

**BOROUGH OF MANVILLE
ORDINANCE 2011-1102**

AN ORDINANCE REGULATING WIRELESS TELECOMMUNICATIONS EQUIPMENT AND FACILITIES

Section 1. Definitions

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

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 communications signals.

BACKHAUL NETWORK — Lines that connect a providers' towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

CELLULAR ANTENNA — Antennas which are used for the transmission and reception of wave frequencies for the purposes of telephone, radio, paging and/or television communication and which are permitted as "conditional uses" in accordance with the specific zoning conditions and standards for their location and operation within this section. For the purposes of this section "cellular antennas," as referred to in the 1996 Federal Telecommunications Act, shall not be considered to be a public utility.

FAA — The Federal Aviation Administration. **FCC** — the Federal Communications Commission.

PUBLIC VIEW — Visible from a public thoroughfare, public lands or buildings or navigable waterways.

TELECOMMUNICATIONS ACT — Federal Telecommunications Act of 1996 and amendments or modifications which may be made thereto.

TOWER — Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communications purposes, 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.

WIRELESS TELECOMMUNICATIONS EQUIPMENT COMPOUND — A fenced in area which houses any combination of wireless telecommunications structures, buildings, antennas, equipment, and/or towers.

WIRELESS TELECOMMUNICATIONS STRUCTURES, ANTENNAS, EQUIPMENT, AND/OR TOWERS — Buildings and/or structures and equipment for the delivery of wireless telecommunications, except for satellite dish antennas. Wireless telecommunications tower means a vertical structure used for wireless telecommunications antennas.

Section 2. Purposes.

It is the purpose of these article provisions to provide specific zoning conditions and standards for the location and operation of cellular antennas for telephone, radio, paging and other personal wireless communication services and/or telecommunications within the Borough of Manville which, while acknowledging that, at times, there may be inherent benefits derived from the construction and operation of such antennas, also recognized, is the need to safeguard the public good and preserve the intent and purpose of the Borough of Manville Zone Plan. This article seeks to meet the mandate of the Telecommunications Act of 1996 while at the same time limiting the proliferation of wireless telecommunications towers.

Section 3. Objectives.

The overall objective of these article provisions is to enable the location within the Borough of Manville of those antennas and/or towers which have been determined by the Telecommunications Act to be necessary and protected so as to provide full and seamless communication services while, at the same time, limiting the number of supporting towers to the extent reasonably practicable. Therefore, since the Telecommunications Act has recognized that service carriers have the right to provide cellular communication service within the Borough of Manville, it also is an objective of these article provisions that many of the different carriers locate their antennas on the same tower in order to limit the overall number of towers within the Borough to the extent reasonably practicable.

Section 4. Conditional use.

A. Notwithstanding anything in the Zoning and Land Use Ordinances of the Borough of Manville to the contrary, the installation of wireless telecommunications structures, antennas, equipment and/or towers and their respective locations shall be a conditional use in the following zoning districts of the Borough: I-Industrial District and C-Commercial District. They are prohibited in all other zoning districts.

B. The installation of wireless telecommunication service shall also be prohibited on any school property, parks and playgrounds, recreations facilities or land dedicated as Green Acres, irrespective of whatever zoning district they are in.

C. Nothing within this article shall be deemed to apply to municipal towers.

Section 5. Maximum height.

A. The maximum height of any proposed cellular antenna and any proposed new cellular tower shall be demonstrated by the applicant to be the minimum height necessary for the proposed installation to satisfactorily operate, but in no event in excess of the following standards for height, exclusive of lightning rods:

- (1) Singular vendor: 120 feet.
- (2) Two vendors: 120 feet.
- (3) Three or more vendors: 120 feet.

B. All tower footings shall be designed to permit future extensions to a maximum height of 120 feet.

Section 6. Location priorities.

If needed, in accordance with an overall comprehensive plan for the provision of full cellular communication services within the Borough utilizing the fewest number of towers to the extent reasonably practicable, cellular antennas and wireless telecommunications structures, antennas, equipment and/or towers shall be permitted as conditional uses at the following prioritized locations:

- A. The first priority location shall be an existing tower, building, silo, steeple or structure or any existing or proposed water tower or water stand pipe within or near the Borough of Manville in the zoning districts delineated in Section 4.
- B. The second priority location shall be on lands owned by the Borough of Manville in the following zoning districts within the Township in order of priority:
 - (1) I-Industrial districts
 - (2) C-Commercial districts.
- C. The third priority location shall be on lands within the Borough of Manville not owned by the Borough zoned as follows in order of priority:
 - (1) I-Industrial districts.
 - (2) C-Commercial districts.

Section 7. Area, setback and miscellaneous requirements.

- A. If the proposed antennas will be attached to an existing tower or to an existing water tower or water stand pipe or other structure or building, no land area shall be required in addition to the land area upon which the existing structure or equipment is situated; or
- B. If the proposed antennas and supporting tower will be on lands within the nonresidential zoning districts recited in Section 6B above and owned by the Borough of Manville, the land area required shall be approved by the Planning Board with consideration given to existing site conditions and surrounding land uses and shall be subject to a lease agreement between the applicant and the Borough of Manville.
- C. If the proposed antennas and proposed new supporting tower will be on land within the Borough of Manville zoned I-Industrial and C-Commercial, the following minimum bulk requirements shall be met:
 - (1) The proposed antennas and proposed supporting tower and ancillary building enclosing related electronic equipment shall be located on a lot size in accordance with the following formula:
 - (a) The total enclosure, including the footprint, shall not be greater than 50 feet by 50 feet.
 - (b) The setback from the footprint to the property boundaries shall adhere to the applicable zone standards.
 - (2) Excepting for any access driveway into the property, any required landscaping and any underground utility lines reviewed and approved by the Planning Board as part of the site plan submission, no building, structure and/or disturbance of land shall be permitted:
 - (a) Within a distance of 100 feet from the property line of any existing residence.
 - (b) Within a distance closer than 2,500 feet from another tower.
 - (c) Within a distance closer than 200 feet from a school property line.
 - (3) All utilities serving the site shall be underground where reasonably practicable.
 - (4) A wireless telecommunications equipment compound shall be unoccupied other than purposes of repair, maintenance and/or construction.

Section 8. Overall comprehensive plan.

In order to provide evidence that the proposed location of the proposed wireless telecommunications structures, antennas, equipment and/or towers have been planned to result in the fewest number of tower locations within the Borough of Manville at the time full service is provided by the applicant throughout the Borough, the applicant shall provide an overall comprehensive plan indicating how it intends to provide full service throughout the

Borough of Manville and, to the extent reasonably practicable, shall indicate how its plan specifically relates to and is coordinated with the needs of all other providers of cellular communications services within the Borough of Manville. Essentially and summarily, the overall comprehensive plan shall indicate the following:

A. Documentary evidence regarding the need for new wireless telecommunications antennas within the Borough with due consideration given to the Borough population. This information shall identify the wireless network layout and coverage area to demonstrate the need for new equipment at a specific location within the Borough as well as future plans for applicant's expansion to the extent reasonably foreseeable.

B. Documentary evidence that a legitimate attempt has been made to locate the antennas on existing buildings or structures. Such evidence shall include a radio frequency engineering analysis of the potential suitability of existing buildings or structures in the search area for such antennas. Efforts to secure such locations shall be documented through correspondence between the wireless telecommunications provider and the property owner of the existing buildings or structures and statements under oath by the applicant.

C. Document the locations of all existing communication towers and/or antennas within the Borough of Manville and surrounding areas with coverage in the Borough and shall provide competent testimony by a radio frequency expert regarding the suitability of potential locations in light of the design of the wireless telecommunications network. Where a suitable location on an existing tower is found to exist in the zoning districts delineated in Section 4, but an applicant is unable to secure an agreement to collocate its equipment on such tower, the applicant shall provide credible written evidence of correspondence with the owner of such tower or statements under oath verifying that suitable space is not available on the existing tower.

D. Explain how the proposed location of the proposed antennas relates geographically to the location of any existing towers within and near the Borough of Manville.

E. Explain how the proposed location of the proposed antennas relates to the anticipated need for additional antennas and supporting towers within and near the Borough of Manville by the applicant and by other providers of cellular communication services within the Borough to the extent such information is not proprietary and can be obtained with reasonable effort.

F. Explain how the proposed location of the proposed antennas relates to the objective of collating the antennas of many different providers of cellular communication services on the same tower.

G. Explain how the proposed location of the proposed antennas relates to the overall objective of providing full cellular communication services within the Borough while, at the same time, limiting the number of towers to the extent reasonably practicable.

Section 9. Visual compatibility requirements and sound design standards.

A. Wireless telecommunications antennas may be erected on existing buildings or structures and a wireless telecommunications compound may be constructed in support of such

antennas within the zoning districts delineated in Section 4 consistent with the following requirements:

- (1) Antenna arrays may be mounted on such existing buildings or structures, but shall not extend beyond the overall height of any such building or structure by more than 10 feet.
- (2) The wireless telecommunications equipment compound shall be enclosed within a fence at least seven feet and no more than eight feet high as approved by the Borough Engineer which shall include a locking security gate.
- (3) A wireless telecommunications equipment compound consisting of no more than 900 square feet may be erected in support of such antenna arrays provided:

(a) It is situated behind existing structures, buildings or terrain features which shall shield the wireless telecommunications equipment compound from public view; or

(b) When a location out of public view is not reasonably practicable, a landscape buffer shall be provided outside the fence around the wireless telecommunications equipment compound to shield the facility from public view. Landscaping shall include native evergreen and deciduous trees at least eight feet high at the time of planting.

B. Antennas installed according to these provisions shall be suitably finished and/or painted so as to minimize their visual impact on the landscape. Depending on the placement of this equipment, color shall be selected to be consistent with the color scheme of the building or structure on which they are mounted, in order to blend with their surroundings. When this is not reasonable or practicable, color selection shall be designed to minimize the visual impact of the antenna arrays.

C. Where new wireless telecommunications towers or other antennas support structures are proposed, stealth designs where reasonably practicable shall be employed to camouflage their appearance, such as bell towers, silos, artificial trees and similar treatments. The degree and nature of such stealth designs shall depend upon the specifics of the site involved so as to provide the most appropriate designs under the circumstances presented.

D. The NJDEP noise regulation (N.J.A.C. 7:29) limits the A-weighted sound levels produced by a commercial facility when measured at a property line. A-weighting is a standardized sound level meter setting having a frequency characteristic similar to the human ear/brain sensitivity and, therefore, provides an overall sound level measurement which correlates with how people perceive noise. The following levels are applicable:

(1) Daytime regulation: (7:00 a.m. to 10:00 p.m.)

<u>31.5</u>	<u>63</u>	<u>125</u>	<u>250</u>	<u>500</u>	<u>1,000</u>	<u>2,000</u>	<u>4,000</u>	<u>8,000</u>
96	82	74	67	63	60	57	55	53
Sound Pressure Level								

(2) Nighttime regulation: (10:00 p.m. to 7:00 a.m.)

<u>31.5</u>	<u>63</u>	<u>125</u>	<u>250</u>	<u>500</u>	<u>1,000</u>	<u>2,000</u>	<u>4,000</u>	<u>8,000</u>
86	71	61	53	48	45	42	40	38
Sound Pressure Level								

(3) The NJDEP noise regulation limits the peak sound pressure levels of an impulsive sound when measured at a residential property line, to 80 decibels during all hours of the day.

Section 10. Design standards.

A. Any proposed building enclosing related electronic equipment shall not be more than 12 feet in height nor more than 300 square feet in area and only one such building shall be permitted on the lot for each provider of cellular communications services located on the site.

B. Any proposed new tower shall be a monopole unless the applicant can demonstrate and the Planning Board agrees, that a different type pole is necessary for the co-location of additional antennas on the tower.

C. No antenna shall be located on any tower in order to provide noncellular telephone service; such service shall be provided via existing telephone lines if available to the site, or by the underground extension of telephone lines to the site if necessary.

D. All proposed antennas, any proposed new tower and any proposed building enclosing related electronic equipment shall be colored to best blend with the surroundings, including any site vistas.

E. Other than typical "warning," "emergency" and equipment information signs, no signs are permitted. Emergency signs shall be on plates attached to the tower or building and shall not exceed two square feet.

F. No lighting is permitted, except as follows, which shall be subject to review and approval by the Planning Board as part of the site plan application:

(1) The building enclosing electronic equipment may have one light at the entrance of the building, provided that the light is attached to the building, is focused downward and is switched so that the light is turned on only when workers are at the building. This shall be exclusive of lights equipped with motion detectors. To the extent these requirements are inconsistent with BOCA requirements, the BOCA requirements shall apply; and

(2) No lighting is permitted on a tower except lighting that is specifically as required by the FAA and any such required lighting shall be focused and shielded to the greatest extent possible so as not to project toward adjacent and nearby properties.

G. No cellular antenna and/or its related electronic equipment shall interfere with any public safety communications subject to FCC rules and regulations.

H. All equipment shall be designed and automated to the greatest extent possible in order to reduce the need for on-site maintenance and thereby, minimize the need for vehicular trips to and from the site.

I. Minimal off-street parking shall be permitted as needed and as approved by the appropriate Board having jurisdiction.

J. All towers shall be designed with anti-climbing devices in order to prevent unauthorized access. Additionally, any tower supporting the cellular antennas and any building enclosing related electronic equipment shall be surrounded by a fence between seven feet and eight feet high. The fence shall be bordered by a landscape buffer pursuant to Section 9A(3)(b).

K. Additional safety devices shall be permitted as needed and as approved by the appropriate Board having jurisdiction.

L. Between any existing or zoned residential property bordering the proposed lot and the location of any proposed new tower or any proposed building enclosing related electronic equipment, a landscaped buffer at least 20 feet deep shall be provided in accordance with the following:

(1) The landscaped buffer shall consist of a combination of existing and/or newly planted evergreen and deciduous trees of sufficient density to screen the view of the tower and building from the surrounding properties to the maximum extent possible.

(2) Any newly planted evergreen trees shall be at least eight feet high at time of

planting and any newly planted deciduous trees shall be a minimum caliper of 2 1/2 inches to three inches at time of planting.

M. Towers and antennas shall meet the following requirements:

(1) Towers shall be subject to any applicable standards of the FAA and, to the extent reasonably practicable, 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 them into 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 such as sky blue 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 reasonably practicable.

(4) The applicant shall submit a report from a qualified expert certifying that the wireless telecommunications antenna and equipment facility comply with the latest structural and wind-loading requirements as established by applicable building and electrical codes. The applicant shall provide a description of the number and type of antennas that may be accommodated and the effect on structural integrity.

Section 11. Site plan submission and approval requirements.

A. Wireless telecommunications structures, antennas, equipment and/or towers and cellular antennas for telephone, radio, paging and/or television communication shall require major site plan review and approval in accordance with the zoning and land use ordinances of the Borough of Manville.

B. In addition to the applicable documentation and items of information required for major site plan approval contained in the zoning and land use ordinances of the Borough of Manville and on the related checklist, the following additional documentation and items of information specific to wireless telecommunications are required to be submitted to the Board of Adjustment or Planning Board, as appropriate, for review and approval as part of the site plan submission:

(1) Documentation by a qualified professional engineer expert in structural engineering regarding the capacity of the proposed tower for the number and type of antennas.

(2) Documentation by a qualified professional engineer expert in structural engineering that any proposed tower will have sufficient structural integrity to support the proposed antennas and the anticipated future collocated antennas and that the structural standards developed for antennas by the Electronic Industry Association (EIA) and/or the Telecommunications Industry Association (TIA) have been met.

(3) A letter of intent by the applicant in a form which is reviewed and approved by the Borough Planning Board Attorney or Zoning Board of Adjustment Attorney indicating that the applicant will share the use of any tower with other approved cellular communication services and that the cost to achieve co-location to other carriers shall not exceed fair market value. This co-location requirement shall be a condition of approval.

(4) A visual site distance analysis using balloon testing and a composite image, graphically simulating the appearance of any proposed tower and indicating its view from at least the five locations around and within one mile of the proposed tower where the tower will be most visible.

C. An environmental assessment or inventory study in accordance with the zoning and land use ordinances of the Borough of Manville shall be required. Proof that the applicant meets FCC standards as to radiation emissions shall also be required.

D. A report from a qualified expert containing the following:

(1) A description of the tower and the technical and other reasons for the tower design and height.

(2) Documentation by a professional engineer to establish that the tower has sufficient structural integrity for the proposed uses of the proposed location and meets the minimum safety requirement margins according to FCC requirements and their current adopted revision as well as BOCA requirements.

(3) The general capacity, of the tower in terms of the number and type of antenna it is designed to accommodate.

E. A letter of commitment pursuant to Section 11B(3) by the applicant to lease excess space on the tower to other potential users at prevailing market rates and conditions. The letter of commitment shall be recorded prior to issuance of a building permit. This letter shall commit the tower owner and successors in interest.

F. Elevations of the proposed tower and accessory building generally depicting all proposed antennas, platforms, finish materials and all other accessory equipment.

G. A copy of the lease or deed for the property, redacted so as to protect the lessor and lessee proprietary and confidentiality interests.

H. The site plan shall also provide the following information:

(1) Legal description of the parent tract and lease parcel.

(2) The setback distance between the proposed tower and the nearest residential unit, planned residentially zoned properties and unplatted residentially zoned properties.

(3) The separation distance from other towers described in the inventory of existing sites submitted. The applicant shall also identify the type of construction of the existing tower and owner/operator of the existing tower if known.

(4) A landscape plan showing specific landscape materials.

(5) Method of fencing and finished color and, if applicable, the method of camouflage and illumination.

(6) Identification of the entities providing the backhaul network for the tower described in the application and other cellular sites owned or operated by the applicant in the municipality and surrounding competitor sites, to the extent reasonably obtainable.

(7) 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.

Section 12. Antenna modifications.

Operators of wireless telecommunications towers shall provide to the Borough of Manville a report every three years from a licensed professional engineer certifying the structural integrity of the tower, together with all antennas mounted thereon and whether they remain in use, and that they meet applicable minimum safety requirements. Such report shall also be provided whenever antenna arrays are modified, and shall include a detail listing of all antennas and equipment so certified. Vendors shall also be required to notify the Borough when the use of such antennas and equipment is discontinued. A satisfactory insurance company inspection report shall be deemed to meet the requirements of this section.

Section 13. Co-location required.

Authorization for the construction for a new wireless telecommunications tower shall be conditioned on agreement by the tower owner that other wireless telecommunication service providers will be permitted to co-locate on a proposed tower within the limits of structural and radio frequency engineering requirements and at rates which reflect a fair market price for such service. As part of the application for tower approval, the applicant shall document the extent to which additional equipment could be mounted on the tower, the extent to which the height of the tower could be increased and the type of equipment which could be accommodated. Such request for approval shall be considered to be a "C" or bulk variance to be reviewed by the Planning Board.

Section 14. Application and escrow fees.

Development application and escrow fees for wireless telecommunications installations are as provided in Ordinances #725 and #727.

Section 15. Restoration provisions.

The applicant shall provide a performance bond and/or other assurances satisfactory to the Planning Board in a form approved by the Borough Attorney that will cause the antennas, the supporting tower, the ancillary building enclosing related electronic equipment and all other related improvements to the land to be removed at no cost to the Borough, when the antennas are no longer operative. Any communication facility not used for its intended and approved purpose for a period of 12 months shall be considered no longer operative and abandoned and shall be removed by the applicant or their assigns within 60 days thereof. If the use of the tower is 10% or less of its maximum permitted capacity, it shall be considered no longer operative and therefore abandoned.

Section 16. Applicability.

A. All new towers or antennas shall be subject to this article and to the jurisdiction of the Planning Board except as provided in Subsection C hereinbelow.

B. Pre-existing towers and pre-existing antennas shall not be required to meet the requirements of this article, but shall be required to meet the requirements of all state and federal regulations on the subject including FCC, FAA and BOCA requirements. However, at time of submission of any application for site plan approval, such towers and antennas shall be brought into conformance with this ordinance where reasonably practicable.

C. All other planned and nonconforming structures and expansions of existing antennas, structures, towers or wireless telecommunications equipment compounds shall be deemed to be an expansion of a nonconforming use and shall require a "D" variance from the Zoning Board of Adjustment pursuant to N.J.S.A. 40:55D-70(d).

Section 17. Other requirements.

A. All antennas, structures, towers, or wireless telecommunications equipment compounds shall be insured with liability coverage as follows: \$1,000,000 to \$3,000,000 with the Borough named as co-insured. Evidence of such insurance coverage shall be submitted to the Borough Attorney or his designee at the time of approval and each succeeding year by the anniversary date of the approval.

B. All other applicable requirements of this article contrary to the specific conditions and standards specified herein shall be met, but waivers and/or variances of all applicable requirements of this article may be granted by the Planning Board or Zoning Board of Adjustment.

Section 18. Repealer.

Any ordinance or part of any ordinance which is inconsistent with this ordinance shall be repealed as to its inconsistencies only.

Section 19. Severability.

If any section of this ordinance is adjudged invalid, such determination shall apply only to the specific section so adjudged and the remainder of the ordinance shall be deemed valid.

Section 20. Effective Date.

This Ordinance shall take effect after final passage and publication according to law.

ORDINANCE #2011-1102

FIRST READING:

Introduced	Seconded	Council	Yes	No	Abstain	Absent
√		ASHER	√			
		FISCHER	√			
		LYNN				√
		ONDERKO	√			
		PETZINGER	√			
	√	SZABO	√			
		MAYOR ZUZA				

PASSED this 14th day of February, 2011

Attest:

Philip E. Petrone, Borough Clerk

SECOND READING:

Introduced	Seconded	Council	Yes	No	Abstain	Absent
	√	ASHER	√			
		FISCHER	√			
√		LYNN	√			
		ONDERKO	√			
		PETZINGER	√			
		SZABO	√			
		MAYOR ZUZA				

PASSED this 14th day of March, 2011

Attest:

Philip E. Petrone, Clerk