

ORDINANCE NO. ____

AN ORDINANCE ESTABLISHING STANDARDS AND REGULATIONS FOR TELECOMMUNICATIONS ANTENNAE AND TOWERS WITHIN THE TOWNSHIP OF EAST HANOVER, COUNTY OF MORRIS, STATE OF NEW JERSEY AND SUPPLEMENTING CHAPTER **95** OF THE CODE OF THE TOWNSHIP OF EAST HANOVER ENTITLED, “LAND USE AND ZONING”.

WHEREAS, the Township of East Hanover (“Township”) has received and expects to continue to receive requests to site wireless communications towers and antennae within the municipal boundaries; and,

WHEREAS, the Township finds that it is in the public interest to permit the siting of wireless communications towers and antennae within the municipal boundaries; and,

WHEREAS, the Federal Telecommunications Act of 1996 (“Act”), 47 U.S.C. 332(c) et. seq., which governs the construction and placement of wireless communications, preserves local government authority to enforce zoning requirements that protect public safety; and,

WHEREAS, this State’s Legislature has recently amended the Municipal Land Use Law, NJJ\$±A40:55D-70, in order to clarify the appropriate standards regarding variances for inherently beneficial uses; and,

WHEREAS, the Township Council of the Township of East Hanover (“Township Council”) finds that while it must accommodate the communication needs of Township residents and businesses, it must also protect the public health, safety and general welfare of the Township; and,

WHEREAS, the Township Council finds that co-location of antennas upon existing towers best serves these purposes;

NOW THEREFORE, BE IT ORDAINED by the Township Council of the Township of East Hanover, County of Morris, State of New Jersey that an ordinance establishing standards for telecommunications antennae and towers within the Township be established as follows:

**STANDARDS AND REGULATIONS FOR TELECOMMUNICATIONS
ANTENNAE AND TOWERS WITHIN THE TOWNSHIP OF EAST HANOVER**

Section 1: Purpose.

The purpose of this ordinance is to amend Chapter 95 of the Township Code of the Township of East Hanover delineated “Land Use and Zoning” to include the regulation of cellular communication towers and antennae located within the Township of East Hanover. The goal of this ordinance is to establish general guidelines for the siting of cellular towers and antennae and to:

1. restrict the location of towers to non-residential areas;
2. minimize the total number of towers throughout the Township;
3. encourage strongly the joint use of new and existing tower sites;
4. encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
5. encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas;
6. enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently;
7. consider the public health and safety of communication towers;
8. avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures;

9. encourage the use of existing structures for antennae.

In furtherance of these goals, the Township of East Hanover should give due consideration to the Township of East Hanover master plan, zoning map, existing land uses and environmentally sensitive areas in approving sites for the location of towers and antennae.

Section 2: Definitions.

As used in this ordinance, the following terms shall have the meanings indicated:

a. “Alternative tower structure” shall mean man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennae or towers.

b. “Antenna” shall mean any exterior apparatus designed for telephonic, radio, or television communications through the sending and/or receiving of electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals. Satellite dishes shall not be included within this definition.

c. “Backhaul network” shall mean the lines that connect a provider’s towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

d. “Co-location” shall mean when two or more receiving and/or transmitting facilities are placed together in the same location or on the same tower or monopole.

e. “FAA” shall mean the Federal Aviation Administration.

f. “FCC” shall mean the Federal Communications Commission.

g. “Height” shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

h. “Preexisting towers and antennae” shall mean any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of this ordinance, including permitted towers or antennae that have not yet been constructed so long as such approval is current and not expired.

i. “Satellite Dish” shall mean any apparatus with a flat or parabolic surface which is designed for the purpose of receiving television, radio, microwave, satellite or similar electronic signals.

“Tower” shall mean any structure that is designated and constructed primarily for the purpose of supporting one or more antennae, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

k. “Township” Township of East Hanover, County of Morris, State of New Jersey.

l. “Township Council” shall mean the governing authority of the Township of East Hanover.

Section 3: Applicability.

a. New Towers or Antennae. All new towers or antennae in the Township of East Hanover shall be subject to these regulations, except as provided in Sections 4(f) and 4(g).

b. Amateur Radio; Receive-Only Antennae. This ordinance shall not govern any tower, or the installation of any antenna, that is under seven (7) feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennae.

c. Pre-Existing Towers and Antennae. Any tower or antenna for which a permit has been properly issued prior to the effective date of this ordinance shall not be required to meet the requirements of this ordinance, other than the requirements of Sections 4(f) and 4(g). Any such towers or antennae shall be referred to in this ordinance as “preexisting towers” or “preexisting antennae”. This exception shall not apply to any expansion or intensification of said pre-existing tower or antenna.

d. Government Agencies. Communication towers or antennae owned, operated or used by the Federal, State, County or Municipal governments shall be exempt from the requirements of this ordinance.

e. AM Array. For purposes of implementing this ordinance, an AM array, consisting of one or more tower units and supporting ground system which functions as one AM broadcasting antenna, shall not be considered one tower.

f. One and Two Family Dwellings. The provisions of this Ordinance do not apply to antennae constructed on one and two-family dwellings.

Section 4: General Guidelines and Requirements.

a. Principal or Accessory Use. Antennae and towers shall be considered principal uses unless subservient and clearly related to an existing principle use or structure, except as may be provided under Section 8(a).

b. Lot Size. For purposes of determining whether the installation of a tower or antenna complies with local zoning regulations, including but not limited to set-back requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennae or towers may be licensed parcels within such lots.

c. Inventory of Existing Site Each applicant for an antenna and/or tower shall provide an inventory of its existing towers that are either within the jurisdiction of the Township or within one-quarter mile of the border thereof, including specific information about the location, height, and design of each tower. The Township Departments may share such information with other applicants or organizations seeking to locate antennae within the jurisdiction of the Township, provided, however that the Township Departments are not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

d. Aesthetics. The guidelines set forth in this Section 4.d. shall regulate the location of all towers, and the installation of all antennae, governed by this ordinance, provided, however, that the appropriate Township body may waive these requirements if it determines that the goals of this ordinance are better served thereby.

(1) Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color, so as to reduce visual obtrusiveness.

(2) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and surrounding buildings.

(3) If an antenna is 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 as visually unobtrusive as possible.

e. Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the appropriate Township body may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

f. State or Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennae. If such standards and regulations are changed, then the owners of the towers and antennae governed by this ordinance shall bring such towers and antennae into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling governmental or quasi-governmental

agency. Failure to bring towers and antennae into compliance with such revised standards and regulations shall require the removal of the tower or antenna at the owners expense.

g. Building Codes; Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable National, State and local standards for towers as amended from time to time. If, upon inspection, the appropriate Township official 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 the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. If the owners fail to bring such tower into compliance within said thirty (30) days, the tower shall be removed at the owner's expense.

h. Measurement. For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the Township of East Hanover irrespective of municipal and county jurisdictional boundaries.

i. Not Essential Services. Towers and antennae shall be regulated and permitted pursuant to this ordinance and shall not be regulated or permitted as essential services, public utilities, or private utilities.

Franchises. Owners and/or operators of towers or antennae shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in the Township have been obtained and shall file a copy of all required franchises with the Clerk of the Township of East Hanover who shall distribute copies of same to the Township Construction Official and Township Land Use Department.

k. Signs. No signs or other nonessential accoutrements shall be allowed on any antenna or tower with the exception of warning signs or other signs required by Federal, State or local law.

l. Buildings and Support Equipment. Buildings and support equipment associated with antennae or towers shall comply with the requirements of Section 12. Buildings and support equipment clearly related to the use of antenna shall be considered accessory structures.

Section 5: Permitted Uses.

a. Antennae shall be permitted uses in the following zones in the Township of East Hanover:

1. Research, Laboratory and Office [R-L];
2. Public [P] (subject to the sole discretion of the Township Council);

3. Highway Development/Office, Commercial, Industrial [HD/OCI];
4. Special Economic Development Zone [SED]
5. State-owned property located in the Township.

b.

Antennae shall not be permitted on State-owned property located either in residential zones or contiguous to residential zones within the Township.

Section 6 Permitted, Conditional Uses.

a. Towers shall be permitted, conditional uses in the following zones in the Township Ordinance: of East Hanover subject to specific conditions set forth in Section 10 of this

1. Research, Laboratory and Office [R-L];
2. Public [P](subject to the sole discretion of the Township Council);
3. Highway Development/Office, Commercial, Industrial [HD/OCI];
4. Special Economic Development Zone [SED]
5. State-owned property located in the Township.

b. Towers shall not be permitted on State-owned property located either in residential zones or contiguous to residential zones located in the Township.

Section 7: Exemption for Property Owned, Controlled or Leased by the Township.

All applications for antennae or towers to be placed on property owned, controlled or leased by the Township are exempt from Planning Board or Board of Adjustment review but are subject to review and approval by the Township governing body which may require a license or lease for such antenna and/or tower.

Section 8 Regulations and Standards - Antennae.

The following regulations and standards shall apply to all antennae:

- a. Antennae on existing structures. Any antenna which is not attached to a tower may be approved by the appropriate Township board as an accessory use to any commercial, industrial, professional, institutional, or multi-family structure of eight or more dwelling units, provided;

- (1) The antenna does not extend more than three (3) feet above the highest point of the structure;
- (2) The antenna complies with all applicable FCC and FAA regulations; and,
- (3) The antenna complies with all applicable building codes.

b. Antennae on existing towers. An antenna to be attached to an existing tower may be approved by the appropriate Township board subject to the following conditions and other conditions cited in this Ordinance and all other Township ordinances:

- (1) To minimize adverse visual impacts associated with the proliferation and clustering of towers, co-location of antennae by more than one carrier on existing towers shall be preferred over the construction of new towers, provided such co-location is accomplished in a manner consistent with the following:
- (2) A tower which is modified or reconstructed to accommodate the co-location of an additional antenna shall be of the same tower type as the existing tower, unless the appropriate Township board allows reconstruction as a monopole.

Section 9. Site Plan Approval.

- a. General: No person shall construct or erect, or cause to be constructed or erected, a tower or antenna unless site plan approval is obtained from the appropriate Township board. The following provisions shall also apply:
- (1) Applications for site plan approval under this Section shall be subject to the procedures and requirements of Article VI, Chapter 95 of the Township's Land Use Zoning Ordinance, except as modified in this Section.
 - (2) In granting site plan approval, the appropriate Township board may impose conditions to the extent such board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties, or the community at large.

- (3) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.
- (4) An applicant for site plan approval shall submit the information described in this Section and a non-refundable fee as established by the governing Township body, or pursuant to existing Township escrow fee regulations, to reimburse the Township for the costs of reviewing the application.

b. Information Required for Site Plan Approval for Towers

- (1) In addition to any information required for applications for site plan approval pursuant to Chapter 95-36D of the Township's Land Use and Zoning Ordinance, applicants for site plan approval for a tower shall submit the following information:
 - (i) A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, and other information as required by this and other Township ordinances to enable comprehensive review of the application.
 - (ii) Survey of the property, signed and sealed by a surveyor licensed in the State of New Jersey, dated no earlier than twelve (12) months prior to the date of the application.
 - (iii) The distance between the proposed tower and the nearest residential unit.
 - (iv) The separation distance from other towers described in the inventory of existing sites submitted pursuant to this ordinance shall be shown on an updated site plan or map certified by a licensed engineer or licensed land surveyor. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s).
 - (v) A landscape plan showing specific landscape materials and precise locations of proposed landscaping improvements

certified by a licensed engineer or certified landscape architect.

- (vi) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
- (vii) A statement by the applicant as to whether construction of the tower will accommodate co-location of additional antennae for future users.
- (viii) Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the municipality.
- (ix) A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.
- (x) A description of the feasible location(s) of future towers or antennae, which may be erected by the applicant, within the Township based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.
- (xi) Line of sight analysis detailing the view of the proposed tower from various directions and angles from adjacent residential areas. The analysis shall be utilized to determine buffer requirements.

(2) Factors Considered in Granting Site Plan Approval for Towers. In addition to any standards for consideration of site plan approval applications pursuant to Article VI, Chapter 95 of the Township Land Use and Zoning Ordinance, the appropriate Township board shall consider the following factors and make specific and separate written findings thereon in determining whether to issue site plan approval, although the appropriate Township board may waive or reduce the burden on the applicant of one or more of these criteria if the appropriate Township board concludes that the goals of this ordinance are better served thereby:

- (i) Height of the proposed tower;

- (ii) Proximity of the tower to residential structures and residential district boundaries;
- (iii) Nature of uses on adjacent and nearby properties;
- (iv) **Surrounding topography;**
- (v) Surrounding tree coverage and foliage;
- (vi) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- (vii) Proposed ingress and egress; and
- (viii) Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures, as discussed in Section 9(b)(3) of this ordinance.

(3). Availability of Suitable Existing Towers or Other Structures, or Alternative Technology. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the appropriate Township board and said board makes specific and separate written findings thereon, that no existing tower, structure or **alternative technology** can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the appropriate Township board related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

- (i) No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements.
- (ii) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
- (iii) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related

equipment.

- (iv) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
- (v) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or **to adapt an existing tower or structure for sharing** are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
- (vi) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
- (vii) The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a **cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system**, is unsuitable. Costs of alternative technology that exceed **new tower or antenna development** shall not be presumed to render the technology unsuitable.

Section 10: Conditions for Site Plan Approval of Towers.

An applicant shall satisfy the specific **conditions enumerated below to obtain site plan approval for towers.**

- (1) **Maximum Tower Height:** the maximum height of any tower shall not exceed seventy (70) feet. For purposes of measurement, the maximum tower height shall include any structures supported by the tower and any antenna.
- (2) **Setbacks.** The following setback **requirements** shall apply to all towers for which site plan approval is required:

- (i) Towers must be set back a distance equal to at least one hundred twenty-five percent (125%) of the height of the tower from any adjoining lot line provided that distance is no closer than the building setback applicable to the zone.
 - (ii) Guys and accessory facilities must satisfy the minimum zoning district setback requirements.
- (3) Separation. The following separation requirements shall apply to all towers and antennae for which site plan approval is required:
- (i) Separation from off-site uses/designated areas.
 - (a) Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in Table 1, except as otherwise provided in Table 1.
 - (b) Separation requirements for the towers shall comply with the minimum standards established in Table 1.

Table 1:

Off-site Use/Designated Line

Separation Distance Measured From the Nearest Point of the Tower to the Structure of the Off-Site Use or Designated Line

Single-family or duplex residential units	200 feet or 300% of height of tower whichever is greater, measured to the residential unit.
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary subdivision plan approval which is not expired	200 feet or 300% of height of tower whichever is greater, measured to the building set back line of the off-site use.
Vacant unplatted residentially zoned lands	100 feet or 125% of height of tower whichever is greater, measured to the property line.
Existing multi-family residential units greater than duplex units	100 feet or 125% of height of tower whichever is greater, measured to the property line.
Non-residentially zoned lands or non-residential uses	Setbacks apply pursuant to Section 10, Subsection 2.

- (4) In addition to the above conditions for all permitted and permitted conditional uses, the applicant must satisfy all other conditions for site plan approval set forth in Chapter 95 of the Township's Land Use and Zoning Ordinance.

Section 11: Design Standards - Towers.

Applicants shall satisfy the design standards enumerated below to obtain site plan approval for towers in addition to other standards that may be required pursuant to the Township Land Use and Zoning Ordinance, Construction Code and/or other applicable regulations:

- (1) Security Fencing. Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device; provided, however, that the appropriate Township board may waive such

requirements, as it deems appropriate.

- (2) Landscaping. The following requirements shall govern the landscaping surrounding towers for which site plan approval is required; provided, however, that the appropriate Township board may waive such requirements if the goals of this ordinance would be better served thereby.
 - (i) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall be consistent with the Township Land Use and Subdivision Ordinance 95-47(A)(6).
 - (ii) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.
 - (iii) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

Section 12. Building or Other Equipment Storage.

- a. The equipment cabinet or structure used in association with antennae shall comply with the following:
 - (1) The cabinet or structure shall not contain more than 200 square feet of gross floor area or be more than 12 feet in height. In addition, for buildings and structures which are less than sixty-five (65) feet in height, the related unmanned equipment structure shall not be located on the roof of the structure.
 - (2) If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than 10 percent of the roof area.

- (3) If the equipment structure is located on the roof of a building, it shall be camouflaged.
- (4) Equipment storage buildings or cabinets shall comply with all applicable building codes.
- (5) The equipment cabinet or structure shall be screened from view of all residential properties which abut or are directly across the street from the structure or cabinet.

- b. Modification of Building Size Requirements. The requirements of this Ordinance may be modified by the appropriate Township board to encourage co-location.

Section 13: Removal of Abandoned Antennae and Towers.

Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be presumed abandoned, and the owner of such antenna or tower shall remove same within thirty (30) days of being notified of such abandonment.

Section 14: Enforcement

The provisions of this ordinance will be enforced by the Township Zoning Officer, Township Construction Official and/or Township Land Use Director as appropriate.

Section 15. Severability.

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Section 16. Repealer. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 17. Effective Date. This Ordinance shall take effect twenty (20) days after second reading and final passage.

TOWNSHIP OF EAST HANOVER

LAWRENCE COLASURDO, MAYOR

ATTEST:

MARILYN J. SNOW, CLERK

This Ordinance was passed on first reading at a regular meeting of the Township of East Hanover on _____ 1997, and will be taken up for final consideration on _____ 1997, after publication and the scheduled public hearing at the Municipal Building located at 411 Ridgedale Avenue, East Hanover Township, New Jersey, at ~p.m. (a.m.)

MARILYN J. SNOW, CLERK

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