

ORDINANCE NO. 2009-29

ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BARNEGAT, COUNTY OF OCEAN, STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER 55 “LAND USE” IN ORDER TO MODIFY AND AMEND SECTION 55-30 ENTITLED “WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAE”

NOW THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Barnegat, County of Ocean, State of New Jersey, as follows:

SECTION 1. Chapter 55 of the Code of the Township of Barnegat entitled “Land Use” specifically Section 55-30 entitled “Wireless Telecommunications Towers and Antennae” is hereby amended and supplemented to as follows:

Section 55-30. Wireless Telecommunications Towers and Antennae.

- A. *Purpose.*** The purpose of this section is to establish specific standards for the siting of wireless communications towers and antennae. The goals of this section are to: (1) protect residential areas and land uses from potential adverse impacts of towers and antenna; (2) encourage the location of towers in nonresidential areas; (3) minimize the total number of towers throughout the community; (4) strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers; (5) encourage users of towers and antennae to locate them, to the extent possible, in areas where the adverse impact on the community is minimal; (6) encourage users of towers and antennae to configure them in a way that minimizes the adverse visual impact of the towers and antennae through careful design, siting, landscape screening and innovative camouflaging techniques; (7) enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently; (8) consider the public health and safety of communication towers; and (9) avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures. In furtherance of these goals, the Township of Barnegat shall give due consideration to the Township’s Master Plan, Zoning Map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennae.

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B. *Definitions.* As used in this ordinance, the following terms shall have the meanings set forth below:

ALTERNATE TOWER STRUCTURE: 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.

ANTENNA: 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.

BACKHAUL NETWORK: 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.

FAA: The Federal Aviation Administration.

FCC: The Federal Communications Commission.

HEIGHT: When referring to a tower or other structure, the distance measured from the natural grade of the parcel to the highest point on the tower or other structure, including the base pad and any antennae.

PRE-EXISTING TOWERS AND PRE-EXISTING ANTENNAE: Any tower or antenna for which a building permit, conditional use permit, site plan approval, or use variance approval has been properly issued prior to the effective date of this section, including permitted towers or antennae that have not yet been constructed so long as such approval is current and not expired.

TOWER: Any structure that is designed and constructed primarily for the purpose of supporting one or more antennae 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, alternate tower structures, and the like. The term includes the structure and any support thereto.

C. *Applicability.*

- (1) New towers and antennae. All new towers or antennae in the Township of Barnegat shall be subject to these regulations, except as provided in Section 55-30C (2) through (4), inclusive.

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- (2) Amateur radio station operators/receive only antennae. This section shall not govern any tower, or the installation of any antenna, that is under seventy (70) feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennae. These uses are exempt from the provisions of this Ordinance.
- (3) Pre-existing towers or antennae. Pre-existing towers and pre-existing antennae shall not be required to meet the requirements of this section, other than the requirements of Section 55-30D (1) and (2).
- (4) AM array. For purposes of implementing this section an AM array, consisting of one or more tower units and supporting ground system which functions as one (1) AM broadcasting antenna, shall be considered one (1) tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.

D. *Compliance With Other Requirements.*

- (1) State or Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA and FCC, and any other agency of the State or Federal government with the authority to regulate towers and antennae. In the Pinelands Area, all towers shall comply with the standards for local communications facilities in N.J.A.C. 7:50-5.4(c) and any comprehensive plan for such facilities approved by the Pinelands Commission pursuant to N.J.A.C. 7:50-5.4(c)6. If such standards and regulations are changed, then the owners of the towers and antennae governed by this section 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 different compliance schedule is mandated by the controlling State or Federal agency. Failure to bring towers and antennae into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- (2) 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

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applicable State or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Township of Barnegat 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 thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

- (3) Franchises. Owners and 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 of Barnegat have been obtained and shall file a copy of all required franchises with the Township Administrator.

E. *Submission and Procedural Requirements.*

- (1) Multiple Antenna and Tower Plans. The Township of Barnegat encourages applicants for towers and antennae to submit a single application for approval of multiple towers, multiple antenna arrays on a single tower and for antennae located on sites without towers. Applications for approval of multiple site and multiple arrays shall be given priority in the review and hearing process.
- (2) Public Notice. For purposes of this section, any conditional use application, variance request, site plan application and any amended applications for any of the foregoing shall provide public notice in accordance with the provision of the Land Use Ordinance, and the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.
- (3) Information Required. The information required for applications for development for towers set forth below shall be incorporated by reference into the checklist for completeness. In addition to any information required for application for conditional use permits pursuant to Chapter 55-200 of the Municipal Land Use Ordinance and for site plan approval pursuant to Article VI, Site Plan Regulations, applicants for approval of a tower, antenna array and for antenna located on sites without towers, whether as permitted uses, conditional uses or variances, shall submit the following information:

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- (a) Inventory of existing sites. Each applicant for an antenna, tower or both shall provide to the Township Administrator an inventory of its existing towers, antennae, or sites approved for towers or antennae, that are either within the jurisdiction of the Township of Barnegat or within one (1) mile of the border thereof, including specific information about the location, height, and design of each tower. The Township Administrator may share such information with other owners or operators of towers and antennae, applicants for towers and antenna and other organizations seeking to locate antennae within the jurisdiction of the Township of Barnegat. Nothing herein shall be construed as a representation or guarantee by the Township Administrator that such sites are available or suitable.
- (b) 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), Master Plan classification of the site and all properties within the applicable separation of distances, 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 deemed by the Planning Board or Zoning Board to be necessary to assess compliance with this ordinance.
- (c) Legal description of the parent tract and leased parcel (if applicable).
- (d) The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.
- (e) A landscape plan showing specific landscape materials, planting height and height at maturity.
- (f) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
- (g) A description of compliance with subsection D(1), (2)and (3) and all applicable Federal, State or local laws.

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- (h) A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennae for future users.
- (i) 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.
- (j) 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.
- (k) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.
- (l) An accurate simulation, equivalent to a photographic representation, of the visual effects of the proposed tower, antennae and all associated structures viewed from the street frontage of the tower site and from all within 200 feet of the proposed tower.
- (m) An applicant for a conditional use permit shall submit the information described in this subsection and a non-refundable escrow fee as established by ordinance of the Township Committee of the Township to reimburse the Township for the costs of reviewing the application.

F. *Zoning Requirements.*

- (1) Not Essential Services. Towers and antennae shall be regulated and permitted pursuant to this section and shall not be regulated or permitted as essential services, public utilities, or private utilities.
- (2) Antennae or towers shall be permitted uses in the following commercial and industrial zones: CM, CN and C-PHD zones.
- (3) Antennae or towers shall be permitted as conditional uses in all zones other than: CM, CN and C-PHD zones.

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- (4) The following requirements shall apply to all towers and antennae, whether permitted as conditional uses, as permitted uses or by variance:
- (a) **Measurement.** For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the Township of Barnegat irrespective of municipal and County jurisdictional boundaries.
 - (b) **Lot Size.** The minimum lot size for a freestanding wireless telecommunications tower shall be three (3) acres.
 - (c) **Permitted Height.** Antennae and towers may not exceed the maximum height of one hundred eighty (180) feet. Towers and antennae however are exempted from the maximum building height permitted pursuant to the Barnegat Township Land Use Ordinances.
 - (d) **Buildings and support equipment associated with antennae or towers shall comply with the following setback requirements, provided, however, that the Zoning Board may reduce the setback requirements if the criteria for issuance of a variance are satisfied**
 - 1. The tower shall be setback a distance to any property line at least equal to the height of the tower structure. For the purposes of this section, the height of the tower structure shall be the difference between the grade elevation at the base of the tower plus the height of the tower inclusive of all antennae.
 - 2. Guys and accessory buildings and structures must satisfy the minimum zoning district setback requirements and shall not be subject to the setback requirements applicable to towers
 - (e) **Signs.** No signs shall be allowed on an antenna or tower.
 - (f) **Security Fences.** Towers shall be enclosed with ten-foot high security fencing and shall also be equipped with an appropriate anti-climbing device.

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(g) Separation. The following separation requirements shall apply to all towers and antennae provided, however, that the approving Board may reduce the standard separation requirements if the criteria for a variance are met.

1. Separation from off-site uses/designated areas.
2. 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.
3. Separation requirements for towers shall comply with the minimum standards established in Table I

Table 1

Off-Site Use/Designated Area	Separation Distance
Residential structures, whether single family, duplex or multifamily including those that abut a commercially zoned area. ¹	200 feet or 300 % height of tower, ² whichever is greater
Vacant residentially zoned land which is platted with a valid preliminary subdivision plan approval, and in the event that the proposed tower is to be located on a permitted commercially zoned property but abuts either a residence or residential zone.	200 feet or 300% height of tower, ³ whichever is greater
Vacant unplatted residentially zoned lands. ³	100 feet or 100% height of the tower, whichever is greater.

G. Conditional Use Standards. General. In addition to the zoning standards applicable to towers and antennae, the following provisions

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¹ Includes modular homes and mobile homes used for living purposes.

² Separation measured from base of tower to closest building setback line.

³ Separation measured from base of tower to closest building setback line.

shall govern the issuance of conditional use permits for towers or antennae:

- (1) Applications for conditional use permits under this subsection shall be subject to the procedures and requirements of Section 55-200 of the Land Use Ordinance, except as modified in this Section.
- (2) In addition to any standards for consideration of conditional use permit applications pursuant to Chapter 55-200 of the Land Use Ordinance, the Planning Board shall consider the following factors in determining whether to grant conditional use approval. To satisfy these conditional use criteria, the Planning Board may impose conditions necessary to minimize any adverse effect of the proposed tower on adjoining properties. The Planning Board shall consider the following factors in granting conditional use permits for towers:
 - (a) Height of the proposed towers;
 - (b) Proximity of the tower to residential structures and residential district boundaries;
 - (c) Nature of uses on adjacent and nearby properties;
 - (d) Surrounding topography;
 - (e) Surrounding tree coverage and foliage;
 - (f) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - (g) Proposed ingress and egress; and
 - (h) Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or other structures. If suitable existing towers are available, or there are other structures, or alternative technology to satisfy the need, no new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Planning Board that no existing tower, structure of alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the

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Planning Board related to the availability of suitable existing towers, other structures of alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the proposed ordinance.

- (3) The applicant's proposed antenna may consist of the following:
- (a) No existing towers or structures are located within the geographic area which meet applicant's engineering requirements.
 - (b) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
 - (c) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - (d) 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.
 - (e) 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.
 - (f) The applicant demonstrates that there are no other limiting factors that render existing towers and structures unsuitable.
 - (g) 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.

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H. *Buildings or Other Equipment Storage.*

- (1) Antennae mounted on structures or rooftops. The equipment cabinet or structure used in association with antennae shall comply with the following:
 - (a) The cabinet or structure shall not contain more than three hundred (300) square feet of gross floor area or be more than twelve (12) feet in height.
 - (b) 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 fifteen percent (15%) of the roof area.
 - (c) Equipment storage buildings or cabinets shall comply with all applicable building codes.
- (2) Antennae mounted on utility poles or light poles. The equipment cabinet or structure used in association with antennae shall be located in accordance with the following:
 - (a) In all zones the equipment cabinet or structure shall be no greater than three hundred (300) square feet of gross floor area, and a height of no more than twelve (12) feet.
- (3) Antennae located on towers. The related unmanned equipment structure shall not contain more than three hundred (300) square feet of gross floor area or be more than twelve (12) feet in height, and shall be located in accordance with the minimum yard requirements of the zoning district in which located.
- (4) In the PA and PF Zones, new wireless telecommunications facility towers shall be permitted only at the following locations:
 - (a) Maximum height. In the Pinelands Area no tower shall exceed one hundred seventy (170) feet in height and all towers shall be designated so that their height may be increased to one hundred seventy (170) feet if necessary to accommodate the needs of other wireless carriers;
 - (b) On developed publicly owned lands, provided that the tower will be located on previously disturbed lands that have not subsequently been restored and that no tower will be located on State, County or municipal conservation lands, State recreation lands or County and

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municipal lands used for low intensity recreational purposes;

- (c) On the parcel of an approved resource extraction operation, provided that the tower will be located on previously disturbed lands that have not subsequently been restored;
 - (d) On the parcel of an existing first aid or fire station; or
 - (e) On the parcel of an existing landfill, provided that the facility will be located on previously disturbed lands that have not subsequently been restored.
- (5) If the search area for a proposed new tower facility contains lands located both inside and outside the Pinelands Area or lands in more than one (1) Pinelands management area, the applicant shall seek to site the facility in accordance with the following hierarchy, with the first designation being the location of greatest preference:
- (a) Outside the Pinelands Area;
 - (b) The Pinelands Regional Growth Area;
 - (c) The Pinelands Preservation Area, Pinelands Forest Area and Pinelands Village of Brookville.

I. *Design and Performance Standards.*

- (1) **Finish.** 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) **Aesthetics.** 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 into the natural setting and surrounding buildings.
- (3) **Antennae on Structures.** 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.

- (4) Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
- (5) Landscaping. The following requirements shall govern the landscaping surrounding towers:
 - (a) 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 consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound.
 - (b) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.
 - (c) Existing mature 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.
 - (d) The structure or cabinet shall be screened by an evergreen hedge with a height at maturity of eight (8) feet and a planted height of at least thirty-six (36) inches. In all other instances, structures or cabinets shall be screened from view of all residential properties which abut or are directly across the street from the structure or cabinet by a solid fence ten (10) feet in height and an evergreen hedge with a height at maturity of eight (8) feet and a planted height of at least thirty-six (36) inches to be located on the exterior face of the fence.

J. *Removal of Abandoned Antennae and Towers.* Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the Township of Barnegat notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within said ninety (90) days shall be grounds to remove the tower or antenna at the owner's expense. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the tower. If the tower is being used for municipal communications

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purposes, or if the Township foresees using the tower in the future, then the Township may opt to have the tower transferred to the Township. Upon the dismantling and removal of a tower in the Pinelands Area, the property on which the tower was located shall be restored in accordance with N.J.A.C. 7:50-6.24.

K. *Nonconforming Uses.*

- (1) Not Expansion of Nonconforming Use. Towers that are constructed, and antennae that are installed, in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.
- (2) Pre-existing Towers. Pre-existing towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such pre-existing towers. New construction other than routine maintenance on a pre-existing tower shall comply with the requirements of this ordinance.
- (3) Rebuilding damaged or destroyed nonconforming towers or antennae. Notwithstanding subsection I, bona fide nonconforming towers or antennae that are damaged or destroyed may be rebuilt without having to first obtain administrative approval or a conditional use permit and without having to meet the separation requirements specified in subsection F(2)(d) and (e). The type, height, and location of the tower onsite shall be of same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within with one hundred eighty (180) days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in subsection J.

SECTION 2. 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.

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SECTION 3. Repealer. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 4. Effective Date. This Ordinance shall take effect upon publication in an official newspaper of the Township, as required by and in conformance with law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and passed by the Township Committee of Barnegat on first reading at meeting held on the 8th day of September, 2009 at 6:30 p.m. , and finally adopted after public hearing at a meeting of said Committee on the 5th day of October, 2009, at 6:30 p.m., at the Municipal Building located at 900 West Bay Avenue, Barnegat, New Jersey..

Kathleen T. West, RMC, CMC
Municipal Clerk

Prepared by:

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