

ORDINANCE NO. 356

**AN ORDINANCE AMENDING
OCEAN VIEW CODE RELATING TO WIRELESS COMMUNICATIONS
FACILITIES.**

WHEREAS, pursuant to Section 2.313 of the Ocean View Charter, the Town Council of the Town of Ocean View has all powers which, under the Constitution of the State it would be competent for the General Assembly to grant by specific enumeration, and which are not denied by statute; and

WHEREAS, this grant of powers includes the power to adopt ordinances for the protection and preservation of town property, rights and privileges; for the preservation of peace and good order; for securing protection and promotion of health, safety, comfort, convenience, welfare and happiness of the residents of the Town; and

WHEREAS, the Town Council of the Town of Ocean View desires to amend certain sections of the Code relating to wireless communications facilities and amateur radio antennas, to comply with recent changes to State law and Federal Communications Commission Rules, as more explained in the ordinance below.

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE TOWN
COUNCIL OF THE TOWN OF OCEAN VIEW:**

Section 1. Amend Chapter 140 section 140-119 "Amateur radio antenna greater than 65 feet high" of the Code of Ocean View, by deleting the text ~~stricken through~~ and adding the underlined text, as follows:

Chapter 140. Land Use and Development
Article XVIII. Special Exceptions

§ 140-119. Amateur radio ~~antennas antenna greater than 65 feet high.~~

A. Purpose,

(1) Purpose: regulate the use and location of ham radio and citizens band radio operations.

(2) Intent.

(a) Make reasonable accommodation for ham and citizens band radio operations.

(b) Impose no unreasonable costs on the operators of ham and citizens band radios.

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

AMATEUR/CITIZEN BAND RADIO ANTENNA

The arrangement of wires or metal rods used in the transmitting and receiving of electromagnetic waves or radio waves.

AMATEUR RADIO

A radio used for two-way radio communications by private individuals as a leisure-time activity, public service or recreation; also known as "ham radio."

AMATEUR RADIO STATION

A radio station operated in the amateur radio service under license by the Federal Communications Commission.

ANTENNA SUPPORT STRUCTURE

Any structure, mast, pole, tripod or tower utilized for the purpose of supporting an antenna or antennas for the purpose of transmission or reception of electromagnetic waves (by federally license radio operators).

ANTENNA SUPPORT STRUCTURE HEIGHT

The overall vertical length of the antenna support structure or tower, above grade or ground (measured between the highest point of the antenna support structure and the natural grade directly below this point), or if such system is mounted on a building or other structure, then the overall vertical length includes the height of the building or structure upon which the antenna support structure is mounted.

CITIZENS BAND RADIO

A private two-way voice communication service for use in personal and business activities of the general public. Its communications range is from one mile to five miles.

C. Number permitted. No more than one amateur radio tower shall be permitted on any lot and shall be limited to rear yards.

D. Location.

(1) The antenna and its support structure shall not be attached or mounted on any such building appurtenance, such as a chimney.

(2) The placement of an amateur radio tower shall remain 65 feet from any neighboring house; guide wires shall not be closer than five feet to the property line on any side. The antenna shall be installed to withstand wind force of more than 80 miles per hour without the support of guide wire.

E. Height. The total height of the antenna and its antenna support structure ~~of amateur radio operators licensed by the Federal Communications Commission~~ may, ~~as a right~~, not exceed 65 feet above grade. The height shall be measured vertically and shall include the height of any building or structure upon which the antenna support structure is mounted.

F. Electrical requirements. All antenna support structures, whether ground- or roof-mounted, shall be electrically grounded. Grounding shall be in accordance with the

provisions of the National Electrical Code and the support structure's manufacturer's specifications.

G. Safety and maintenance.

(1) All amateur radio towers shall be fitted with anticleimbing devices.

(2) Any antenna structure, antenna support, and accessory structures not properly maintained as required under the standards of this chapter shall be required to be removed at the expense of the persons having control or receiving benefits within 60 days after receiving notice of nonmaintenance from the Town.

H. Application requirements.

All applicants seeking a special exception to construct, erect, relocate or alter an amateur radio antenna shall demonstrate compliance with this Section in an application provided by the Town, accompanied by the fee and the following documents:

(1) One copy of the typical specifications for proposed structures and antennas, including description of design characteristics and material.

(2) A site plan to scale showing property boundaries, tower location, tower height, guy wires and anchors, existing structures, fences, landscape plan, and existing land uses on adjacent property. A site plan is not required if the antenna is to be mounted on an approved existing structure.

(3) Elevations drawn to scale and dimensioned so as to fully describe the proposed structure.

(4) Documentation that the antenna is designed to withstand winds in accordance with all the applicable national building standards for such facilities and structures.

(5) ~~Documentation~~ **Evidence** that a valid federal amateur radio license for the proposed activity has been issued; unless exempt from federal license requirement, this license must remain current during the duration of the antenna or the applicant will be subject to removal of the antenna and any supporting structures at his or her expense within 30 days after the license has expired.

(6) A copy of the applicant's homeowner or rental insurance policy to ensure the applicant has proof of insurance for liability purposes. Proof of insurance must be submitted to the Town annually, no later than the last business day in January of each year.

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

I. Nonconforming antennas

(1) Amateur radio antennas, antenna structures, and masts in existence as of the effective date of this chapter may continue to be used without complying with the provisions of this chapter except as herein provided and shall be considered a legal nonconforming use. Amateur radio antennas, antenna structures, and masts that are a legal nonconforming use shall comply with the provisions regarding height restrictions to the extent that they are capable of doing so without modification. Amateur radio antennas, antenna structures, and masts may be enlarged, expanded or relocated only if brought into compliance with the provisions of this Section. An amateur radio antenna special exception shall be obtained before any expansion, enlargement or relocation.

(2) An existing antenna support structure utilized by a federally licensed amateur radio operator that had been constructed and that was in place prior to the date of the passage of this chapter must comply with all the safety and construction requirements of this Section.

Section 2. Amend Chapter 140 section 140-131 "Wireless communications facilities" of the Code of Ocean View, by deleting the text ~~stricken through~~ and adding the **underlined text**, as follows:

Chapter 140. Land Use and Development

Article XVIII. Special Exceptions

§ 140-131. Wireless communications facilities.

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

B. Purposes. The purpose of this section is to:

(1) Accommodate the need for wireless communications facilities while regulating their location and number in the Town and to ensure compliance with all applicable **Town, State and Federal** governmental regulations.

(2) Minimize any adverse and visual effects of wireless communications facilities antenna(s) and antenna support structures through proper design, siting and screening.

(3) Ensure the structural integrity of the antenna support structure through compliance with applicable industry standards and regulations.

(4) Encourage the joint use of any new antenna support structures to reduce the number of such structures needed in the future.

(5) To promote the health, safety and welfare of the residents of the Town.

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

ANTENNA

A device used to collect and/or transmit wireless communications or radio signals, including panels, microwave dishes and single poles known as "whips." As used herein, the word "antenna" includes "antennas."

ANTENNA SUPPORT STRUCTURE

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

ANTENNA SUPPORT STRUCTURE HEIGHT

The vertical distance measured from the base of an antenna support structure at grade to the highest point of the structure, including any antenna affixed thereto. If

the antenna support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna support structure height.

COLLOCATION

The act of siting Wireless Communications Facilities on an Existing Support Structure without the need to construct a new support structure and without a substantial increase in the size of an existing Wireless Communications Facility.

EXISTING SUPPORT STRUCTURE

A previously erected structure designed to support Wireless Communications Facilities including, but not limited to, Monopoles, Towers, and other freestanding self-supporting structures.

LAND SITE

A tract or parcel of land that contains a wireless communications facility and associated parking and may include other uses associated with and ancillary to wireless communication transmission.

MINOR MODIFICATIONS

Improvements to existing a Wireless Communications Facility that result in some material change to the Wireless Communications Facility or Wireless Communications Equipment Building but of a level, quality or intensity that is less than Substantial Increase.

SUBSTANTIAL INCREASE

occurs when:

(1) the mounting of the proposed antenna on an Existing Support Structure would increase the height of the Existing Support Structure by more than 5% or by 10 feet whichever is greater;

(2) the mounting of the proposed antenna would involve adding an appurtenance to the body of the Existing Support Structure that would protrude from the edge of the Existing Structure more than 10 feet; or

(3) the mounting of the proposed antenna would involve excavation outside the current Existing Support Structure site, defined as the current boundaries of the leased or owned property surrounding the Existing Support Structure and any access or utility easements currently related to the site.

WIRELESS COMMUNICATIONS EQUIPMENT BUILDING

A building or cabinet in which electronic receiving, relay or transmitting equipment for a wireless communications facility is housed.

WIRELESS COMMUNICATIONS FACILITY

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

D. Where allowed. **Wireless Communications** Facilities may be attached to existing **antenna** support structures, and new wireless communications facilities and antenna-support structures may be constructed as follows, provided that they meet the criteria set forth in this section **140-131** and other applicable criteria for special exceptions.

- (1) On any site owned by or in the possession and control of the Town.
- (2) On any state, county, or municipal site for its own internal communication needs.
- (3) On any private property.

E. Application requirements.

All applicants seeking a special exception to construct, erect, relocate or alter a wireless communications facility shall demonstrate compliance with this Section 140-131 on application forms provided by the Town, accompanied by the fee and the following documents:

(1) Copy of the typical specifications for proposed structures and antenna, including description of design characteristics and material.

(2) For new facilities, a site plan to scale showing property boundaries, tower location, tower height, guy wires and anchors, existing structures, photographs or elevation drawings depicting typical design of proposed structures, parking, fences, landscape plan, and existing land uses on adjacent properties.

(3) A current map, or updated map for an existing map on file, showing locations of applicant's antennas, facilities, existing towers, and proposed towers, which are reflected in public records, serving any property within the Town.

(4) A report from a structural engineer showing the tower antenna capacity by type and number, and a certification that the tower is designed to withstand winds in accordance with all the applicable national building standards for such facilities and structures.

(5) Identification of the owners of all antennas and equipment to be located on the site.

(6) Written authorization from the site owner for the application.

(7) Evidence that a valid FCC license for the proposed activity has been issued.

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

(9) A written agreement to remove the tower and/or antenna within 180 days after cessation of use.

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

(11) Evidence that the Standards as set forth in this section have been met.

(11) — Additional (12) Any additional information required by the Town for determination that all applicable zoning regulations are met.

F. Standards.

(1) Location.

(a) The proposed communication tower, antenna or accessory structure will be placed in a reasonably available location which will minimize the visual impact on the surrounding area and allow the facility to function in accordance with minimum standards imposed by the applicable communications regulations and applicant's technical design requirements.

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

(2) Height.

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

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

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

(3) Setbacks.

(a) The minimum distance between the base of any antenna support structure and any property line or right-of-way line shall be the largest of the following: the minimum yard setback in the underlying zoning district or 100% of the proposed antenna support structure height.

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

(4) Fencing. A security fence shall be required around the antenna support structure and other equipment, unless the antenna(s) is mounted on an existing structure. The security fence shall be a minimum of six feet in height, maximum of 12 feet, as determined by the Board of Adjustment, and maintained in proper condition. Barbed wire or razor fencing may be permitted as determined by the Board of Adjustment.

(5) Fully automated/required parking. The wireless communications facility shall be fully automated and not require any maintenance workers to be present on a full-time basis. Adequate parking shall be required for all maintenance workers, with a minimum of two spaces provided. All parking spaces shall be constructed to conform to applicable stormwater management regulations.

(6) Signs. No signs or other structures shall be mounted on the wireless communications facility, except as may be required by the FCC, FAA or other governmental agencies.

(7) Lighting. Antenna support structures shall meet all Federal Aviation Administration (FAA) regulations. No antenna support structure may be artificially lighted except when required by the FAA or other governmental authority. When lighting is required by the FAA or other governmental authority, it shall be oriented inward so as not to project onto surrounding properties. The applicant shall promptly report any outage or malfunction of FAA-mandated lighting to the appropriate governmental authorities.

(8) Visual appearance. Antenna support structures shall be painted silver or have a galvanized finish or may be painted green up to the height of nearby trees to disguise their appearance. All wireless communications and other accessory facilities shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of like facades to blend with the existing surroundings and neighboring buildings to the greatest extent possible.

(9) Landscaping. The following landscaping shall be required to screen as much of a newly constructed antenna support structure, the fence surrounding the newly constructed antenna support structure, and any other newly constructed ground-level features (such as a building) as possible and, in general, soften the appearance of the wireless communications facility. Listed below are the landscaping requirements:

(a) The disturbance of the existing topography shall be minimized unless such disturbance would result in less visual impact of the facility on the surrounding area.

(b) Existing vegetation on and around the land site shall be preserved to the greatest extent possible. Any tree or vegetative element that dies must be replaced within one month, ground permitting.

(c) An evergreen screen shall be required to surround the antenna support structure. The screen can either be a hedge (planted three feet on center maximum) or a row of evergreen trees (planted 10 feet on center maximum). The evergreen screen shall be a minimum of six feet at planting, and shall grow to a minimum of 15 feet at maturity.

(d) Where the wireless communications facility abuts residentially developed land, a residential zoning district, public land, or streets, the land site perimeter shall be landscaped with at least one row of deciduous trees, not less than three inches in caliper, spaced not more than 30 feet apart, on center, and within 25 feet of the land site boundary, as well as at least one row of evergreen trees or shrubs, at least 14 feet high when planted and spaced not more than 15 feet apart and within 40 feet of the land site boundary.

(10) Designed for ~~collocation~~ Collocation; notice to other users. In order to reduce the number of antenna support structures needed in the Town in the future, the proposed antenna support structure shall also be required to accommodate Collocation, where possible, for other users, including other wireless communication, cellular communication and personal communication service provider companies, and local police, fire, and ambulance companies. Applicants shall provide documentary evidence that all other authorized users have been contacted by the applicant with an offer of collocation on the applicant's proposed antenna support structure.

(11) Review of site alternatives for new structures. If the applicant proposes to build an antenna support structure (as opposed to mounting the antenna on an existing structure), the applicant shall demonstrate with documentary evidence that it has contacted the owners of structures of suitable location and height (such as smokestacks, water towers

and buildings housing existing antenna support structures) within a one-mile radius of the site proposed, requested permission to install the antenna(s) on those structures, and has been denied. An application to construct a new antenna support structure should be denied if the applicant has not made a good faith effort to mount the antenna(s) on an existing structure as set forth in this subsection.

(12) Abandoned or unused portions of towers. Upon application for a tower or tower facility, the owner or agent of the tower must supply the Town of Ocean View with a letter stating that if the tower is vacated for any reason, the owner or agent will remove the tower, all apparatus associated with it, the top three feet of the footing and restore the site to its original condition within 60 days of vacation of the tower.

(13) Safety and maintenance. The applicant shall demonstrate that the proposed antenna and antenna structure and entire wireless communications facility are safe and are in accordance with the applicable regulations, and the surrounding properties will not be negatively affected by the antenna support structure failure, falling ice or debris.

(a) All antenna support structures shall be fitted with anticlimbing devices.

(b) The owner of the facility shall conduct radiation tests upon inauguration of service 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."

(c) Any antenna structure, antenna support, and accessory structures not properly maintained shall be required to be removed at the expense of the persons having control or receiving benefits within 60 days after receiving notice of nonmaintenance from the Town.

(d) Vandalism and graffiti will be reported to the Ocean View Police Department. Violation notices shall be issued only after vandalism or graffiti has remained for more than 72 hours after being first noted by the Police Department. If three violation notices are issued within a one-year period or less, this shall be

interpreted as having received notice of nonmaintenance or declared as having abandoned the facility.

~~(14)~~

G. Review criteria.

~~(a)~~**(1)** Compatibility of the proposed structure with the height and mass of the existing buildings in the area.

~~(b)~~**(2)** The location of the antenna in relation to existing vegetation, topography, and buildings to obtain the best visual screening.

~~(c)~~**(3)** Visual and economic impact upon adjacent properties.

~~(d)~~**(4)** Compliance with Federal Communications Commission (FCC) emission standards.

~~(e)~~**(5)** Whether placement of the structure in the proposed location will result in a significant impact to other uses or the reception or transmission of existing facilities.

~~(f)~~**(6)** Each tower location shall evaluate whether the collocation on other existing structures in the same vicinity, such as other towers, buildings, water towers, utility poles, athletic field lights, parking lot lights, etc., is possible without significantly impacting antenna transmissions or reception. However, for location on such existing structures and poles, telecommunications facilities must meet the following additional requirements:

~~(1)~~**(a)** No lighting shall be placed on the site that further illuminates, advertises, or draws attention to any part of the facility.

~~(2)~~**(b)** The mounting of such facility complies in all respects with all other provisions of the Ocean View Town Code and other applicable laws.

H. **Administrative Review.**

(1) Collocations or Minor Modifications may be approved after evaluation of an application by the Director of Planning, Zoning, and Development or his designee. This process is not subject to a public hearing and the Director may grant approval if the application is in accordance with the standards set forth in this Section 140-131.

I. Time Requirements.

(1) Within thirty (30) days of the receipt of an application for Wireless Communications Facilities review, the Director shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) deem the application complete. If the Director informs the Applicant of an incomplete application within thirty (30) days, the overall timeframe for review is suspended until such time that the Applicant provides the requested information.

(2) An applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An applicant's unreasonable failure to complete the application within sixty (60) days after receipt of written notice shall constitute a withdrawal of the application without prejudice. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.

The Board of Adjustment, or the Director if the applicant has requested Administrative Review, must issue a written or oral decision granting or denying the application within ninety (90) days of the submission of the initial application unless:

(a) Director notifies applicant that its application was incomplete within thirty (30) days of filing. If so, the remaining time from the ninety (90) day total review time is suspended until the Applicant provides the missing information; or

(b) Extension of time is agreed to by the Applicant.

Failure to issue a written decision within ninety (90) days shall constitute an approval of the application.

(3) Should the Board of Adjustment deny the application, the Board or the Director, shall provide written justification for the denial. The denial must be based on substantial evidence of inconsistencies between the application and this Section 140-131.

(4) Applicant may appeal any decision of the Board of Adjustment approving, approving with conditions, or denying an application as provided by law. Denial of an Administrative Review application may be appealed to the Board of Adjustment.

Section 3. Chapter 216 titled "Wireless Communications Facilities and Amateur Radio Antennas" shall be deleted in its entirety.

Section 4. This ordinance shall become effective upon its adoption by a majority of all members of the Town Council of the Town of Ocean View.

TOWN OF OCEAN VIEW

By: 
Mayor

Attest: 
Town Clerk

First Reading: 2/12/19

Second Reading: 3/12/19

Adopted: 3/12/19

Synopsis

The proposed amendment to the Land Use Development Code (Chapter 140) Wireless Communications Facilities Ordinance amends the Ocean View Code by: (1) clarifying certain definitions; (2) allowing an administrative review process for Collocation and Minor Modifications to existing wireless communications facilities; and (3) imposing certain time requirements upon the Town for decisions on wireless communication facility applications required by the Federal Communications Commission. The Proposed Ordinance also eliminates redundancies in the code by eliminating Chapter 216, which contains duplicate wireless communications facility and amateur radio antenna sections.

[RCK DRAFT 11/28/18]

[DLS Rev 11-28-18]

[RCK Rev.11-28-18]

[DLS Rev. 11-29-18]

[RCK Rev. 2-11-19]