

ORDINANCE NO. 1499

AN ORDINANCE CREATING CHAPTER 23 OF THE CITY OF JENKS CODE OF ORDINANCES "TELECOMMUNICATIONS"; RENUMBERING APPENDIX A(10), "FIBER OPTIC SYSTEMS," TO BECOME ARTICLE 1 OF CHAPTER 23; ADDING ARTICLE 2, "COMMUNICATION FACILITIES" PROVIDING FOR REGULATIONS APPLICABLE TO COMMUNICATIONS TOWERS, TELEVISION AND RADIO TRANSMISSION TOWERS AND SMALL CELL WIRELESS FACILITIES; PROVIDING FOR SEVERABILITY; REPEALING ALL CONFLICTING ORDINANCES; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JENKS, OKLAHOMA:

SECTION I. Ordinance 701 currently found at Appendix A(10) of the City Code shall be shall be renumbered and moved to become Article 1, "Fiber Optic Systems," of the new Chapter 23.

SECTION II. Chapter 23, Article 2 shall be added and read as follows:

Sec. 23-2-1. – Communication Facilities.

- (A) Purpose. The intent of these provisions is to provide for the continued establishment of new wireless communication providers and the expansion of existing wireless communication 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 co-location.
- (B) Definitions.
- (1) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
 - (2) "Applicable Codes" means uniform building, fire, electrical, plumbing or mechanical codes adopted by the City of Jenks, a recognized national code organization, local amendments to those codes and applicable federal regulations.
 - (3) "Applicant" means a person or entity who submits an application pursuant to this section.
 - (4) "Application" means a request submitted by an applicant (i) for a Permit to construct a Commercial Communication Tower or antenna; (ii) for a Right of Way Permit to co-locate an antenna or a small wireless facility or (iii) to approve the installation or modification of a Commercial Communication Tower, antenna, utility pole or wireless support structure.
 - (5) "City Owned Pole" means (i) a utility pole owned or operated by the City in the right-of-way or easement, including light poles, traffic signals and structures for signage and (ii) a pole or similar structure owned or operated

by the City that supports only Wireless Facilities, but does not include a Commercial Communication Tower.

- (6) "Co-locate" means to install, mount, maintain, modify, operate or replace wireless facilities on or adjacent to a wireless support structure or utility pole. Co-location has a corresponding meaning.
- (7) "Commercial Communications Tower" is a structure composed of a single spire erected and maintained by a public service corporation or a communications service provider that supports antennae used as part of a cellular mobile telephone communication system, and an accessory building not to exceed four hundred (400) square feet used to house equipment necessary for the operation of the cellular communication monopole and related facilities. This term does not include utility poles nor television and radio transmission towers.
- (8) "Communications Service Provider" means a cable operator as defined in 47 U.S.C., Section 522(5), a provider of information service as defined in 47 U.S.C., Section 153(24), a telecommunications carrier as defined in 47 U.S.C., Chapter 153(51) or a wireless provider.
- (9) "Day" means calendar day.
- (10) "Decorative Pole" means a pole specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments—other than a small wireless facility, light fixtures, or specially designed informational or directional signage or temporary holiday or special event attachments—have been placed or are permitted to be placed pursuant to City ordinances and policies.
- (11) "Electric Distribution Pole" means a pole used to support an electric distribution system.
- (12) "Fee" means a one-time charge.
- (13) "Rate" means a recurring charge.
- (14) "Small Wireless Facility" and "Small Cell Facility" mean a wireless facility that meets both of the following criteria: (i) each antenna from the wireless provider could fit within an enclosure of no more than six (6) cubic feet in volume. For an antenna that has exposed elements, all of its exposed elements could fit within an enclosure of no more than six (6) cubic feet and (ii) all other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. Ancillary equipment such as electric meters, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches and vertical cable runs for the connection of power and other services are not included in the equipment volume calculation.
- (15) "Small Communication Tower" is a tower, possibly guy-wired, no more than one hundred ninety (190) feet tall, where antennae and communications equipment are placed to serve residential properties with internet service.
- (16) "Right-of-way" means the area within the jurisdiction of the City of Jenks that is on, below or above a public roadway, highway, street, sidewalk, alley

or similar property or a public easement that authorizes the deployment sought by the wireless provider and does not include a federal interstate highway.

- (17) "Television and Radio Transmission Tower" means a structure set up for the purpose of transmitting and receiving radio and television signals.
- (18) "Utility Pole" means a pole or similar structure that is used in whole or in part for carrying electric distribution lines or telecommunication cables or wires, cable or electric service, lighting, traffic control, signage or a similar function regardless of ownership, including a city-owned pole. This term does not include structures supporting only wireless facilities.
- (19) "Wireless Facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment regardless of technological configuration. This term includes small wireless facilities. This term does not include the structure or improvements on, under or within which the equipment is co-located nor coaxial or fiber optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.
- (20) "Wireless Infrastructure Provider" means any person or entity, including a person or entity authorized to provide telecommunications service in the State of Oklahoma, that builds or installs wireless communication transmission equipment, wireless facilities or wireless support structures who is not a wireless services provider.
- (21) "Wireless Provider" means a wireless infrastructure provider or a wireless services provider.
- (22) "Wireless Services" means any service, whether at a fixed or mobile location, provided using wireless facilities.
- (23) "Wireless Services Provider" means a provider of wireless services.
- (24) "Wireless Support Structure" means a freestanding structure, such as a monopole; commercial communication tower, either guyed or self-supporting; billboard or other existing or proposed structure designed to support or capable of supporting wireless facilities. This term does not include a utility pole.

(C) Commercial Communications Towers.

- (1) Zoning. Commercial communications towers are prohibited within any public right-of-way or residential zoning district. Such towers are allowed by Specific Use Permit, subject to the restrictions contained herein and any conditions applied in the approval of a Specific Use Permit by the Jenks City Council.
- (2) Parcel Size. The parcel on which the commercial communications tower is proposed to be located should be of sufficient size to accommodate the tower and any support facilities and should include access to a public street

or accessible parking area. Ownership or lease of a separate parcel to accommodate the tower and support facilities may require platting and improvements before construction permits can be issued.

- (3) Construction. In order to minimize visual impacts that can result from the presence of such facilities, towers (including attached antennae) are limited to monopole construction and may not exceed two hundred (200) feet in height.
- (4) Setbacks. No commercial tower shall be located closer than two hundred (200) feet to the boundary line of any property zoned or used for any residential purpose or within two hundred (200) feet of any residential structure on the same lot. The tower or structure must observe a setback from any property line zoned or used for a residential purpose a distance equal to at least twice the height of the structure. All towers shall observe a minimum setback from any abutting street right-of-way equal to the height of the tower.
- (5) Appearance. No lights, signals or illumination are allowed on any tower unless required by the Federal Communications Commission (FCC), Federal Aviation Administration (FAA) or City. No commercial advertising, signage or flags are allowed on any tower. This does not prevent the joint use of a legal existing sign structure as a support mechanism for antennae or microwave dishes. Towers and accessory facilities should be colored or painted in muted tones that minimize their visibility, unless otherwise required by the FCC or FAA. Only towers utilizing stealth technology will be allowed. A "stealth tower" is a commercial communications tower that is incorporated into other equipment such that the facility is not readily recognizable as telecommunications equipment and may have a different primary function. Stealth towers may include, but are not limited to, sports lighting facilities at athletic fields, flagpoles with fully enclosed antennas, "shoe box" or shielded parking lot lights with fully enclosed or shielded antennas, crosses, church steeples or clock towers. Such facilities may replicate, duplicate or simulate the construction of common structures that serve a dual purpose. Any rejection by City staff of proposed stealth technology may be appealed to the Board of Adjustment.
- (6) Site Design. A seven (7) foot tall chain link fence shall secure the area containing the monopole, accessory structures and any immediate surrounding area utilized for servicing the communication tower, and the area within the fence shall be paved or graveled and kept weed-free. Other than the street side of the site, any side that faces any residential use shall include opaque fencing and evergreen shrubs or trees at least six (6) foot tall and spaced no further than six (6) feet on center that are sufficient to screen the site in accordance with the requirements of section 250 of the Jenks Zoning Code. If security lighting is installed, such light should be directed into the site and only triggered by motion detectors.
- (7) Co-location. To minimize tower proliferation, all reasonable efforts should be made to co-locate facilities on existing or new towers. If not possible,

communication towers shall be located at least one thousand (1,000) feet apart. Antennae may be placed wholly within any building legally permitted in a commercial or industrial zoning district or any publicly owned building. A commercial antenna may be mounted flush to the exterior of such buildings if painted and integrated into the overall architectural design. Roof-mounted antennae may not extend more than twenty (20) feet above the highest point of the roof structure, and any supporting equipment must be screened from nearby residential districts. Antennae may be attached to any utility structure (such as a water tower or electrical transmission tower) or public building not located in a street right-of-way, if the property is owned by a government or public agency, further provided that the antennae do not extend more than twenty (20) feet above the height of the structure.

- (8) Application Process. Applications must demonstrate compliance with the provisions contained herein as well as applicable building codes including an engineer's structural certification of the tower structure. Before any construction permit can be issued, the applicant must schedule a pre-development meeting with City staff.
- (9) Maintenance, Operation and Removal. The owner of the communication tower shall ensure that it is maintained in compliance with applicable codes and standards for commercial communication towers established by the Telecommunications Industries Association, as may be 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 commercial communication tower may be abated, including the removal of the commercial communication tower, under authority of and in compliance with the City'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 service having authority or jurisdiction over any portion of the City.
- (10) Removal of Abandoned Towers. Any commercial communication 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 or commercial communication tower shall remove same at their expense within ninety (90) days of receipt of notice from the City notifying the permit owner of said abandonment. In the event that such a commercial communication tower is not removed, notice of the intent by the City to remove shall be given to the permit owner(s) and to the owner of the real estate on which the commercial communication tower is located, if different from the permit owner(s). Abandoned commercial communication towers are hereby declared a public nuisance, removable by the City in accordance with nuisance abatement procedures or through the claims on a posted bond.
- (11) An application for a commercial communication tower shall be valid for no more than six months unless a valid building permit is issued and construction proceeds diligently.

(D) Television and Radio Transmission Towers.

- (1) Zoning. Television and Radio Transmission Towers are permitted on private property only with a Specific Use Permit granted by the City Council, in accordance with Chapter 17 of the Jenks Zoning Code. Because of the potential visual impact of all transmission towers, the notification area for the Specific Use Permit required by Section 1704.3 of the Zoning Code shall be increased to include all property owners within one-quarter (1/4) mile from the applicant's property. Towers in excess of two hundred (200) feet in height must be located at least one (1) mile from any subdivision filed of record and served by public water and sewer systems.
- (2) Construction. The FCC must authorize the height of any television or radio transmission tower. Towers up to two hundred (200) feet in height must be of a monopole design. Guyed structures are permitted if taller than two hundred (200) feet, provided engineering data is provided that shows a collapsed structure will be contained within the area of the guy wires and the entire facility is located on the applicant's property.
- (3) Setback. The tower or structure must observe a setback from any property line zoned or used for a residential purpose a distance equal to at least twice the height of the structure. All towers shall observe a minimum setback from any abutting street right-of-way equal to the height of the tower, but not less than two hundred (200) feet. Guy wire anchors must be located at least twenty-five (25) feet from any property line.
- (4) Appearance. No lights, signals or illumination are allowed on any tower unless required by the FCC, FAA or City. If lighting is required, only "dual lighting" (white lights during the day and red lights during the night) will be allowed. All lighting shall be the least intrusive on nearby properties. No commercial advertising, signage or flags are allowed on any tower. Towers and accessory facilities should be colored or painted in muted tones that minimize their visibility, unless otherwise required by the FCC or FAA.
- (5) Co-location. To minimize tower proliferation, all reasonable efforts should be made to co-locate facilities on existing or new towers. Provisions should be made on new transmission towers to allow antennae for personal wireless service or mobile radio service systems.
- (6) Site Design. All proposed or contemplated structures, towers, parking and fencing must be included on a Proposed Site Plan and provide for adequate landscaping to mitigate any visually intrusive elements from nearby property owners.

(E) Small Communication Towers.

- (1) Zoning. Small communication towers are allowed on private property by Specific Use Permit provided they conform to the provisions contained herein. Small communication towers are only permitted within any public right-of-way or public property with a Specific Use Permit approved by City Council.

- (2) Construction. Small communication towers must not exceed one hundred ninety (190) feet in height and shall be constructed in compliance with all applicable codes. An engineer's structural certification of tower structure must be submitted with a building permit application.
- (3) Setback. Towers shall be set back from the property line a distance that protects adjacent property owners and habitable structures from damage if the tower collapses. The area of fall cannot be located on an adjacent property not owned by the applicant or on the public right-of-way. A certified engineer's report is required to verify adequate area of fall and guy wire installation. Towers shall observe a minimum setback from any abutting street right-of-way equal to the height of the tower.
- (4) Appearance. No lights, signals or illumination are allowed on any tower unless required by the FCC, FAA or City. No commercial advertising, signage or flags shall be allowed on any tower. Towers and accessory facilities should be colored or painted in muted tones that minimize their visibility, unless otherwise required by the FCC or FAA.
- (5) Removal. If a small communication tower becomes inoperable and is not put back into service within six months, the owner of the tower shall remove the small communication tower and other related equipment.

(F) Small Cell Facilities

- (1) Permitted Use. Co-location of a small wireless facility, a new or modified utility pole or wireless support structure for the co-location of a small cell facility shall be a permitted use subject to the provisions of this section. However, any wireless provider that seeks to construct or modify a utility pole, wireless support structure or wireless facility that exceeds the height or size limits contained in this section shall be subject to applicable zoning requirements and codes.
- (2) Permit Required. No person or entity shall place a small wireless facility in the right-of-way without first filing a small wireless facility right-of-way permit application and obtaining approval.
- (3) Right-of-Way Permit Applications.
 - (a) The right-of-way permit application for the small wireless facility shall be made by the wireless provider or its duly authorized representative and shall include the following:
 - (i) The applicant's name, address, telephone number and email address;
 - (ii) The names, addresses, telephone numbers and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
 - (iii) A location map depicting the location of proposed sites for small wireless facilities and related construction and engineering drawings for each location sufficient to demonstrate compliance with the provisions herein. Small cell facilities on existing poles, new poles or modified poles shall not interfere with vehicular access to adjacent property

nor shall they be placed in a location that would interfere with an existing individual tree's canopy. For applications to co-locate on an existing pole, the applicant should provide an engineering analysis that demonstrates conformance with applicable codes, construction drawings stamped by a professional engineer licensed in Oklahoma and a description of any make-ready work required, including any modification or replacement of the pole. Up to twenty-five (25) proposed small cell facilities can be covered by one application.

- (iv) If a small wireless facility is proposed to replace an existing pole or be located on an existing pole, then the application shall indicate the owner of said pole.
 - (v) A statement of compliance with all applicable codes from a licensed engineer.
 - (vi) Applications to Co-locate Facilities: An application fee equal to two hundred dollars (\$200) each for the first five small wireless facilities on the same application and one hundred dollars (\$100) for each additional small wireless facility on the same application.
 - (vii) Applications for Installation, Modification or Replacement of a Utility Pole and Associated Co-location: An application fee equal to three hundred fifty dollars (\$350) per pole on the same application.
- (b) Within twenty (20) days of receiving an application, the City will determine and notify the applicant in writing whether the application is complete. If an application is incomplete, the City will specifically identify the missing information in its written communication to the applicant. The processing deadlines set forth herein will be tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information. The processing deadline may also be tolled by agreement of the Applicant and the City.
- (c) An application shall not be required for routine maintenance; the replacement of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight and height or for installation, placement, maintenance, operation or replacement of micro-wireless facilities that are strung on cables between existing utility poles in compliance with the National Electric Safety Code.
- (d) Review Time for Applications to Co-locate Facilities: The City will issue a written decision in response to an application to co-locate small cell facilities within sixty (60) days of receipt of the application. If the written decision is to deny the application, reasons for such denial shall be included in the written communication to the

applicant. If the City does not issue a written decision within the prescribed timeframe, the application will be deemed approved.

(e) Review Time for Applications for Installation, Modification or Replacement of a Utility Pole and Association Co-location: The City will issue a written decision in response to an application to install, modify or replace a utility pole and any associated co-location within seventy-five (75) days of receipt of the application. If the written decision is to deny the application, reasons for such denials shall be included in the written communication to the applicant. If the City does not issue a written decision within the prescribed timeframe, the application will be deemed approved.

(f) Appeals from the Denial of a Right-of-Way Permit Application. Upon receipt of a notice of the City's written decision to deny all or part of a Right-of-Way Permit Application, the applicant may choose to cure the deficiencies in the application or appeal the denial. If the applicant chooses to cure the deficiencies identified by the City, the application must be resubmitted within thirty (30) days of the denial and will not require payment of an additional application fee. Upon receipt of a revised application, the City shall have an additional thirty (30) days to approve or deny the revised application. If the applicant chooses to appeal the denial, the applicant may do so in accordance with Section 1350 of the Zoning Code.

(4) Height of Small Wireless Facilities and Associated Poles and Support Structures.

(a) Small wireless facilities and new or modified utility poles and wireless support structures for the co-location of small wireless facilities may be placed in the right-of-way as a permitted use subject to the following requirements:

(i) Each new or modified utility pole installed in the right-of-way shall not exceed the greater height of either (1) ten (10) feet above the tallest utility pole existing as of December 9, 2019 and located within five hundred (500) feet of the new pole in the same right-of-way or (2) fifty (50) feet.

(ii) Each new small wireless facility in the right-of-way shall not exceed ten (10) feet above an existing utility pole in the same vicinity. Small wireless facilities on a new utility pole shall not exceed the height permitted for a new utility pole as determined by ordinance or franchise agreement.

(b) Small wireless facilities may be placed on property owned, leased or otherwise controlled by the City pursuant to a commercial lease approved by the City Council.

(5) Small Cell Facility Standards.

(a) All small wireless facilities with exterior exposure affixed to a utility pole shall be as close to the color of the utility pole as is commercially available to the wireless provider.

- (b) The design and maintenance of all small wireless facilities, cables, wires, appurtenances and utility poles shall include the use of materials, colors, textures, screening and landscaping that will blend the small wireless facilities, appurtenances and utility poles to the natural setting or the built environment of the primary use.
 - (c) All small wireless facilities affixed to a decorative light pole must be installed in such a way that the cables, wires, appurtenances and facilities are concealed within the pole to the maximum extent possible.
 - (d) Spacing Requirements. No small cell facility shall be approved for placement on a new pole if the new pole is proposed to be located within a five hundred (500) foot radius of an existing pole.
- (6) Relocation or Modification of Small Cell Facilities. Whenever the City has determined that the removal, relocation, change or alteration of any small wireless facility is reasonably necessary for the construction, repair, maintenance or installation of any City improvement or for the operations of the City, including interference with traffic control devices or emergency communications, the City shall provide the wireless provider a written notice. Within sixty (60) days following the written notice, the wireless provider shall at its own expense protect, support temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the right-of-way.
 - (7) Emergency Removal or Relocation of Small Cell Facilities. In the event of a public health or safety emergency and as the City determines to be necessary, the City retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the City. If circumstances permit, the City shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility. The City shall notify the wireless provider after cutting or removing a small wireless facility.
 - (8) Abandonment of Facilities. A small wireless facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of the facility must remove the small wireless facility within ninety (90) days after receipt of written notice from the City notifying the owner of the abandonment.
 - (9) Damage to the Right-of-Way. A wireless provider shall repair all damage to the right-of-way directly caused by the activities of the wireless provider in the right of-way and return the right-of-way to its functional equivalence before the damage. If the wireless provider fails to make the necessary repairs within two (2) weeks of written notice, the City may make the repairs and charge the wireless provider the reasonable, documented cost of such repairs. A wireless provider shall be required to comply with right-of-way and vegetation management practices adopted by the City.
 - (10) City reserves the right to install public emergency or operational equipment to poles upon approval from the wireless provider. The location of said

equipment will be at wireless provider's discretion and will not interfere with the wireless provider's operation.

- (G) Nothing in this Section concerning the regulations of what is legally permissible or legally forbidden interferes with the proprietary right of the City 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.

SECTION III. If any part of this ordinance is found to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance or any part thereof.

SECTION IV. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

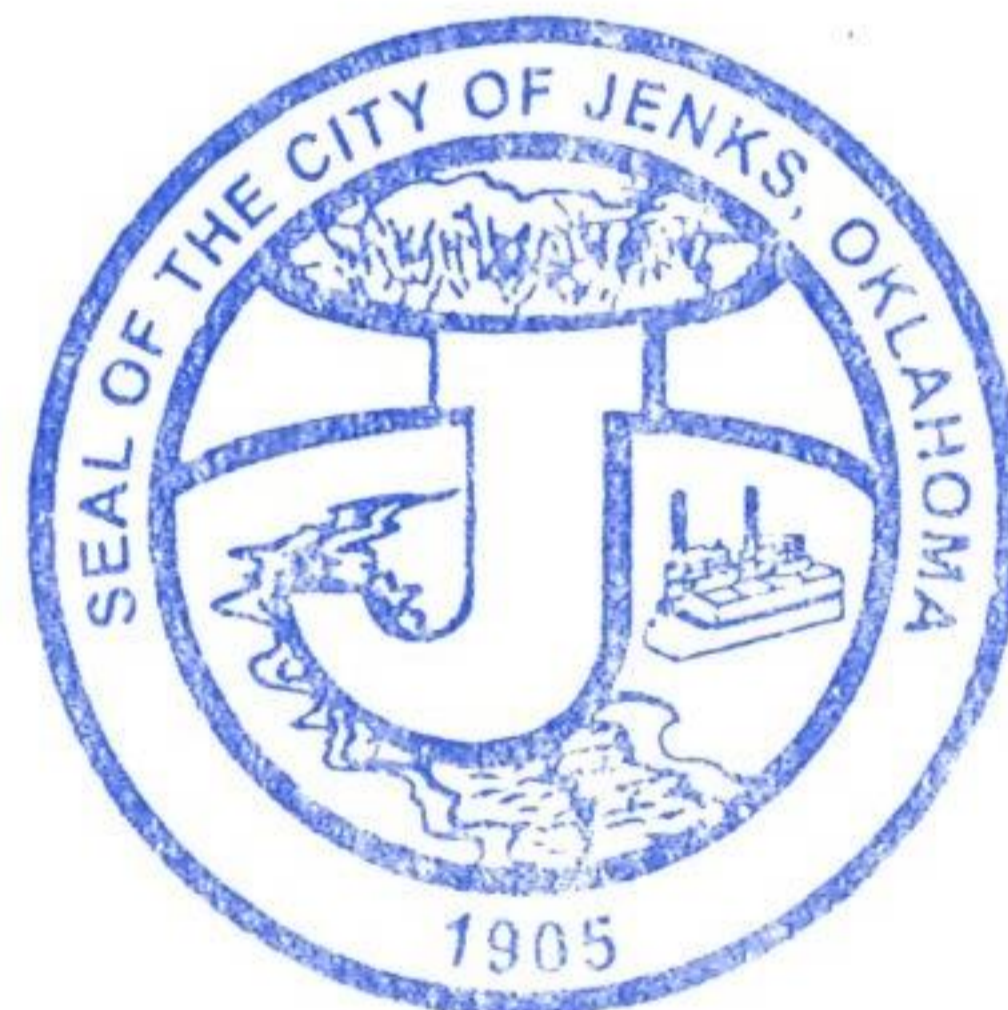
SECTION V. Since the immediate operation of the provisions of this ordinance is necessary for the preservation of public health, welfare and safety, an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after its passage by the City Council.

Approved this 16th day of December 2019.

CITY OF JENKS, OKLAHOMA

MAYOR

Attest:

CITY CLERK

Approved as to form:

CITY ATTORNEY

Emergency Clause approved separately this 16th day of December 2019.

CITY OF JENKS, OKLAHOMA

MAYOR

Attest:

CITY CLERK