of the application. A copy of the minutes of the meeting, which contains some of the evidence, may be used in place of or in addition to other summaries. The decision shall further contain the date at which the public body denied the application. The applicant has thirty (30) days after the denial of the application, within which to seek judicial review. Therefore, the City will attempt to give notice in writing within five (5) business days of the denial of the application, unless the applicant or applicant's representative was present in the meeting at which the denial was announced.

U. Five Year Permits, Notice of Use; Removal of Abandoned Towers

1. Any tower that is not actually used as an antenna support for a continuous period of twelve (12) months shall be considered abandoned, and the permit owner(s) for such antenna(s) or tower shall remove same at their expense within ninety (90) days of receipt of notice from the City of Broken Arrow notifying the permit owner of said abandonment. Antennas that do not have electrical power shall not be considered in use.
2. In the event that such a tower is not removed, notice of the intent by the City to remove shall be given to the applicant and to the owner of the real estate on which the tower is located if different from the applicant. Abandoned antennas and towers are hereby declared a public nuisance, removable by the City Council in accordance with nuisance abatement procedures or through the claims on a posted bond.

3. Permits shall be renewed at the end of each five-year term, provided the permit owner delivers to the City, within thirty (30) days prior to the expiration of the five (5)-year term, a certification which displays that the tower is in use, the identity of the owners of the antennas located thereon, whether the tower is suitable for additional collocation, whether the standard lease contract has been changed (together with a copy of such changes), evidence that all conditions to the issuance of the permit are being satisfied, and evidence that all property taxes that are due on the tower and related facilities have been paid. Should the permit owner fail to satisfy these conditions then the permit shall automatically terminate at the end of the five-year period. Any permit for such tower and facilities that is terminated may only be reissued by following and satisfying the standards applicable at the time required for a new application.

V. Driveway for Towers

Any existing tower site that lawfully uses an unpaved driveway to access a public street, and which driveway allows the deposit of dirt, gravel or similar material to be deposited on the public streets during rain conditions, shall be considered a public nuisance, and may be abated in accordance with the general ordinances dealing with nuisance abatement.

W. Permits Limited if Not Built

A permit for a tower shall be valid for no more than one year, unless a valid building permit is issued and construction proceeds diligently.

X. Proprietary Powers Reserved

Nothing in this Section concerning the regulation of what is legally permissible or legally forbidden interferes with the proprietary right of the City Council to control the property held in the City's name or in the name of any of its trusts as either a corporate owner or as public trustee.