

ORDINANCE NO. 2022-06

AN ORDINANCE OF THE CITY OF TOM BEAN, TEXAS ADOPTING ADDITIONAL STANDARDS AND REQUIREMENTS FOR TOWERS; ESTABLISHING STANDARD RULES AND GUIDELINES FOR THE INSTALLATION, PLACEMENT, AND LOCATION OF TOWERS; ESTABLISHING AN APPLICATION FEE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE OF THIS ORDINANCE; A PENALTY CLAUSE; AND AN EFFECTIVE DATE CLAUSE.

WHEREAS, the City of Tom Bean, Grayson County, Texas (the "City") desires to provide the citizens of Tom Bean, Texas with safe inclusion of towers; and

WHEREAS, the City Council of the City of Tom Bean deems it necessary to provide regulations for development and the construction of towers; and

WHEREAS, given the increasing use of telecommunications facilities in society today, the City Council of the City of Tom Bean expects to receive applications for permits for such facilities in increasing number, some of which facilities may be significantly larger than most similarly situated existing installations; and

WHEREAS, the City Council recognizes the need to have such construction monitored and regulated to preserve the safety and welfare of its citizens; and

WHEREAS, the City does not intend that this ordinance prohibits or has the effect of prohibiting telecommunications service; rather, the City seeks to limit development of telecommunications facilities in and around residential neighborhoods and the City to the fullest extent allowed by law, including those in the City's extraterritorial jurisdiction (ETJ); and

WHEREAS, the City recognizes its responsibilities under the Federal Telecommunications Act of 1996, and believes that it is exercising its regulatory authority pursuant to the fullest extent under the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare; and

WHEREAS, this ordinance shall not relieve any builder, operator or owner of any existing duties or requirements or waive any requirements of state and federal statutes, rules and requirements of the Federal Communications Commission (FCC) and any applicable rules or regulations such as the Code of Federal Regulations or the Texas Administrative Code (TAC); and

WHEREAS, a public hearing on this matter was held by the City Council;

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

SECTION 1 - OTHER ORDINANCES AND LAWS.

The Zoning Ordinance is amended as stated herein and only those parts of said Ordinance or other ordinances that conflict herein is hereby replaced and repealed and declared no further in force or effect. All other terms and conditions remain in full force and effect and are in addition to those hereunder. This Ordinance is intended to supplement the existing Ordinance and provide application requirements and other procedures and controls.

SECTION 2 - CONTROLLING ORDINANCE

This ordinance shall control over any conflicting terms of the Zoning Ordinance and any other ordinances amending ordinances thereunder, except as may be otherwise stated herein.

SECTION 3 - DEFINITIONS

TOWER - Radio, Television and Microwave Towers - Structures supporting antenna for transmitting or receiving any portion of the radio spectrum including non-commercial antenna installations for home use of radio or television. This shall include cell towers, monopole towers, lattice towers, and similar structures. It shall also include circumstances where the Communication Equipment is intended to be affixed to an existing building, structure or facility.

TOWER SITE – A Tower including Communication Equipment including land and right of way.

COMMUNICATION EQUIPMENT – Any equipment attached, mounted, or installed at a Tower Site, including antennas, control boxes, cables, conduit, power sources, mounts, hardware and other equipment, structures, plant, and appurtenances necessary for the purpose of servicing or operating a Tower Site.

TOWER SITE APPLICATION – A process established so that the City Engineer can review surveys, engineered drawings, and other documents associated with the installation of a Tower Site to ensure that the planned installation does not conflict with any ordinances or regulations, whether here or in the future passed by the City Council of the City of Tom Bean. The City Engineer is authorized by this Ordinance to prepare a Tower Site Application form, as amended, that shall be completed by any owner or builder constructing a Tower Site. The Tower Application shall apply to commercial and amateur tower requests. The Tower Application shall apply to requests to place Communication Equipment on existing buildings, structures or facilities.

MONOPOLE TOWER – A self-supported single mast hollow steel pipe tower which utilizes a single foundation at its base that takes the vertical, horizontal and most importantly, overturning load of the tower.

UTILITY POLE – A column or post used to support overhead power lines and various other public utilities such as telephone wires, cable, fiber optic cable, and related equipment such as transformers and street lights.

PRIVATE PROPERTY - Any lot or tract within the City of Tom Bean, Texas owned by any Person, Firm, or Corporation.

CITY PROPERTY - on any lot or tract owned entirely by the City of Tom Bean that is not considered a part of a Right-of-Way.

RIGHT-OF-WAY - the surface of, and the space above and below, any publicly dedicated street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive, or other easement now or hereafter held by the City or over which the City exercises any rights of management control.

HEIGHT - The distance between the top of a Tower and the natural grade soil at a Tower Site.

BUILDING OFFICIAL – The City Engineer or the person or department to whom the City may delegate the Building Official duties including regulation of this ordinance.

PERSON, FIRM OR CORPORATION - includes a natural person, entity, firm, partnership, association, limited liability company, joint ventures, or corporation.

Other terms herein shall have the meanings defined in other ordinances of the City, except where the context clearly requires otherwise.

SECTION 4 – STATE AND FEDERAL REGULATIONS

This ordinance does not, and is not intended to release any Person, Firm or Corporation from any applicable state or federal regulation or requirements in regards to the installation, construction, maintenance, or operation of any Tower Site within the City of Tom Bean.

SECTION 5 - EXISTING TOWERS

This ordinance does not make unlawful any Tower Site already in place and complying with all laws and exiting ordinance when this ordinance becomes effective.

SECTION 6 - UNLAWFUL LOCATION (INSTALLATION) OF TOWER SITES

It shall be unlawful for any Person, Firm or Corporation to install, construct or erect, or cause to locate any Tower Site at any location within the municipal boundaries of the City of Tom Bean in such a way that conflicts with this or any other city ordinances. (See Zoning Ordinance.)

SECTION 7 - VIOLATIONS AND PENALTIES

Any Person, Firm or Corporation who commits any of the following shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than FIVE HUNDRED DOLLARS (\$500.00) for:

- a. Any violation of this ordinance or other ordinance regulating Towers, Tower Sites or Communication Equipment; or
- b. Providing false information to a City official concerning a Tower Site Application under this ordinance or compliance with this ordinance.

Each day or portion of a day during which any violation occurs or continues shall be a separate offense.

SECTION 8 - PERMISSIBLE LOCATION OF A TOWER SITE.

PRIVATE PROPERTY - A Tower Site is expressly prohibited on any Private Property except as allowed by the Zoning Ordinance and placed in compliance with the requirements in this ordinance. The prohibition of a commercial tower located in an area which is zoned as a residential district is affirmed. A Tower Site may be installed upon any other lot or tract of land only as set out in the Zoning Ordinance. For other Private Property in the ETJ, the Tower Site shall comply with Section 9, 10 and 11 of this ordinance. In addition, any Tower shall be located a distance of at least 200 feet from any residential structure or from any area zoned residential or shown as residential on the current comprehensive zoning plan. Such distance shall be measured as the shortest possible distance in a straight line from the closest point of the tower to the closest point of such area or residence.

CITY PROPERTY - A Tower Site may not be installed on any City Property without first securing a lease or other purchased right for the use of the property in accordance with the Texas Constitution. A Tower Site or Communication Equipment may be installed on City Property if authorized by the City Council of the City of Tom Bean and is subject to a written agreement approved by the City Council.

RIGHT OF WAY – Towers shall not normally be placed in City right of way. In exceptional circumstances, such limited use shall be conditioned by the requirements in Section 9 of this ordinance and only upon approval by the Tom Bean City Council. If allowed, a Tower Site may be installed on approved City Right-of-Way within the municipal boundaries of the City of Tom Bean, subject to the following conditions:

1. Any site specific requirements established by the City Council, the City Engineer or other applicable regulatory requirements.
2. The Tower Site shall not be installed in a location where the City Engineer or Building Official deems, at their sole discretion, that the Cell Tower Site would pose a visual or travel hazard to vehicular traffic.

3. Any part of a Tower Site which is constructed within an alley shall not be installed in such a manner that it blocks vehicular use of the alley.
4. A Tower Site may not be installed on any Right-of-Way without first securing a lease, occupancy agreement, or license with the City in accordance with the Texas Constitution.

SECTION 9 –PERMISSIBLE CELL TOWER TYPES, HEIGHT LIMITS AND REQUIREMENTS

- a. Wood utility poles may be used as a Cell Tower as long as the Height does not exceed forty (40) feet.
- b. Any Tower which is to be installed with a Height of forty (40) feet or more shall be a steel Monopole Tower.
- c. In no case shall a Tower be installed with a Height to exceed one hundred (100) feet.
- d. A Tower shall not be installed in any Right-of-Way with a Height to exceed seventy (70) feet.
- e. For a Tower on a Private Property, there shall be a setback equal to one foot for every height of tower. (Example: A 100' tower requires at least a 200' by 200' parcel). For a Tower on City Property or Right of Way, setbacks shall be at the discretion of the City.
- f. A Tower shall only be built upon showing that it is being built for use by a licensed wireless carrier or a properly licensed business. An amateur Tower must show it is being built for a licensed operator in compliance with FCC regulations.
- g. A Tower on Private Property, other than those on a wood utility pole, must be enclosed in a locked fence using at least 6 foot chain link fencing and anti-climbing wire at the top of the fence.
- h. Structural Integrity. All Towers shall be constructed to the Electronic Industries Association/Telecommunication Industry Association (EIA/TIA) 222 Revision F Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures" (or equivalent), as the same may be updated or amended. Each support structure shall be capable of supporting at least three antenna arrays. In addition, such structure shall comply with any and all applicable state or local building codes. If, upon inspection, the City concludes that a Tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of said Tower, the owner shall have thirty (30) days to bring such Tower into compliance with such standards. Failure to bring such Tower into compliance within said thirty (30) days shall constitute grounds for the removal or repair of the Tower at the owner's expense. Provided further, however, that in the event of an emergency circumstance representing an immediate threat to the health, safety, and welfare of the citizens of the City of Tom Bean, the City may require the owner of any Tower to immediately remedy any such dangerous or threatening circumstance, and upon the owner's failing to respond to such emergency, the City may itself respond to said emergency at the owner's expense.

SECTION 10 – EMERGENCY CONTACT INFORMATION REQUIRED

Any Person, Firm or Corporation who erects, owns, or operates a Tower Site shall affix emergency contact information at each Cell Tower Site. It shall be the Person, Firm or Corporation's duty to maintain the emergency contact information current at all times.

SECTION 11 – TOWER SITE APPLICATION

Any Person, Firm or Corporation who desires to erect, own, or operate a Tower Site or Communication Equipment as permitted in this ordinance shall file a Cell Tower Site Application for each proposed location with the Building Official. This section shall apply to all Tower Site requests, whether amateur or commercial. Each location shall require a separate application.

No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the City that no existing support structure, or alternative support structure, or alternative technology that does not require the use of support structures can accommodate the applicant's proposed Tower or Communication Equipment. An applicant shall submit any and all information as the City may deem appropriate related to the availability of suitable existing Towers, other structures, or alternative technology. Information submitted to demonstrate that no existing support structure, tower, or other structure or alternative technology can accommodate the applicant's proposed tower or Communication Equipment may evidence any of the following:

- (1) No existing support structures or Towers are located within the geographic area which meet applicant's engineering requirements;
- (2) Existing support structures or other towers are not of sufficient height to meet applicant's engineering requirements;
- (3) Existing support structures or Towers do not have sufficient structural strength to support applicant's proposed tower, Communication Equipment and related equipment;
- (4) The applicant's proposed Communication Equipment would cause electromagnetic interference with existing Communication Equipment, or the broadcast signal or antenna array on existing towers or support structures would cause interference with the applicant's proposed Communication Equipment;
- (5) The fees, costs, or contractual provisions required by the owner of the other structure in order to share an existing support structure or tower or to adapt an existing support structure or tower for sharing is unreasonable. Costs exceeding new Tower development are presumed to be unreasonable;

(6) There are other limiting factors that render existing support structures, towers or an alternate technology unsuitable;

(7) An alternative technology that does not require the use of towers, such as a cable micro-cell network using multiple low power/receivers attached to a wire line system, is unsuitable. Costs of alternative technology that exceed new tower development shall not be presumed to render the technology unsuitable.

The application shall also include:

a. A non-refundable fee for each Tower Site Application is hereby established and said fee shall be \$200.00 plus five dollars (\$5.00) per foot height of the Cell Tower.

b. The Tower Site Application form shall include:

1. A survey depicting the proposed Tower Site, the boundaries of any Right-of-Way, and adjacent property lines.

2. Engineering design and specification drawings for the Tower and all equipment and fencing to be installed.

3. Where Communication Equipment is attached to a Utility Pole, applicant must include a load bearing study to determine whether the attachment of the Communication Equipment may proceed without pole modification or whether the installation will require pole reinforcement or replacement.

4. Where Communication Equipment is attached to an existing building or other structure, applicant must include a load bearing study to determine whether the attachment of the Communication Equipment will significantly affect the structural integrity of the building or structure modification and whether the installation will require reinforcement.

c. Upon filing of a Tower Site Application, the Building Official or City Engineer shall process the application within sixty (60) days. The Building Official shall:

1. Verify that the Tower Site Application is complete.

2. Review engineering design documents to determine compliance with this ordinance and any other ordinances of the City of Tom Bean.

3. As appropriate, the Building Official or City Engineer shall require applicant to make design modifications in order to comply with applicable requirements under this ordinance and any other ordinances of the City of Tom Bean.

4. Failure to make the requested design modifications shall result in an incomplete Tower Site Application which may not be processed.

d. Upon finding that the Tower Site Application is complete and in compliance with all applicable requirements as outlined in this ordinance, the Building Official shall schedule a Public Hearing before the Tom Bean City Council, as required in Section 12.

e. The Tower Site Application form may be modified from time-to-time by the City Engineer or Building Official as deemed necessary in order to more efficiently process applications.

SECTION 12 – PUBLIC HEARING AND CITY COUNCIL APPROVAL REQUIRED

Any request and use allowed under this ordinance that requires any public hearing, Planning and Zoning Commission and/or City Council consideration shall also comply with all procedures, hearings and requirements of the Zoning Ordinance or other applicable ordinance or regulation.

SECTION 13 – NON-APPLICABILITY FOR GOVERNMENTAL USE

This ordinance shall not be applicable to any Tower Site that is:

1. Owned and operated by the City of Tom Bean.
2. On property owned by any other governmental agency, when the Tower Site is used for a governmental purpose. Application, survey, design, drawings, and studies shall be provided as determined and requested by the City Engineer.
3. On property owned by any other governmental agency, subject to the terms of Chapter 791 of the Texas Government Code, as it may be amended. Application, survey, design, drawings, and studies shall be provided as determined and requested by the City Engineer.

For any use of City property or right of way, owner and operator shall have a valid lease and assume all responsibility for design, operation, inspection, maintenance, safety, repair and public welfare.

SECTION 14 - NONLIABILITY

The City and its officers, agents and employees shall have no liability of any nature for any actions, omissions, or other matters in any way concerning the subject matter of this ordinance.

SECTION 15 – SEVERABILITY

If any section, sub-section, sentence, clause, phrase or portion of this ordinance shall be held unconstitutional or invalid by a court of competent jurisdiction, such section, sub-section, sentence, clause, phrase or portion shall be a deemed separate, distinct, and independent provision and such invalidity shall not affect the validity of the remaining portions of this ordinance.

SECTION 16 – PUBLICATION

The City Secretary is hereby authorized and directed to cause publication in accordance with law.

SECTION 17 - EFFECTIVE DATE

This ordinance shall be in full force and effect from the date of its passage and adoption by the City Council of the City of Tom Bean and publication. To the extent allowed by law, the ordinance shall also apply in the City's ETJ.

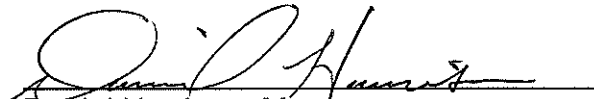
SECTION 18 - OPEN MEETING

It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required by law and that public notice of the time, place, and purpose of said meeting was given as required.


SECTION 19 - PREMISES ADOPTED

All of the above premises are found to be true and correct and are hereby approved and adopted into the body of this ordinance.

DULY PASSED by the City Council of the City of Tom Bean, this the 14th day of November 2022.


Daniel Harrison, Mayor

ATTEST:



City Secretary