

(First Published in the Phillips County Review on October 22, 2014) 1t

ORDINANCE NO. 1385

AN ORDINANCE AMENDING: SECTION 13 OF ARTICLE XXVIII, AS CONTAINED IN A BOOK ENTITLED “ZONING ORDINANCE AND SUBDIVISION REGULATIONS FOR THE CITY OF PHILLIPSBURG, KANSAS” AS ORIGINALLY ADOPTED IN ORDINANCE NO. 1334; AND REPEALING SAID SECTION 13 OF ARTICLE XXVIII AS CONTAINED IN SAID BOOK AS ORIGINALLY ADOPTED IN ORDINANCE NO. 1334. THIS ORDINANCE PERTAINS TO ADDITIONAL HEIGHT, AREA, AND USE REGULATIONS APPLICABLE TO WIRELESS COMMUNICATION TOWERS WITHIN THE CITY OF PHILLIPSBURG, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PHILLIPSBURG, KANSAS:

Section 1. That Section 13, entitled WIRELESS COMMUNICATION TOWERS of Article XXVIII, ADDITIONAL HEIGHT, AREA, AND USE REGULATIONS, in a book entitled “Zoning Ordinance and Subdivision Regulations for the City of Phillipsburg Kansas” as originally adopted in Ordinance No. 1334, is hereby amended to read as follows:

**Section 13**                      **Wireless Communication Facilities.**

A. Definitions.

The following definitions shall apply to this section of these regulations:

**Wireless Communication Facility** shall mean all parts of a the facility including antennae, antenna array, equipment shelters support structure and towers.

**Wireless Communication** shall mean broadcast systems, cellular, commercial mobile radio services, common carrier wireless access exchange services, enhanced specialized mobile radio, functionally equivalent services, personal communication services, paging, personal wireless services, public service and emergency systems, specialized mobile radio, tower builder, unlicensed wireless services and wireless cable system.

Wireless communication does not include amateur radio, private dispatch systems or City emergency warning sirens.

B. Wireless communication facilities shall be exempt from the maximum height restrictions of the zoning districts in which they are located. All wireless communication facilities shall be subject to an administrative approval or a special use permit.

C. Development Plan.

1. At the time of application for public building official's approval or special use permit, the applicant shall submit a development plan in sufficient detail, as determined by the public building official, to evaluate its conformance with applicable standards and guidelines. The following criteria shall be utilized to determine whether a proposed wireless communication facility shall be reviewed administratively or if a special use permit is required.
  - a. Wireless communication facilities less than 100 feet in height from the ground, or less than 40 feet in height as measured from the top of the building or structure if so mounted, **and** located in a non-residential zoning district, shall be reviewed by the public building official.
  - b. All wireless communication facilities proposed to be located in residential zoning districts **and** all towers 100 feet or more in height from the ground in a non-residential zoning district, or 40 feet or more in height as measured from the top of a building or structure if so mounted, shall be reviewed as a special use permit. If the applicant is requesting a tower taller than 100 feet, then notification shall be sent to all property owners within 200 feet to the proposed height of the tower.
  - c. All towers proposed to be located in a residential zoning district shall be no taller than 50 feet in height, measured from the ground and shall be reviewed as a special use permit.
2. The development plan shall include:
  - a. A written authorization from the property owner of the proposed wireless communication facility site;
  - b. A site plan drawn to scale showing the property boundaries, wireless communication facility, guy wire anchors and other apparatus, existing and proposed structures, proposed transmission buildings and/or other accessory uses, access road(s) location, access road surface material, parking area, fences, location and content of warning signs, exterior lighting specifications, a landscaping plan, land elevation contours, drainage plan, and existing land uses surrounding the site. If any accessory building is proposed, details of the building, including elevations and proposed use of the building, shall be submitted with the application; and

- c. A report or written information prepared and signed by an engineer licensed to practice in the State of Kansas which describes the wireless communication facility height and design, including a cross-section of the structure, if applicable; engineering specifications detailing construction of the wireless communication facility, base and guy wire anchorage; the proposed painting and lighting schemes; and description of the wireless communication facility's capacity, including the number and type of antennas that the wireless communication facility can accommodate.
  - d. Documentation that the proposed location has been approved by the FAA or if such approval is not necessary then a copy of the regulations that exempt the proposed wireless communication facility must be submitted.
  - e. Copies of any Necessary Easements
  - f. An affidavit certifying that the space on the proposed tower will be made available to future users when technically feasible.
3. Before a permit is issued, the wireless communication facility owner shall provide the City with proof in writing of the existence of at least \$1,000,000 in general liability insurance, as is required by state law or at the discretion of the City.

#### D. General Provisions.

1. A proposal for a new wireless communication facility shall not be approved unless the applicant can document that the telecommunications equipment planned for the proposed facility cannot be accommodated on an existing or proposed wireless communication facility or approved structure due to one or more of the following reasons:
  - a. The planned equipment would exceed the structural capacity of existing and approved wireless communication facilities, considering existing and planned use of those facilities, and existing and approved facilities cannot be reinforced to accommodate the planned or equivalent equipment at a reasonable cost..
  - b. The planned equipment would cause frequency interference with other existing or planned equipment for these facilities, and the interference cannot be prevented at a reasonable cost;
  - c. Existing or approved wireless communication facilities do not have space on which planned equipment can be placed so it can function effectively and reasonably in parity with other similar equipment in place or approved; and
2. Any wireless communication facility owner granted a special use permit or zoning certificate under these regulations shall provide the City with a copy of the notice to the FCC of intent to cease operations and shall have 180 days from the date of cessation of operations to remove the wireless communication facility and accessory structure(s). If the owner fails to remove the facility and accessory structure(s) within the allotted

time, the City may remove them and collect the cost thereof pursuant to K.S.A. 12-6a(17).

E. Development Standards.

1. The location of a ground mounted wireless communication facility must be such that it is set back at least equal to the height of the facility to the nearest property line or building of the property owner as measured from the center of the facility. A ground mounted wireless communication facility may be set back less than the facility height to the nearest property line or building if documentation from a Kansas licensed engineer is submitted certifying that in the event of a wireless communication facility failure or collapse, the facility is designed to fall within the proposed setback area. All guy wires, similar support devices and other apparatus shall project no closer than 20 feet to any property line.
2. Wireless communication facilities may be placed on the roof of a building or on top of other structures using either of the following to determine wireless communication facility height and setback:
  - a. Wireless communication facility height above the roof/structure may be as high as the setback distance to the nearest roof/structure edge.
  - b. The height of a ground-mounted wireless communication facility may be used for a roof/structure mounted facility if the required setbacks for a ground facility are satisfied.
3. Additional setbacks may be required to contain on-site all ice-fall or debris from facility failures and/or to preserve the privacy of adjoining residential and public property. Setbacks shall apply to all facility parts including guy wire anchors and any accessory facilities.
4. All wireless communication facilities and accessory facilities shall be sited to have the least adverse visual affect as is practical on the environment. Facilities shall not be lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Facilities shall be a galvanized finish or painted gray or light blue unless other standards are required by the FAA. In all cases, monopole wireless communication facilities shall be preferable to guyed wireless communication facilities or free standing structures. Wireless communication facilities shall be designed and sited to avoid, whenever possible, application of FAA lighting and painting requirements.
5. Unauthorized access to the tower, pole, or other support structure, including anchors and guywires, shall be limited by a provision of an immediately surrounding six (6) foot high fence with locking portal. Tower climbing apparatus shall be limited to no lower than twelve (12) feet from the ground.
6. When located within one thousand (1,000) feet of a residential district, the tract shall be appropriately landscaped to produce a visually pleasing appearance.

Section 2. That Section 13, entitled WIRELESS COMMUNICATIONS TOWERS OF ARTICLE XXVIII, ADDITIONAL HEIGHT, AREA, AND USE REGULATIONS, in a book entitled "Zoning Ordinance and Subdivision Regulations For The City of Phillipsburg, Kansas" as originally adopted in Ordinance No. 1334, is hereby repealed.

Section 3. That this ordinance shall take effect and be in full force from and after its publication in official newspaper of the City of Phillipsburg, Kansas.

PASSED BY THE CITY COUNCIL THE 20<sup>th</sup> day of October, 2014

APPROVED BY MAYOR THIS 20<sup>th</sup> day of October, 2014.



Fred E. Robinson  
City of Phillipsburg, Kansas

(SEAL)

ATTEST:



Brenda L. Chance, City Clerk  
City of Phillipsburg, Kansas