



Town of Milton

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ORDINANCE NO. 2022-010

AN ORDINANCE TO AMEND CHAPTER 220 OF THE TOWN CODE, ENTITLED "ZONING," REGARDING WIRELESS COMMUNICATIONS TOWERS.

WHEREAS, the Charter of the Town of Milton vests power in the Mayor and Town Council to provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants; and

WHEREAS, the Mayor and Town Council has the power to zone or district the Town and make provisions for particular zones or districts with regard to structures, building, and building material, and to exercise all powers and authorities vested in the legislative body of cities and incorporated towns under and by virtue of Chapter 3, Title 22 of the Delaware Code; and

WHEREAS, the Town Council of the Town of Milton has previously found it necessary for the aforementioned purposes to enact a zoning ordinance, codified as Chapter 220 of the Town Code; and

WHEREAS, pursuant to Chapter 220, the Town Council of the Town of Milton may, from time to time, on its own motion or on petition or upon recommendation by the Planning and Zoning Commission, amend, supplement, or change the boundaries of the districts or the zoning regulations after public notice and hearing; and

WHEREAS, the Town of Milton Planning and Zoning Commission held a duly noticed hearing on July 19, 2022 and voted 6-0 in the Advisory Report received by Town Council; and

WHEREAS, The Town Council held a public hearing on September 12, 2022, as scheduled by prior resolution, with proper notice by publication as required by Town Code Section 220-101A; and

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Town Council of the Town of Milton, a majority thereof concurring, that the following revisions hereby be incorporated into Chapter 220 of the Town Code, entitled "Zoning," in Article VII, entitled "Development Guidelines":

Section 1. Amend § 220-52 with deletions shown by strike-through and additions shown by underline as follows:

§ 220-52. Antennas, towers and satellite dishes.

A. No antenna, tower, microwave dish or satellite dish used for any other purpose than that of personal use of the structure will be permitted by right in any district. Any such personal use antenna, tower, microwave dish or satellite dish shall only be located in rear yards or, if not visible from the street level along the entirety of the front lot line, in side yards. However, this restriction shall not apply to any property for which the owner, tenant or user provides evidence to the Town Code Enforcement Officer

that the restriction unreasonably delays or prevents the use, unreasonably increases the cost of installation, maintenance or use, or precludes receiving or transmitting an acceptable quality signal. Each property owner, tenant, and user shall make all reasonable efforts to limit or eliminate the visual impact on the adjoining properties, such as screening by landscaping.

B. Any apparatus used for the receipt or transmittal of UHF, VHF, HF or any other radio, video or microwave signal for commercial purposes will be considered a public utility system and will be reviewed on a case-by-case basis and approved by the Planning and Zoning Commission on an as-needed basis where it would be a benefit to the community of the Town of Milton residents and comply with § 220-52.1.

C. If there is any question as to the use, type, frequency or any other signal, a site plan review will be required by the Planning and Zoning Commission.

D. Any historic site or any property in the HP-OD shall comply with § 220-21G(7).

E. If applicable to the site or property, any apparatus shall comply with the floodplain management regulations of Chapter 125.

Section 2. Add a new § 220-52.1 additions shown by underline as follows:

§ 220-52.1 Wireless communications towers.

A. Applicability. This section applies to all wireless communications towers as defined in this section.

B. Purposes. The purposes of this section are to:

(1) Accommodate the need for wireless communications towers while regulating their location and number in the Town and to ensure compliance with all Town, State and Federal regulations, including FCC and FAA regulations.

(2) Ensure the structural integrity of the tower through compliance with applicable State, Federal and industry standards and regulations.

(3) Promote the health, safety, and welfare of the residents of the Town.

C. Definitions. The following definitions shall apply to the regulations and standards in this section.

ANTENNA SUPPORT STRUCTURE

Any pole, telescope mast, tower, tripod, lattice construction steel structure or any other structure that supports an antenna or has an antenna attached to it.

ANTENNA SUPPORT STRUCTURE HEIGHT

The vertical distance measured from the base of an antenna support structure at grade to the highest point of the structure, including any antenna affixed thereto. If the antenna support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna support structure height.

COLLOCATION

The act of siting wireless communications equipment on an existing support structure without the need to construct a new support structure and without a substantial increase in the size of an existing wireless communications tower.

EXISTING SUPPORT STRUCTURE

A previously erected structure designed to support a wireless communications tower including, but not limited to, monopoles, towers, and other freestanding, self-supporting structures.

WIRELESS COMMUNICATIONS EQUIPMENT BUILDING

A building or cabinet where electronic receiving, relay or transmitting equipment for a wireless communications tower is housed.

WIRELESS COMMUNICATIONS TOWER

The antenna, antenna support structure, wireless communications equipment building, parking and/or other structures, building, cabinets, and equipment involved in receiving or transmitting wireless communications or radio signals for commercial purposes.

D. Where allowed. New wireless communications towers may be constructed as follows, provided that they meet the criteria set forth in this chapter and other applicable criteria for special permitted uses as a public utility system.

(1) On any lot owned by or in the possession and control of the Town.

(2) On any state, county, or municipal lot for its own internal communication needs.

(3) On any private property.

E. Application requirements. Applicants seeking a special permitted use to construct, erect, relocate or alter a wireless communications tower shall comply with § 220-34, and provide the following:

(1) Specifications for proposed tower, antenna and other structures, including description of design characteristics and material.

(2) Site plan to scale showing property boundaries, tower location, height, guy wires and anchors, existing structures, elevation drawings depicting typical design of proposed structures, parking, access roads, fences, landscape plan, stormwater management plan, existing land uses on adjacent properties, and distance to all structures on adjacent properties.

(3) A report from a licensed structural engineer showing the tower capacity by type and number, and a certification that the tower is designed to withstand winds in accordance with all the applicable Town, State, and Federal construction standards.

(4) A line-of-sight analysis showing the potential visual and aesthetic impacts as well as any attract/detract lighting impacts on the adjacent residential districts.

(5) A written agreement to remove the tower and/or antenna within 60 days after cessation of use.

(6) Proof of liability insurance procured for the Town to respond to claims up to \$1,000,000 in the aggregate that may arise from operation of the tower during its life, at no cost to the Town of Milton, in a form approved by the Town Solicitor.

(7) Documentary evidence that all other authorized wireless communication service providers and owners of structures of a suitable height and location within a one-mile radius of the proposed area have been contacted by the applicant with a request for collocation and that request was denied.

(8) Any additional information required by the Town for determination that all applicable zoning regulations are met.

F. Standards.

(1) Location.

(a) The proposed tower, antenna and/or accessory structure shall be placed to allow the wireless communication tower to function in accordance with minimum standards imposed by the applicable communications regulations and the applicant's technical design requirements.

(b) The locations proposed within the lot shall consider minimizing the visual impact on the surrounding area.

(c) The applicant must show that the proposed antenna and equipment cannot be accommodated and function as required by applicable regulations and the applicant's technical design requirements without unreasonable modifications on any existing structure or tower under the control of applicant.

(2) Height.

(a) The applicant shall demonstrate that the tower and the antenna must be at the height proposed to satisfy their function in the applicant's regional plan or grid system. The applicant shall also demonstrate that the antenna height and antenna support structure height requested are not in excess of the minimum required to function satisfactorily.

(b) An antenna that is attached to a tower, telephone, electric, or utility pole, existing wireless communications tower, cellular communications or personal communications tower, water tower or other similar tall structure, together with any antenna support structure, shall not exceed the height of the existing structure by more than 10 feet.

(c) An antenna that is not mounted on an existing antenna tower shall not have an antenna height in excess of the height restrictions in the zoning district where it is located.

(3) Setbacks.

(a) The minimum distance between the base of any antenna support structure and any property line or right-of-way line shall be the larger of the following: the minimum yard setback in the underlying zoning district; or the collapse height of the proposed tower, as projected by a licensed structural engineer, plus 10 feet.

(b) The minimum distance between the base of any guy wire anchors and any property line or right-of-way shall equal 40% of the proposed antenna tower height.

(4) Fencing. A security fence shall be required around the antenna support structure and other equipment, unless the antenna(s) is mounted on an existing structure. The security fence shall be a

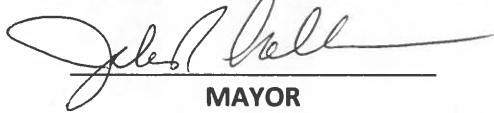
minimum of six feet in height, with a maximum of 12 feet, as determined by the Planning and Zoning Commission, and maintained in accordance with the Town property maintenance codes.

- (5) Fully automated/required parking. The wireless communications tower shall be fully automated and not require any maintenance workers to be present on a full-time basis. Adequate parking shall be required for all maintenance workers, with a minimum of two spaces provided. All parking spaces shall be constructed to conform to applicable stormwater management regulations.
- (6) Signs. No signs or other structures shall be mounted on the wireless communications tower, except as may be required by the Town, State of Delaware, FCC, FAA or other governmental agencies.
- (7) Lighting. No tower may be artificially lighted except when required by the Town, FAA or other governmental authority. When lighting is required by the FAA or other governmental authority, it shall be oriented inward so as not to project onto surrounding properties.
- (8) Design for collocation; notice to other providers. The applicant shall provide documentary evidence that all other authorized wireless communication service providers for the proposed area have been contacted by the applicant with an offer of collocation on the applicant's proposed antenna support structure.
- (9) Landscaping. The following landscaping shall be required to screen much of a newly constructed wireless communication tower:

 - (a) The disturbance of the existing topography shall be minimized unless such disturbance would result in less visual impact on the surrounding area.
 - (b) Existing vegetation on and around the land site shall be preserved to the greatest extent possible.
 - (c) An evergreen screen shall be required to surround the exterior of the security fence around the tower base and any accessory structure. The screen can either be a hedge (planted three feet on center maximum) or a row of evergreen trees (planted 10 feet on center maximum). The evergreen screen shall be a minimum of six feet at planting, and shall grow to a minimum of 15 feet at maturity.
 - (d) Where the tower abuts residentially developed land, a residential zoning district, public land, or streets, the land site perimeter shall be landscaped with at least one row of deciduous trees, not less than three inches in caliper, spaced not more than 30 feet apart, on center, and within 25 feet of the land site boundary, as well as at least one row of evergreen trees or shrubs, at least 14 feet high when planted and spaced not more than 15 feet apart and within 40 feet of the land site boundary.
- (10) Abandoned or unused portions of towers. Upon application for a tower, the owner or agent of the tower must supply the Town with a letter stating that if the tower is vacated for any reason, the owner or agent will remove the tower, all apparatus associated with it, the top three feet of the footing and restore the site to its original condition within 60 days of vacation of the tower. The owner or agent shall provide a bond in the amount of 125% of the cost for removal as determined by the Town Engineer.
- (11) Safety and maintenance. The applicant shall demonstrate that the proposed tower and any accessory structure are safe and are in accordance with the applicable regulations, and comply with the following minimum standards.

- (a) All towers shall be fitted with anticlimbing devices.
- (b) The owner of the wireless communication tower shall conduct radiation tests upon inauguration of service and on an annual basis thereafter to assure compliance with the current ANSI on "American National Standard Safety Levels with Respect to Human Exposure to Radio Frequency and Electromagnetic."
- (c) Any tower and accessory structures not properly maintained shall be required to be removed at the expense of the persons having control or receiving benefits within 60 days after receiving notice of violation from the Town.

I, **JOHN R. COLLIER** Mayor of the Town of Milton, hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the Town Council of the Town of Milton at its meeting held on the 5th day of **December, 2022** following a duly noticed public hearing, at which a quorum was present and voting throughout and that the same is still in full force and effect.



MAYOR

SYNOPSIS

This ordinance amends the Town Code's zoning ordinance by adding a section specifically relating to wireless communication towers.