

BOROUGH OF BERGENFIELD
BERGEN COUNTY, NEW JERSEY

Ordinance No. 2219

AN ORDINANCE TO AMEND "LAND USE REGULATIONS", a/k/a THE BOROUGH OF BERGENFIELD ZONING ORDINANCE OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF BERGENFIELD TO PERMIT COMMUNICATION TOWERS AND ANTENNAS ONLY ON MUNICIPAL PROPERTY.

WHEREAS, the popularity of various forms of communication equipment, including but not limited to cellular telephones, pagers and satellite television, has created an increase in the demand for facilities for cellular communications systems, personal communication services (PCS) and specialized mobile radio transmitters (SMR) and for wireless communications towers and antennas capable of sending and receiving signals from same; and

WHEREAS, there is a corresponding rise in concern within the Borough of Bergenfield and throughout the State of New Jersey over the safety, welfare and aesthetic effects that such wireless communication towers and antennas have on the community as a whole; and

WHEREAS, the Federal Telecommunications Act of 1966, 47 U.S.C. §332 (the "Act") establishes a framework for the exercise of jurisdiction, in part, by municipalities over the construction, modification and placement of facilities for cellular telecommunications systems, personal communication services (PCS) and specialized mobile radio transmitters; and

WHEREAS, pursuant to the Act, the Borough of Bergenfield may not discriminate between different providers of cellular telecommunications systems, PCS or SMR; and

WHEREAS, in order to maximize the usefulness of wireless telecommunications towers and antennas while minimizing the negative impact created by same, and in order to protect and preserve the public health, safety and welfare of the residents of the Borough of Bergenfield and maintain the fair market value of properties in the Borough and, specifically in the immediate area of the location of wireless communications towers and antennas, the Mayor and Council desires to regulate the location and installation of wireless communications towers and antennas within the Borough to the extent permissible under the Act; and

WHEREAS, the purpose of this Ordinance is to establish general guidelines for the siting of wireless communications towers and antennas, in order to protect residential areas and environmentally sensitive areas in the Borough from potential adverse impacts of towers and antennas, and to minimize the total number of towers throughout the Borough while enhancing the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently; and

WHEREAS, by this Ordinance, the Borough's intent and purpose is to advance the following purposes of the Municipal Land Use Law, N.J.S.A.40:55D-1, et seq:

- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals and general welfare;
- b. To secure safety from manmade disasters;
- c. To provide adequate light, air and open space;
- d. To ensure the development of individual municipalities does not conflict with the development of the general welfare of neighboring municipalities, the county and the State as a whole;
- e. To provide sufficient space in appropriate locations for a variety of residential, recreational, commercial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;
- f. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;
- g. To promote the conservation of historic sites and districts, open spaces, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;
- h. To encourage coordination of various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land; and

WHEREAS, the Mayor and Council believes that wireless communication towers and antennas should be located on municipally owned, leased or controlled property in order to minimize the impact of same upon the Borough; and

WHEREAS, the Mayor and Council desires to allow the installation of wireless communication towers and antennas on municipally owned or controlled property, subject to regulation as hereinafter provided, and further subject to entry into a lease or leases with the Borough of Bergenfield, in accordance with the requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq. and the Local Lands and Buildings Law, N.J.S.A. 40A:12-1, et seq.;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Bergenfield that the Revised General Ordinances of the Borough of Bergenfield, entitled "Land

Use Regulations," be amended as follows:

Section I §602 "Regulations Pertaining to All Districts" shall be amended to include the following subsection:

Communication Towers and Antennas.

(1) Definitions.

(a) "Antenna" shall mean any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

(b) "Communication tower" shall mean and include any and all antennas and towers as defined in this section, together with other accessory structures and equipment associated therewith.

(c) "Preexisting towers and preexisting antennas" shall mean any tower or antenna for which a building permit has been properly issued, or for which a contract, lease or other agreement has been awarded or entered into by the Borough Council, prior to the effective date of this ordinance, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.

(d) "Tower" shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed 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 shall include the structure and any support thereof.

(2) Applicability.

(a) All towers and antennas within the Borough of Bergenfield shall be subject to these regulations, except as provided in sections (b) and (c) below.

(b) This ordinance shall not govern any tower, or the installation of any antenna, that is under thirty-five (35) feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive only antennas.

(c) Lawful, preexisting, nonconforming towers and antennas, as hereinabove described, shall be entitled to the protections and limitations available to lawful,

preexisting, nonconforming structures.

(3) **Locations Permitted.** A communication tower shall be a permitted conditional use in the B1, B2, M and P zones within the Borough of Bergenfield, subject to the following conditions:

(a) Communication towers shall only be permitted on property owned, leased or otherwise controlled by the Borough of Bergenfield.

(b) The Borough of Bergenfield must give its consent before its property may be used for a communication tower. This consent shall be in the form of a resolution of approval adopted by the Mayor and Council of the Borough of Bergenfield.

(c) No communication tower shall be erected or operated within the Borough except pursuant to a license issued by the Mayor and Council or a lease entered into between the operator of the facility and the Borough.

(d) All communication towers shall meet the following requirements:

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

(ii) Towers shall not be artificially lighted, unless required by the FAS or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.

(iii) No signs shall be allowed on an antenna or tower.

(e) No tower or antenna shall be permitted in any residential zones within the Borough.

(4) **Application Procedure.**

(a) All applications for the construction or modification of towers or antennas within the Borough of Bergenfield shall be made to the Borough Zoning Officer who shall transmit copies to the Borough Clerk and the Borough Engineer.

(b) The Zoning Officer shall review the application to determine if the proposed tower or antenna meets all of the conditions contained in Section 602N. The Zoning Officer shall respond to each such application within thirty (30) days of reviewing it.

(c) If the Zoning Officer determines that the applicant has met all of the conditions of Section 602N, he shall administratively approve the application.

(d) If the Zoning Officer determines that the applicant has not met all of the conditions of Section 602N, he shall deny the application.

(5) Maintenance and Abandonment.

(a) All towers must meet or exceed current standards and regulations of the Federal Aviation Administration, the Federal Communications Commission, and any other agency of the state or federal government with the authority to regulate towers and antennas, if such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers or antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

(b) 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. If, upon inspection, the Borough 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. Failure to bring such tower into compliance within said (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

(c) In the event any communication tower shall be abandoned or not operated for a period of one (1) year, the same may be removed, at the option of the Borough of Bergenfield, at the sole expense of the operator.

Section II Inconsistent Ordinances.

All ordinances inconsistent with the provisions of this Ordinance are hereby repealed as to such inconsistencies only.

Section III Effect of Partial Invalidity.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance. The governing body of the Borough hereby declares that it would have passed this Ordinance and each section or part thereof irrespective of the fact that any one or more sections or part thereof be declared invalid or unconstitutional.

Section VI Effective Date.

This Ordinance shall take effect immediately after final adoption and publication as required by law.

KEVIN M. CLANCY, Mayor

TEST:

roduced: _____

Adopted: _____

**BOROUGH OF BERGENFIELD
BERGEN COUNTY
NEW JERSEY**

**RESOLUTION TO FINALLY ADOPT ORDINANCE #2219 ON SECOND
READING - AN ORDINANCE RE: LAND USE**

OFFERED BY COUNCILMAN BOHAN

September 30, 1997

SECONDED BY COUNCIL

WHEREAS, Ordinance #2219 ,entitled

AN ORDINANCE TO AMEND "LAND USE REGULATIONS", A.K.A.

The Borough of Bergenfield Zoning Ordinance of the Revised General Ordinances of the Borough of Bergenfield to permit Communication Towers and Antennas only on Municipal Property as introduced and had first reading and was advertised according to law and a hearing was held thereon second reading.

NOW THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Bergenfield that the aforesaid Ordinance be and the same is hereby passed on second reading and adopted, and that the Deputy Borough Clerk is hereby authorized and instructed to advertise the passage of said ordinance as required by title only.

ROLL CALL	YES	NO	ABSENT
BOHAN			
LODATO			
BILSKI			
NAFASH			
RABBITT			
RIVAS			
CLANCY			