

**BOROUGH OF NORTH EAST**

**ORDINANCE NO. 865**

**AN ORDINANCE OF THE BOROUGH COUNCIL OF NORTH EAST  
AMENDING SECTIONS AND ADDING  
SECTIONS OF THE NORTH EAST MUNICIPAL CODE,  
REGARDING THE REGULATION OF WIRELESS  
TELECOMMUNICATIONS FACILITIES IN THE BOROUGH OF NORTH EAST**

**BE IT ORDAINED BY THE BOROUGH COUNCIL OF NORTH EAST**

**ARTICLE I. PURPOSE**

The North East Borough Council finds and determines that the purpose of this ordinance is to establish comprehensive guidelines for the permitting, placement, design and maintenance of Wireless Telecommunications Facilities in all zones within the Borough of North East. These regulations are intended to prescribe clear, reasonable and predictable criteria to assess and process Applications in a consistent and expeditious manner while reducing impacts associated with Wireless Telecommunications Facilities. The ordinance provides standards necessary for the preservation of land uses within the Borough, while allowing for the orderly and efficient deployment of Wireless Telecommunications Facilities in accordance with state and federal laws, rules and regulations.

**ARTICLE II. DEFINITIONS**

For the purposes of this ordinance, the following words or phrases shall have the meanings ascribed to them, unless otherwise noted:

**Antenna:** means any system of wires, poles, rods, reflecting discs, panels, microwave dishes, whip antennas or similar devices used for the transmission or reception of electromagnetic waves including antennas relating to personal wireless services as defined by the Federal Telecommunications Act of 1996, whether such system is either external to or attached to the exterior of a structure (building-mounted or rooftop-mounted) or ground-mounted. Antennas shall include devices having active elements extending in any direction, and directional beam-type arrays mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be a part of the antenna.

**Collocation:** The use of a wireless telecommunications facility by more than one wireless telecommunications provider.

**High Visibility:** Means any of the following wireless communication facilities:

**Lattice tower:** A support structure constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top.

**Monopole:** A support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.

**Open Space:** Land devoted to conservation or recreational purposes and/or land designated by a municipality to remain undeveloped (may be specified on a zoning map).

**Telecommunication:** The technology which enables information to be exchanged through the transmission of voice, video, or data signals by means of electrical or electromagnetic systems.

**Wireless telecommunications antenna:** The physical device through which electromagnetic, telecommunications signals authorized by the Federal Communications Commission are transmitted or received. Antennas used by amateur radio operators are excluded from this definition.

**Wireless telecommunications equipment shelter:** The structure in which the electronic receiving and relay equipment for a wireless telecommunications facility is housed.

**Wireless telecommunications facility:** A facility consisting of the equipment and structures involved in receiving telecommunications or radio signals from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.

**Wireless telecommunications tower:** A structure intended to support equipment used to transmit and/or receive telecommunications signals including monopoles, guyed and lattice construction steel structures.

### **ARTICLE III. INTENT**

Wireless telecommunications facilities are either permitted or conditional uses in a variety of zoning districts contingent upon a number of requirements being met. These criteria are in place in an attempt to minimize adverse health, safety, public welfare or visual impacts through buffering, sighting, design and construction, and reduction of the need for new towers.

### **ARTICLE IV. USE REGULATIONS**

Wireless telecommunications facilities are permitted under varying conditions dependent upon their form and the zoning district in which they are to be located. The following sections spell out these conditions.

#### **SECTION 1 General**

The following requirements apply to all wireless telecommunications facilities regardless of the zoning district in which they are to be located. These general standards are to be

supplemented with the specific regulations for nonresidential and residential districts as set forth in Sections 2 and 3 which follow:

- (a) When the proposed wireless telecommunications facility is to include a new tower, a plot plan at a scale of not less than one inch is equal to 100 feet shall be submitted. This plot plan shall indicate all building uses within 1000 feet of the proposed facility. Aerial photos and/or renderings may augment the plot plan.
- (b) The location of the tower and equipment shelter shall comply with all natural resource protection standards established in the Zoning Code, including those for floodplain, wetlands and steep slopes.
- (c) Security fencing eight feet in height shall surround the tower, equipment shelter and any guy wires, either completely or individually, as determined by the Planning Commission.
- (d) The following buffer plantings may be located around the perimeter of the security fence as deemed appropriate by the Planning Commission: An evergreen screen shall be planted that consists of either a hedge, planted three feet on center maximum, or a row of evergreen trees planted five feet on center maximum.
- (e) Existing vegetation (trees and shrubs) shall be preserved to the maximum extent possible.
- (f) Any applicant requesting permission to install a new tower shall provide evidence of written contact with all wireless service providers who supply service within a mile of the proposed facility. The applicant shall inquire about potential collocation opportunities at all technically feasible locations. The contacted providers shall be requested to respond in writing to the inquiry within 30 days. The applicant's letter(s) as well as response(s) shall be presented to the Planning Commission as a means of demonstrating the need for a new tower.
- (g) Any application to locate an antenna on a building or structure that is listed on an historic register, or is in an historic district shall be subject to review by the Borough's Building Commissioner.
- (h) The tower shall be painted a non-contrasting gray or similar color minimizing its visibility, unless otherwise required by the Federal Communications Commission (FCC) or Federal Aviation Administration (FAA).
- (i) No advertising is permitted anywhere on the facility, with the exception of identification signage. No commercial messages nor any other signs

beyond safety warnings and an identification sign of not greater than 6 square feet shall be placed on any tower or facility.

- (j) All providers utilizing towers shall present a report to the Borough Council notifying them of any tower facility located in the municipality whose use will be discontinued and the date this use will cease. If at any time the use of the facility is discontinued for 180 days, a designated local official may declare the facility abandoned. The owner of a facility shall provide a performance bond or other financial security of twenty-five percent (25%) of the cost of the new tower, which amount may be increased by resolution of Borough Council. In the event of a transfer of ownership, the seller shall be responsible for notifying the buyer of this requirement and for notifying the Borough of the transfer. (This excludes any dormancy period between construction and the initial use of the facility.) The facility's owner/operator will receive written notice from the Borough Council and instructed to either reactivate the facility's use within 180 days, or dismantle and remove the facility. If reactivation or dismantling does not occur, the municipality will remove or will contract to have removed the facility and assess the owner/operator the costs.
- (k) No tower under 150 feet shall be artificially lighted except to assure safety or as required by the FAA. Any tower between 150 and 200 feet in height shall follow safety marking and obstruction lighting as prescribed by the FAA. Security lighting around the equipment shelter is permitted.
- (l) "No Trespassing" signs shall be posted around the facility with a telephone number of who to contact in the event of an emergency.
- (m) Applicants will provide evidence of legal access to the tower site thereby maintaining this access regardless of other developments that may take place on the site.
- (n) A Conditional Use Permit must be approved by the Planning Commission and/or Borough Council with a subsequent Building Permit issued by the Building Commissioner for construction of new towers in nonindustrial districts. Collocation of antennas on a single tower, antennas attached to existing structures/buildings, towers located in industrial districts, or replacement towers to be constructed at the site of a current tower are permitted uses and will not be subject to the Conditional use permitting process.
- (o) Any decision to deny a request to place, construct or modify a wireless telecommunications antenna and/or tower shall be in writing and supported by evidence contained in a written record of the proceedings of the Planning Commission.

- (p) Underground equipment shelters are encouraged, especially in nonindustrial districts, and may be requested by the Planning Commission. No equipment shed for a telecommunications facility shall exceed 200 square feet for a single shelter, or 500 feet for more than one shelter, in area nor 12 feet in height. All such sheds shall be screened with vegetation, or other aesthetically pleasing materials. Furthermore, all such sheds shall be secured with approved fencing and a locked gate.
- (q) Verification of compliance with the FCC's RF Emission Standards is required.
  - (i) Prior to commencing regular operation of the facility, all facility owners and operators must submit a certificate of compliance with all current Federal Communications Commission regulations concerning electromagnetic radiation and other electronic emissions applicable to the facility.
  - (ii) All facility operators and owners must sign an agreement, to be maintained by the Borough, agreeing to bring facilities into compliance with any new federal, state, or local laws or regulations concerning electromagnetic radiation and other electronic emissions applicable to the facility within 120 days of the effective date of the regulations.
- (r) Insurance on the facilities including liability for coverage in the minimum amount of \$1 million per occurrence and \$1 million on the grounds, buildings and equipment is the responsibility of the provider.
- (s) Inspection by the Borough Building Commissioner is to be permitted at all times.
- (t) Height Restrictions
  - (i) No new telecommunications facility shall exceed 100 feet in height. However, in the event of dense vegetation or other substantial obstacles to signal propagation, facilities can extend to a height or no more than 20 percent above the average tree canopy height within 1,000 feet of the proposed facility.
  - (ii) Telecommunications facilities that simulate objects that typically occur in landscapes similar to the proposed location (except billboards, electrical transmission, or telecommunications towers) may exceed 100 feet in height if, based on the judgment of the Planning Commission, it would appear in context on the landscape, is aesthetically acceptable, and would be a preferable alternative to an undisguised facility.

- (iii) Telecommunications facilities located atop or within existing buildings or structures may result in an overall increase in height of the structure of no more than ten percent of the structure's height without the facility or the maximum height allowed in the zoning district in which the structure is located, whichever is less.
- (u) No new tower shall be constructed without a setback from the tower's base of at least 1.5 times the tower height to a public or private road and at least 2.5 times the tower height to the nearest property line.
- (v) Equipment Storage:
  - (i) Antennas Mounted on Rooftops: The equipment cabinet or structure used in association with legally-placed antennas mounted on rooftops shall comply with the following:
    - a. The cabinet or structure shall not contain more than ten (10) square feet of gross floor area or be more than eight (8) feet in height. In addition, for buildings and structures which are less than sixty-five (65) feet in height, the related unmanned equipment structure, if over ten (10) square feet of gross floor area or eight (8) feet in height, shall be located on the ground and shall not be located on the roof of the structure.
    - 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 one percent (1%) of the roof area.
    - c. Equipment storage cabinets or cabinets shall comply with all applicable building Codes.
  - ii) All Other Legally-Placed Antennas: For all other legally-placed antennas, the related unmanned equipment cabinet or structure shall comply with all applicable Building Codes and shall contain no more than sixteen (16) square feet of gross floor area nor be more than twelve (12) feet in height, and may be located:
    - a. In front or side yard provided the cabinet or structure is no greater than six (6) feet in height or sixteen (16) square feet of gross floor area and the cabinet/structure shall be screened by an evergreen hedge with an ultimate height of at least sixty to sixty-six (60-66) inches and a planted height of at least thirty-six (36) inches.

- b. In a rear yard, provided the cabinet or structure is no greater than six (6) feet in height or sixteen (16) square feet in gross floor area. The cabinet/structure shall be screened by an evergreen hedge with an ultimate of eight (8) feet and a planted height of at least thirty-six (36) inches.

## **SECTION 2 Nonresidential Districts**

Wireless telecommunications facilities proposed for the following zoning districts-- industrial, commercial and institutional are subject to the following conditions:

- (a) Sole use on a lot: A wireless telecommunications facility is permitted as a sole use on a lot subject to the following:
  - (i) Minimum lot size - 7,500 square feet
  - (ii) Minimum yard requirements - Tower: the minimum distance to any single-family or two-family residential use or district lot line shall be 500 feet
  - (iii) Equipment shelter: Maximum height -Tower: 100 feet (includes antenna)
  - (iv) Maximum size of equipment shelter - 200 square feet for a single shelter, or, if there is more than one, 500 total square feet
- (b) Combined with another use: A wireless telecommunications facility is permitted on a property with an existing use subject to the following conditions:
  - (i) The existing use on the property may be any permitted use in the district or any lawful nonconforming use, and need not be affiliated with the wireless telecommunications provider. The wireless telecommunications facility will not be considered an addition to the structure or value of a nonconforming use.
  - (ii) The wireless telecommunications facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance (except during construction or an emergency).
  - (iii) Minimum lot area - The minimum lot area shall be the area needed to accommodate the tower (and guy wires, if used), the equipment shelter, security fencing and buffer planting.

- (iv) Minimum yard requirements - Tower: the minimum distance to any single-family or two-family residential use or district lot line shall be 500 feet

Equipment shelter: shall comply with the minimum setback requirements for the primary lot.

- (v) Access - The service access to the equipment shelter shall, whenever feasible, be provided along the circulation driveways of the existing use.

- (vi) Maximum height - Tower: 100 feet (includes antenna)

- (vii) Maximum size of equipment shelter - 200 square feet for a single shelter, or, if there is more than one, 500 square feet

- (c) Combined with an existing structure: Where possible an antenna for a wireless telecommunications facility shall be attached to an existing structure or building subject to the following conditions:

- (i) Maximum height - 10 feet or 10% of the building height above the existing building or structure, whichever is greater.

- (ii) If the applicant proposes to locate the telecommunications equipment in a separate shelter (not located on, or attached to, the building), the shelter shall comply with the following:

- a. The minimum setback requirements for the subject zoning district.
- b. A buffer yard may be planted in accordance with section 1D.
- c. Vehicular access to the shelter shall not interfere with the parking or vehicular circulation on the site for the principle use.
- d. The maximum size of the equipment shelter shall not exceed 200 square feet, or, if there is more than one, 500 total square feet.

### **SECTION 3 Residential Districts**

Wireless telecommunications facilities that include towers are not permitted in single-family or two family residential districts with the exception of placement on any property with an institutional use (e.g., church, park, library, municipal/government, hospital,



school, utility) located in either of these two districts. However, antennas attached to existing buildings or structures are permitted. In applying for a permit in any residential district, the applicant must present substantial evidence as to why it is not technically feasible to locate in a more appropriate nonresidential zone. Once those efforts have been exhausted, a wireless telecommunications facility may be located in a residential district subject to the following conditions:

- (a) General: The wireless telecommunications facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance. This shall apply to (b), (c), (d) and (e) below.
- (b) Combined with a nonresidential use: An antenna may be attached to a nonresidential building or a structure that is a permitted use in the district; including, but not limited to, a church, a municipal or governmental building or facility, agricultural building, and a building or structure owned by a utility. The following conditions shall be met:
  - (i) Maximum height, 10 feet above the existing building or structure
  - (ii) If the applicant proposes to locate the telecommunications equipment in a separate shelter, the shelter shall comply with the following:
    - a. The shelter shall comply with the minimum setback requirements for the subject zoning district.
    - b. The maximum size of the equipment shelter shall not exceed 200 square feet, or, if there is more than one, 500 total square feet.
    - c. A buffer yard shall be planted in accordance with section 1.(d).
    - d. Vehicular access to the shelter shall not interfere with the parking or vehicular circulation on the site for the principal use.
- (c) Located on a nonresidential-use property: A tower to support an antenna may be constructed on a property with a nonresidential use that is a permitted use within the district, including but not limited to a church, hospital, school, municipal or government building, facility or structure, agricultural use and a utility use, subject to the following conditions:
  - (i) The tower shall be set back from any property line abutting a single-family or two family residential lots by 500 feet.

- (ii) Maximum height - Tower: 100 feet (includes antenna)  
Equipment shelter: *(include the maximum building height for the district)*
  - (iii) The maximum size of the equipment shelter shall not exceed 200 square feet, or, if there is more than one, 500 total square feet.
  - (iv) Vehicular access to the tower and equipment shelter shall, whenever feasible, be provided along the circulation driveways of the existing use.
  - (v) In order to locate a telecommunications facility on a property that is vacant or with an agricultural use the tract shall be at least 10 acres.
- (d) Located on a residential building: An antenna for a wireless telecommunications facility may be attached to a mid-rise or high-rise apartment building subject to the following conditions:
- (i) Maximum height, 10 feet above the existing building.
  - (ii) If the applicant proposes to locate the telecommunications equipment in a separate shelter (not located in, or attached to, the building), the shelter shall comply with the following:
    - a. The shelter shall comply with the maximum setback requirements for the subject zoning district.
    - b. The maximum size of the equipment shelter shall not exceed 200 square feet, or, if there is more than one, 500 total square feet.
    - c. A buffer yard shall be planted in accordance with section 1D.
    - d. Vehicular access to the shelter shall, if at all possible, use the existing circulation system.
- (e) Located in open space: A wireless telecommunications facility is permitted on land that has been established as permanent open space, or a park subject to the following conditions:
- (i) The open space shall be owned by the municipality, county or state government, a homeowners association, charitable organization, or a private, non-profit conservation organization.

- (ii) Maximum height - Tower: 100 feet (includes antenna)
- (iii) The maximum size of the equipment shelter shall not exceed 200 square feet, or, if there is more than one, 500 total square feet.
- (iv) The tower shall be set back from any single-family or two-family property line 500 feet.

#### **SECTION 4 Criteria for a Conditional Use**

**Use T-1: Wireless Telecommunications Facility** A wireless telecommunications facility which includes a tower may be permitted as a conditional use in a multi-family residential, institutional or commercial district, or located on an institutionally-used property in any residential district. In order to be considered for review, the applicant must prove that a newly-constructed tower is necessary in that opportunities for collocation on an existing tower are not feasible. The following steps must also be taken for the application to be considered for review in this category:

- (a) The applicant shall present a landscaping plan that indicates how the wireless telecommunications facility will be screened from adjoining uses.
- (b) The applicant shall demonstrate that the telecommunications tower must be located where it is proposed in order to service the applicant's service area. There shall be an explanation of why a tower and this proposed site is technically necessary.
- (c) Where the telecommunications facility is located on a property with another principal use, the applicant shall present documentation that the owner of the property has granted an easement or entered into a lease for the proposed facility and that the vehicular access is provided to the facility.
- (d) Any applicant requesting permission to install a new tower shall provide evidence of written contact with all wireless service providers who supply service within a quarter mile of the proposed facility. The applicant shall inquire about potential collocation opportunities at all technically feasible locations. The contacted providers shall be requested to respond in writing to the inquiry within 30 days. The applicant's letter(s) as well as response(s) shall be presented to the Planning Commission as a means of demonstrating the need for a new tower. No towers will be permitted to be constructed on "speculation" a there must be verification of a proven need for the structure.
- (e) Co-location of antennas on existing structures such as pre-existing towers, building, water towers, street lights, utility poles and silos are the preferred means of erecting new towers. Stealth towers disguised as landscape

features are also preferred. Aesthetics and appearance of cell towers will be taken into consideration before permitting will be granted.

## **SECTION 5 Building Permit**

Items to submit for review of Building Permit application:

- (a) A report prepared by a licensed professional engineer shall be included with the submitted application and shall contain the height, design and proof of compliance with nationally-accepted structural standards published by the American National Standards Institute/Electronic Industry Association Section 222-F, as amended. The cost of expert assistance must be paid for by the applicant
- (b) A soil report complying with the standards of ANSI/EIA Section 222-F (Annex I: Geotechnical Investigations for Towers), as amended, shall be submitted to the Building Department to document and verify the design specifications of the foundation for the tower, and anchors for the guy wires, if used.
- (c) Wireless telecommunications towers and antennae shall be designed to withstand sustained winds of at least 80 miles per hour.
- (d) The ANSI/EIA Section 222-F (Annex H: Commentary on Ice Design Criteria for Communications Structures) shall be consulted for ice load specifications.
- (e) Elevations of existing and proposed structures showing width, depth, and height of the telecommunications facility as well as the specifications of the antenna and support structure shall be presented.
- (f) The applicant shall present documentation that the tower is designed in accordance with the standards established in the Use Regulations section of the Wireless Telecommunications Facilities section of the Zoning Code.
- (g) The applicant shall demonstrate that the proposed tower complies with all Federal Aviation Administration regulations concerning safety.
- (h) The applicant shall demonstrate that the proposed tower complies with all Federal Communications Commission regulations addressing radio frequency emissions standards.
- (i) When the proposed facility is to include a new tower, a plot plan, including all building uses within 1000 feet, shall be required at a scale not less than one inch equal to 100 feet. Aerial photos and/or renderings may augment the plot plan.

- (j) All applicants shall be required to construct or locate on a base tower structure and structure foundation that is designed to be buildable up to 100 feet above the finished grade. Although the initial capacity may be for one antenna, the structure shall be designed to serve as a base for a reconstructed tower with the capacity for three (3) providers when constructed to the maximum allowable height.
- (k) Underground equipment shelters are encouraged, especially in nonindustrial areas, and may be requested by the Building Commissioner.
- (l) A projection of the applicant's anticipated future wireless telecommunications facility siting needs within the Borough, which information may be used by the Borough as part of a master planning effort designed to ensure a more planned, integrated and organized approach to wireless telecommunications facility siting is required.
- (m) An identification of the geographic service area for the subject installation, including a map showing all of the applicant's existing sites in the local service network associated with the coverage gap the wireless telecommunications facility is meant to close, and describing how the coverage gap will be filled by the proposed installation.
- (n) An accurate visual impact analysis showing the maximum silhouette, viewed analysis, color and finish palette and proposed screening for the wireless communication facility. The analysis shall include photo simulations and other information as necessary to determine visual impact of the wireless telecommunications facility. A map depicting where the photos were taken shall be included. The analysis shall include a written description of efforts to blend the wireless telecommunications facility with the surrounding area.
- (o) Noise and acoustical information derived from the manufacturer's specifications for all equipment such as air conditioning units and back-up generators, and a depiction of the equipment location in relation to adjoining properties.
- (p) The height and diameter of the facility, together with evidence that demonstrates that the proposed wireless telecommunications facility has been designed to the minimum height and diameter required from a technological standpoint for the proposed site. If the facility will exceed the maximum permitted height limit, as measured from grade, a discussion of the physical constraints (topographical features, etc) making the additional height necessary shall be provided.
- (q) A description of the maintenance and monitoring program for the wireless telecommunications facility and associated landscaping.

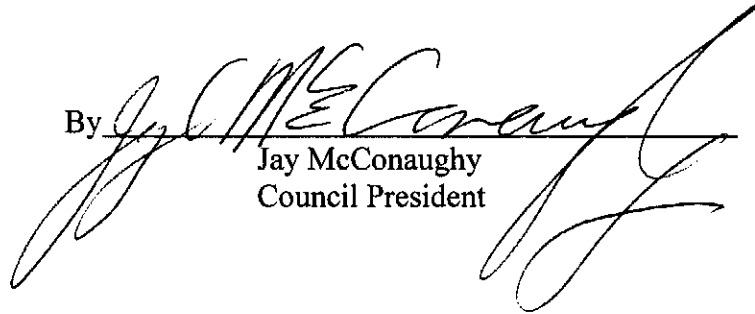
- (f) A written statement of the applicant's willingness to allow other carriers to co-locate on the proposed wireless telecommunications facility wherever technically and economically feasible and aesthetically desirable.

ORDAINED AND ENACTED into law by the Borough Council this 6th day of September 2011.

[SEAL]

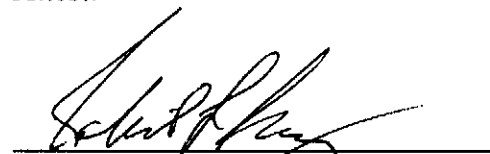
THE BOROUGH COUNCIL OF THE BOROUGH  
OF NORTH EAST

By



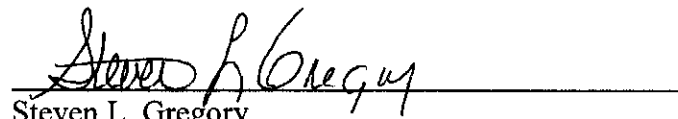
Jay McConaughy  
Council President

Attest:



Robert L. Brayman  
Borough Manager/Secretary

Approved this 6th day of September, 2011.



Steven L. Gregory  
Mayor

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