

# ORDINANCE NO. 13- 8

## AN ORDINANCE RELATING TO COMMERCIAL COMMUNICATIONS TOWERS AND ANTENNAS

THE COUNCIL OF THE TOWN OF FREDERICA HEREBY ORDAINS:

**Section 1.** That the Table 7-1 of the Frederica Land Development Ordinance be amended by adding a new entry to the Not Grouped Elsewhere section of the Table to list Commercial Communications Towers and Antennas as Conditional Uses in the AO and I zones.

**Section 2** That Section 4-8 of the Frederica Land Development Ordinance be amended by adding a new subsection, Subsection D, to read as follows:

### D. Commercial communications towers and antennas

1. Commercial communication towers and antennas shall comply with the following conditions in regards to location, siting, and height:

(a) Location. Commercial communication towers and antennas shall be conditional uses in the AO and I zones.

(b) Siting. The siting is the method of placing the tower or antenna on a specific area within the subject parcel. Commercial communication towers and antennas shall follow the setbacks mandated in subsection H.

(c) Height. The following provisions are given pertaining to height requirements for commercial communication towers and antennas:

(1) The maximum height for a tower is 200 feet.

(2) District height requirements do not apply to these towers.

(3) Any other structures must still adhere to the height requirements of each district.

2. Tower or antenna applications shall be accompanied by an independent professional engineer's report entitled "Engineer's Report for Communication Town Application" and shall contain the following:

(a) Purpose. The purpose of this engineer's report is to collect key technical information regarding the communication tower applicant in order to justify the proposed communication tower application. All information, findings and recommendations written and described in this engineer's report shall be reviewed for technical merit by the Town or its designee. The designee will act as a third party reviewer who will provide the Town with an independent evaluation of the applicant's engineers report. The applicant shall be responsible for all of the Town's designee/third party reviewing fees. All information, findings and recommendations in this engineer's report shall be utilized as substantial evidence to approve or deny the proposed communications tower application. Therefore, precise technical information should be documented by the applicant in this report. If information, findings

and/or recommendations are found to be not valid by the Town or its designee reviewer of this report, substantial delays and potential denial of the report may occur. Towers that are accessory to a first permitted business or industry are exempt from the engineer's report. This relates to businesses requiring communication with their employees only.

(b) Process. The following information is to be answered.

(1) Background Information. Please complete the following:

- [a] Name of company.
- [b] Name of point of contact (POC) for company.
- [c] Address of company.
- [d] Phone number of company and POC.
- [e] Federal Communications Commission (FCC) license number (please submit a copy of the license to cover the Town).
- [f] Date of FCC license issuance.
- [g] Type of license [cellular or personal communications services (PCS)].
- [h] Service area (metropolitan, rural, major and/or basic).

(2) Proposed location information.

- [a] Eight-digit UTM grid coordinate of proposed tower location.
- [b] Latitude and longitude coordinates in NAD27 and NADS3 of the proposed location.
- [c] Ground elevation in feet above mean sea level (AMSL).
- [d] Description of desired coverage area, or coverage goals, from the proposed location.
- [e] Federal Communications Commission (FCC) license number (please submit a copy of the license to cover the Town).
- [f] Description of existing towers within a five-mile radius of your proposed tower location(s) to include the following information:

- [1] Eight-digit UTM grid coordinate location of existing tower(s).
- [2] Latitude and longitude coordinates in NAD27 and NAD83 of each existing tower.
- [3] Ground elevation in AMSL of each existing tower.
- [4] Overall height of each existing tower in feet above ground level (AGL).
- [5] Available location (height) on each existing tower in feet AGL.
- [6] Name, address, and phone number of tower(s) owners.

[7] Number of existing collocations on tower(s).

[8] Structural capability of each tower to handle more antennas.

[9] Major use of each tower (i.e., PCS, cellular, etc.).

[10] Existing tower design (i.e., monopole, etc.).

[11] Current zoning of proposed tower location.

(3) Proposed tower information.

[a] Proposed height of tower.

[b] Proposed height of antennas in feet AGL.

[c] Tower design (i.e., monopole, etc.).

[d] Proposed coverage area (descriptive of roadways and other desired areas).

[e] Number and types (i.e., cellular, PSC, etc.) of allowable collocates on proposed tower.

[f] Frequency of transmission (i.e., 870 MHZ, 1900 MHZ, etc.).

[g] Power of proposed facility in effective radiated power (ERP).

[h] Type of antennas for proposed facility.

[i] Azimuth of antennas for proposed facility.

[j] Downtilt of proposed antennas.

[k] Any calculations utilized to achieve design requirements (i.e., Okumura Study results, etc.).

[l] Please submit copies of any propagation analysis or drive test studies used for analysis.

[m] Type of coverage (i.e., single or system).

[n] Fate of tower if no longer being utilized (i.e., when will it be disassembled after no longer being utilized for 120 consecutive days; who will pay for its disassembly?).

[o] List alternative locations analyzed for this application and state if they can be utilized or why they cannot be utilized:

(4) National Environmental Policy Act (NEPA) review. (The applicant is to describe the NEPA analysis performed as required in Subpart 1, Part 1, of the Federal Communication Commission's Rules, 47 CFR 1.1301 to 1.1319.)

(5) Applications for communication towers shall be submitted to 436 CES and 436 OSS/OSAB when the construction site is within ten nautical miles of Dover Air Force Base.

(c) Collocation requirements. A proposal for a new commercial communication tower and antenna shall not be approved unless the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing tower or building within the following search radius of the proposed tower (one-mile radius for towers over 120 feet in

height; one-half-mile search radius for towers under 120 feet in height; and one-quarter-mile search radius for towers under 80 feet in height) for one or more of the following reasons:

(1) The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified and licensed professional engineer, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.

(2) The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost.

(3) Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer.

(4) Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.

(d) Any proposed commercial wireless telecommunication service tower shall be designed structurally, electrically and in all respects to accommodate both the applicant's antennas and comparable antennas for at least one additional user if the tower is over 60 feet in height or for at least two additional users if the tower is over 100 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

(e) Landscaping shall be provided around the base of the tower and adjacent to the required minimum six-foot-high security fence equipped with an appropriate anti-climbing device. The landscaping shall consist of a minimum twenty-five-foot-wide planting strip with ground cover and/or grass, including at least one row of six-foot-high evergreen trees adjacent or proximate to the fence and ten-foot-high, one-and-one-half-inch caliper deciduous trees no more than 20 feet apart. Applicants may substitute alternative landscape plans that meet the intent of this section to limit the visual impact.

(f) Each applicant shall provide the Planning Commission with an inventory of existing towers that are within a one-mile radius of the proposed site and specifying location, height and design of the tower.

(g) A tower shall be located so as not to encroach into any established public or private airport approach zone as established by the Federal Aviation Administration.

(h) Any principal part of an antenna tower, excluding guy cables, shall be set back from the street line, any property line or any line that establishes the site area on which it is located a distance of not less than the height of each tower, or unless specified elsewhere in this section.

(i) Any blinking or rotating light thereon shall be screened so as not to throw its lights below the horizontal plane in which it is installed.

(j) No identification sign thereon shall be illuminated. Signs other than identification and warning signs are prohibited.

(k) The owner of the facility shall conduct radiation tests upon inauguration of service and on an annual basis thereafter for a period of five years to assure compliance with ANSI C 95.1-1982, entitled "American National Standard Safety Levels with respect to Human Exposure to Radio Frequency and Electromagnetic Fields."

(l) If 75% of the homeowners within a five-mile radius complain of radio and/or television interference the approval may be revoked.

(m) Abandoned or unused towers or portions of towers shall be removed as follows:

(1) All abandoned or unused towers and associated facilities shall be removed within 12 months of the cessation of operations at the site unless an extension is approved by the Planning Commission. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted at the time of application. In the event that a tower is not removed within 12 months of the cessation of operations at a site, the tower and associated facilities may be removed by the Town and the costs of removal assessed against the property.

(2) Unused portions of towers above a manufactured connection shall be removed within six months of the time of antenna relocation. The replacement of portions of a tower previously removed requires the issuance of a building permit.

(n) This section will not affect amateur radio towers.

(1) This section shall not govern any tower or installation of antenna that is under the maximum height requirement of the district regulations in which it is located, owned and operated by federal licensed amateur radio operators, or is used exclusively for receive only antenna.

(2) A preexisting tower and antenna for which a permit has been properly issued prior to the effective date of this chapter shall become legal nonconforming use.

(o) The reviewing body may impose any other appropriate or more stringent conditions it deems necessary to protect the health, safety and welfare of the neighborhood.

(p) Where, in the case of a particular commercial communication tower or antenna, it can be demonstrated to the satisfaction of the Town Council, through the conditional use site plan review process, that strict compliance with the requirements of this section would result in extraordinary hardship to the applicant due to specific constraints related to lot configuration, orientation of existing buildings on adjacent lots, existing built conditions, or specific service

delivery limitations, the siting criteria and bulk requirements listed above cannot be met, the Town Council may vary, modify or waive the requirements so that substantial justice may be done and the public interest secured; provided, however, that such variance, modification or waiver shall be to the minimum extent possible so as to preserve the purpose and intent of this section.

**Section 3.** Severability. The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph shall be held unconstitutional or violate the Laws of the State of Delaware by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

**Section 4** Effective Date. This ordinance shall become effective thirty days after adoption.

#### SYNOPSIS

This ordinance regulates commercial communication towers and antennas.

Repealer: All ordinances and parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

Date of Effect: The Clerk shall certify to the adoption of this Ordinance and cause the same to be published as required by law; and this Ordinance shall take effect and be in force thirty days from and after its approval by Council.

**ORDAINED AND ENACTED INTO THE LAW** by a majority vote of the Council Members present at a regular session of Frederica Town Council, Delaware on the 20 day of Nov, A.D. 2013.

First Reading: Nov 20, 2013

Public Hearing and Second Reading: Dec 18, 2013

Published: JAN 17, 2014

William C. Glanden

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Mayor

I do hereby certify that the foregoing is a true and correct copy of the Ordinance passed by the Town Council at its meeting on DEC 18, 2013 at which meeting a quorum was present and voting throughout that the same is still in full force and effect.

Ricky Maddox  
RICKY MADDOX  
COUNCIL SECT.