

**ORDINANCE 19-2013**

**ORDINANCE AMENDING CHAPTER 96 OF THE CODE OF THE  
BOROUGH OF CLAYTON BY CREATING A WIRELESS  
COMMUNICATION ANTENNA CONDITIONS AND STANDARDS  
(UNIFIED DEVELOPMENT ORDINANCE)**

*BE IT ORDAINED* by the Mayor and Council of the Borough of Clayton that Chapter 96, "Unified Development Ordinance", be amended by adding a new section to be entitled "Wireless Antenna Conditions and Standards" to read as follows:

Section 1.

1. The industrial district set forth under Article III, Zoning District, of this chapter in Section 21, and in accordance with the specific zoning conditions and standards for their location and operation included within this new section.
  - A. Purposes. It is the overall purpose of these provisions to provide specific zoning conditions and standards for the location and operation of wireless communication antennas within the Borough of Clayton, to recognize the need to safeguard the public good and preserve the intent and purposes of the Clayton Borough Master Plan and Zone Plan.
  - B. Overall objective. The overall objective of these provisions is to enable the location within the Borough of Clayton of those antennas which are necessary to provide adequate wireless communication services while, at the same time, limiting the number of antennas, and limiting the number of supporting towers to the fewest possible and therefore specifically encouraging the use of existing towers on Borough of Clayton municipal property, water towers, existing public buildings and existing towers on municipal property.
  - C. Specific goals.
    - (1) To minimize the total number of wireless communication towers within the Borough of Clayton;

- (2) To limit the impact of wireless communications antennas, towers and related facilities upon the residences and the streetscapes throughout the Borough of Clayton;
- (3) To safeguard the prevailing and historic character of development throughout the Borough of Clayton;
- (4) To encourage the location of antennas upon, or within, existing structures, including existing wireless communication towers, existing buildings, existing water towers or standpipes, and existing telephone and electric poles and towers, especially those existing structures situated on public property;
- (5) To encourage as many antennas as possible, of as many of the wireless communication carriers as possible, to be collocated on the fewest number of existing structures within the Borough of Clayton;
- (6) To discourage the construction of new towers which do not have the likelihood of being used by a number of wireless communication carriers;
- (7) To encourage the communication carriers to configure their facilities in a manner that minimizes and mitigates any adverse impacts upon affected properties, streetscapes and vistas through careful design, siting, landscape screening and innovative camouflaging techniques;
- (8) To formulate and maintain, for land use planning purposes, a complete inventory of all wireless communications antennas, towers and related facilities within the Borough of Clayton, and others in the vicinity of the Borough, which are capable of providing service within the Borough;
- (9) To enhance the ability of the carriers of wireless communications services who adhere to the letter and intent of these provisions to provide such services quickly, effectively and efficiently;
- (10) To comply with the mandate of the Federal Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7), which preserves local government authority to enforce zoning requirements which protect public safety, public and private property and community aesthetics; and
- (11) In recognition of the small size of the Borough of Clayton, to determine whether there is adequate coverage from other sources

outside the Borough of Clayton from wireless communications facilities, which may eliminate the need to have a wireless communication facility within the Borough.

D. Overall comprehensive plan.

(1) In order to effectuate the purposes, objective and goals of these provisions as noted hereinabove, any applicant to the Borough of Clayton for approval to erect a wireless communication antenna, in addition to all other information required by this chapter, shall provide threshold evidence that the proposed location of the proposed antenna(s), and any proposed supporting tower and/or ancillary cabinets enclosing related electronic equipment, has been planned to result in the fewest number of antennas or tower locations within the Borough of Clayton at the time full service is provided by the applicant throughout the Borough.

(2) Therefore, the applicant shall provide an overall comprehensive plan indicating how it intends to provide full service throughout the Borough of Clayton and, to the greatest extent reasonably possible, shall indicate why such antennas or towers are specifically required in the Borough of Clayton and the availability of wireless communication antenna locations outside and around the Borough of Clayton, and shall indicate how its plan specifically relates to and is coordinated with the needs of all other providers of wireless communication services within and around the Borough.

(3) More specifically, the overall comprehensive plan shall include the following:

(a) The mapped location and written description of all existing antennas and existing approved supporting structures within the Borough;

(b) The map of GIS database location and written description of all existing or approved water towers or water standpipes and existing telephone or electric poles or towers within the Borough;

(c) How the proposed location of the proposed antenna(s) specifically relates to the suitability or unsuitability of such existing structures to be utilized to provide the intended wireless communications;

(d) How the proposed location of the proposed antenna(s) specifically relates to the anticipated need for additional antennas and supporting structures within and near the Borough of Clayton by the applicant and by other providers of wireless communication services within the Borough;

(e) How the proposed location of the proposed antenna(s) specifically relates to the objective of collocating the antennas of many different providers of wireless communication services on a single supporting structure; and

(f) How the proposed location of the proposed antenna(s) specifically relates to the overall objective of the providing full wireless communication services within the Borough of Clayton while, at the same time, limiting the number of towers to the fewest possible, including alternate technologies which do not require the use of towers.

E. Location priorities. Based upon the overall comprehensive plan submitted by the applicant in accordance with the requirements of this section above, if the Borough of Clayton determines that the proposed antennas to be needed for the provision of full wireless communication services within the Borough, utilizing the fewest number of towers as reasonably possible, wireless communication antennas for telephone, radio, paging and/or television communication shall be permitted within the Borough at the following prioritized locations:

(1) The first priority location shall be an existing or approved water tower or water standpipe, or any other existing telephone or electric pole or tower within or near the Borough of Clayton, that is located in an approved zone for this conditional use. Any application for use of such lands and structures owned by the Borough of Clayton must be accompanied by written consent from the Borough Council of Clayton to the plan and shall be subject to a written lease with the Borough.

(2) The second priority location shall be on any other lands owned by the Borough of Clayton. Any application for use of such lands must be accompanied by written consent from the Borough Council of Clayton to the plan and shall be subject to a written lease with the Borough.

(3) The third priority shall be on lands situated within the Borough of Clayton in the Industrial District set forth under Article III of Chapter 96.

F. Factors considered in granting site plan approval for antennas or towers. In addition to any standards for consideration of site plan approval applications pursuant to this Chapter 96, the Combined Planning/Zoning Board shall consider the following factors and make specific and separate written findings thereon in determining whether to issue site plan approval:

- (1) Height of the proposed tower or antenna;
- (2) Proximity of the tower or antenna to residential structures and residential district boundaries;
- (3) Nature of uses on adjacent and nearby properties;
- (4) Surrounding topography;
- (5) Surrounding tree coverage and foliage;
- (6) Design of the tower and antenna with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- (7) Proposed ingress and egress; and
- (8) Availability of suitable existing towers and other structures within and outside the Borough, or alternative technologies not requiring the use of towers or structures as discussed in Subsection B below.

G. Availability of suitable existing towers or other structures or alternative technology. No new tower or antennas shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Combined Planning/Zoning Board, and said Board makes specific and separate written findings thereon, that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna either within or outside the Borough of Clayton. An applicant shall submit information requested by the Board related to the availability of suitable existing towers, other structures, or alternative technology. Evidence submitted to demonstrate that no existing tower or structure within or outside the Borough of Clayton or alternative

technology can accommodate the applicant's proposed antenna may consist of the following:

(1) No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements.

(2) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.

(3) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

(4) 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.

(5) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

(6) 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.

H. Conditions for site plan approval of towers or installation of antennas. The applicant shall satisfy the following conditions enumerated below in order to obtain site plan approval for towers or installation of antennas:

(1) Maximum tower height. The maximum height of any tower shall not exceed 100 feet, or a height not greater than that of an existing structure onto which the cellular communications antennas are intended to be placed. For purposes of measurement, the maximum tower height shall include any structures supported by the tower and any antenna.

(2) Setbacks. The following setback requirements shall apply to all towers for which site plan approval is required.

(a) Towers must be set back a distance equal to at least 125% of the height of the tower from any adjoining lot line, provided that the distance is no closer than the building setback applicable to the zone.

(b) All required electronic equipment for all anticipated communication carriers to be located on the subject site shall be housed within a building which is no greater than 12 feet in height, and which building shall not exceed 250 square feet, and which shall be designed with a residential or office character of appearance and must satisfy the minimum zoning district setback requirements for the zoning district in which the building lies.

(3) Separation. The following separation requirements shall apply to all towers and/or antennas for which site plan approval is required:

(a) Separation from off-site uses/designated areas.

[1] 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.

[2] Separation requirements for the towers shall comply with the minimum standards established in Table 1.

**Table 1**  
**Off-Site Use/Designated Line Separation Distance**

(measured from the nearest point of the tower or structure upon which the antennas are mounted to the structure of the off-site use or designated line)

Residence district, low-density residence district, low and moderate residential district, senior citizen overlay district	300 feet or 300% of the height of the tower or existing structure, whichever is greater, measured to the residential unit
Vacant land in the residence district, low-density residence district, low and moderate residential district, and senior citizen overlay district which is either platted or has preliminary subdivision plan approval which is not expired	300 feet or 300% of the height of the tower or existing structure, whichever is greater, measured to the building setback line of the off-site use
Vacant unplatted residentially zoned lands	150 feet or 150% of the height of the tower or existing structure, whichever is greater, measured to the property line
Public park or conservation area	150 feet or 150% of the height of the tower or existing structure, whichever is greater,

**Table 1**  
**Off-Site Use/Designated Line Separation Distance**

Nonresidentially zoned lands or nonresidentially uses.	measured to the property line Setbacks apply pursuant to Subsection <u>H(2)</u> above.
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[3] In addition to the above conditions for all permitted and permitted conditional uses, the applicant must satisfy all other conditions for site plan approval set forth in this Chapter 96.

**I.** Site plan submission and approval requirements.

(1) The applicant shall provide to the Combined Planning/Zoning Board a specific written addressment of design details which conform with and set forth the following information:

(a) Only if the wireless communication antennas cannot be located on an existing structure as set forth above, any proposed new tower shall be a monopole, unless the applicant can demonstrate, and the Combined Planning/Zoning Board agrees, that a different type of pole is necessary for the collocation of additional antennas on the tower.

(b) To the greatest extent possible no antenna and/or its supportive tower shall be located so as to be visible from any historic district or site as duly designated by the Borough of Clayton, the State of New Jersey or by the federal government.

(c) To the greatest extent possible, no new tower shall be located to be visible from any public street.

(d) To the greatest extent possible, all cables shall be installed within underground conduits.

(e) Any new tower shall be located behind existing buildings and/or natural topographic elevations in order to screen the tower's base from being visible from adjacent properties and from any street right-of-way.

(f) The color of and any camouflaging of the proposed tower shall be proposed by the applicant in the context of the visibility of the tower from different vantage points throughout the Borough, and the existing land uses and vegetation in the vicinity of the subject site.

(g) No antenna shall be located on any tower in order to provide service provider personnel the equivalent of wireline telephone service; such service shall be provided via existing telephone lines if available to the site, or the underground extension of telephone lines to the site if necessary.

(h) No lighting is permitted on the tower except lighting that specifically is required by the Federal Aviation Administration (FAA), and any such required lighting shall be focused and shielded to the greatest extent possible so as not to project towards adjacent and nearby properties. The applicant shall provide to the Combined Planning/Zoning Board all applicable FAA standards regarding lighting that may apply to the proposed tower.

(i) No signage is permitted, unless warning and/or equipment information signs are necessary for safety purposes and are specifically approved by the Combined Planning/Zoning Board.

(j) Minimal off-street parking shall be permitted as needed and as specifically approved by the Combined Planning/Zoning Board.

(k) Between the location of the tower and the building enclosing related electronic equipment and any public street or residential dwelling unit or residential zoning district within view of the tower and the building, landscaping shall be provided in accordance with the following:

[1] The landscaping shall consist of a combination of existing and/or newly planted evergreen and deciduous trees and shrubs of sufficient density to screen the view of the tower, particularly at its base, to the maximum extent reasonably possible, and to enhance the appearance of the building from the surrounding residential properties and any public street;

[2] The landscaping plan shall be prepared by a licensed landscape architect who shall present testimony to the Combined Planning/Zoning Board regarding the adequacy of the plan to completely screen the tower from view and to enhance the appearance of the building; and

[3] Any newly planted evergreen trees shall be at least eight feet high at the time of planting, and any newly planted deciduous

trees shall be a minimum caliper of two inches at the time of planting.

(2) Wireless communication antennas, and any proposed supporting tower and related electronic equipment shall require preliminary and major site plan approval as required under this chapter.

(3) In addition to the applicable documentation and items of information required for preliminary and final major site plans specified in this chapter, the following additional documentation and items of information specific to wireless communication antennas are required to be submitted to the Combined Planning/Zoning Board for review and approval as part of the submission of the preliminary site plan application:

(a) Documentation by a qualified expert that any existing structure proposed for the location of the antenna will have sufficient structural integrity to support the proposed antennas, and that the safety hazards resulting from ice falling from the structure and the antennas have been adequately mitigated;

(b) Documentation by a qualified expert 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 Industries Association (EIA) and/or the Telecommunication Industry Association (TIA) have been met;

(c) A letter of intent by the applicant, in a form which is reviewed and approved by the Borough Attorney, indicating that the applicant will share the use of any tower with other approved wireless communication service providers at reasonable rates which shall be economically viable;

(d) A visual sight distance analysis, including photographic reproductions of a crane or balloon test, graphically simulating the appearance of any proposed tower, with at least three antenna arrays attached thereto, from at least 15 locations around and within one mile of any proposed tower where the tower will be most visible. The applicant shall schedule the time of the crane or balloon test with the Borough Engineer in order to provide the members of the Combined Planning/Zoning Board and general public the opportunity to view the crane or balloon.

(e) Written approval from the Clayton Council for use of Borough owned structures or land when the application involves Borough owned structures or property.

(f) Evidence from an independent expert that all equipment will comply with the then current Federal Communication Commission (FCC) rules and regulations, including that radio frequency (RF) emissions will be within the FCC guidelines. Any approval shall contain a condition that the applicant shall provide a further report to the Borough Engineer from an independent expert that the RF emissions are within the FCC guidelines within 90 days after installation is complete and that upon any change in FCC guidelines or regulations governing same the applicant shall within 120 days of such change provide a report to the Borough Engineer from an independent expert that the RF emissions are within the revised FCC guidelines or regulations.

(4) In addition to its normal professional staff, given the technical and specialized nature of the testimony by the applicant's radio frequency expert(s), the Combined Planning/Zoning Board shall hire its own radio frequency expert to review and comment upon the testimony presented by the applicant. Additionally, based upon other testimony presented by the applicant, the Combined Planning/Zoning Board may hire other experts with specialized areas of expertise if deemed necessary.

J. Restoration provisions. Except for proposals to locate antennas on lands owned by Clayton, the applicant (and the landowner in the instance of a lease property) shall provide a performance bond and/or other assurances satisfactory to the Combined Planning/Zoning Board and in a form approved by the Borough Attorney that will cause antennas, any supporting tower, the electric equipment cabinets, any building enclosing the electronic equipment cabinets, 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 wireless communication antenna facility not used for its intended and approved purpose for a period of six months shall be considered no longer operative and shall be removed by the responsible party within 60 days thereof.

**Section 2. Repealer**

All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistencies.

**Section 3. Severability**

Each section of this Ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void or ineffective, shall not be deemed to affect the validity or constitutionality of any other sections or parts hereof.

***BE IT FURTHER ORDAINED*** that this Ordinance shall be effective as of October 10, 2013, upon publication and final passage thereof, as provided by law.

BOROUGH OF CLAYTON



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THOMAS BIANCO, Mayor

Attest:



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CHRISTINE NEWCOMB, Borough Clerk

**PUBLIC NOTICE**

**SUMMARY OF ORDINANCE #19-2013**

**ORDINANCE AMENDING CHAPTER 96 OF THE CODE OF THE  
BOROUGH OF CLAYTON BY CREATING WIRELESS  
COMMUNICATION ANTENNA CONDITIONS AND STANDARDS  
(UNIFIED DEVELOPMENT ORDINANCE)**

The purpose of this Ordinance is to provide specific zoning conditions and standards for the location and operation of wireless communication antennas within the Borough of Clayton, to recognize the need to safeguard the public good and preserve the intent and purpose of the Clayton Borough Master Plan and Zone Plan.

A copy of this Ordinance can be obtained without any cost, by any member of the general public in the Borough Clerk's office within the Borough of Clayton in the Municipal Building, 125 N. Delsea Drive, New Jersey, during normal business hours (8:00 a.m. to 4:00 p.m.), Monday through Friday.

This Ordinance was introduced at a meeting held on the 26th day of September, 2013. It is scheduled for a public hearing and final adoption at the next regular meeting of the Mayor and Council of the Borough of Clayton on the 10th day of October, 2013 at 8:00 p.m.

Christine Newcomb, Municipal Clerk  
Borough of Clayton

**19-2013**

**NOTICE OF ADOPTION**

**AN ORDINANCE AMENDING CHAPTER 96, OF THE CODE OF THE  
BOROUGH OF CLAYTON BY CREATING WIRELESS COMMUNICATION  
ANTENNA CONDITIONS AND STANDARDS  
(UNIFIED DEVELOPMENT ORDINANCE)**

The foregoing Ordinance was finally adopted by the Mayor and Council of the Borough of Clayton on October 24, 2013.

Christine Newcomb  
Borough Clerk