

**ORDINANCE NO. 2020-04**

**AN ORDINANCE AMENDING AND MODERNIZING CHAPTER 62 ZONING AND LAND DEVELOPMENT REGULATIONS OF THE HILLIARD TOWN CODE; ADDING SECTION 62-386 – WIRELESS TELECOMMUNICATION FACILITIES; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 62 of the Town Code is outdated because of changes in the Town; and

**WHEREAS**, the Town desires modernizing Chapter 62 of the Town Code to reflect the practical realities for the need for a wireless telecommunications facilities code section to regulate and allow cell towers within the Town’s limits; and

**WHEREAS**, the Town of Hilliard has found it necessary to enact the following amendment to Chapter 62, Zoning and Land Development Regulations.

**NOW, THEREFORE THE TOWN OF HILLIARD HEREBY ORDAINS**, the following Section of the Hilliard Town Code, Chapter 62, Zoning and Land Development Regulations shall be amended as follows:

**Section 1.**

**Section 62-386 - Wireless telecommunication facilities is hereby added and shall read as following:**

- (a) *Generally.* The provisions of this section apply to wireless telecommunications facilities and are intended to promote the health, safety and general welfare of the citizens by regulating the siting of communications towers and to establish the necessary legal framework to encourage the use of towers which are compatible with their surroundings.
- (b) *Purpose.* The Hilliard Town finds that the promulgation of this section is warranted and necessary to accomplish the following purposes:
  - (1) To direct the location of communication towers within the town;
  - (2) To protect residential areas and land uses from the potential adverse impacts of communication towers;
  - (3) To minimize adverse visual and aesthetic impacts of communication towers through careful design, siting, landscape screening, and innovative aesthetic mitigation;
  - (4) To accommodate the growing demand for communication towers;
  - (5) To promote and encourage shared use and co-location of existing and new communication towers as the preferred option rather than construction of additional single-use towers;
  - (6) To consider the public health and safety of communication towers;
  - (7) To avoid or minimize potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

(c) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Alternative support structure* means any manmade structure, except towers, including, but not limited to, buildings, power poles, light poles, clock towers, bell towers, steeples, water towers and the like, which allow for the attachment of antennas.

*Antenna* means a device for radiating or receiving radio waves. As used in this section, the term "antenna" shall include all antennas integrated and used as a single unit, such as an antenna array.

*Camouflaged* means a structure designed to support one or more antenna but designed to unobtrusively blend into the existing surroundings and disguised so as to not have the appearance of a tower. Such tower shall be consistent in size, scale and appearance with the type of object it is designed to resemble.

*Customer premises equipment* means telecommunications equipment on the premises of a telecommunications customer for the sole use of the occupants of the premises.

*Guyed* means a tower anchored with guide wires.

*Lattice* means a self-supporting tower with three or more side or open-framed supports.

*Mobile station* means equipment which is not fixed and ordinarily moves. Such a facility is typically the end users' equipment such as a wireless telephone.

*Monopole* means a single, self-supporting tower of concrete, steel, or similar materials having a solid appearance and no guide wires.

*Speculative* means a tower which is proposed for erection without evidence of any antenna leases or agreement for use of the tower.

*Tower* means a structure, greater than 15 feet in height, designed and used primarily to support one or more antenna of any type.

(d) *Special Exception required.*

(1) All wireless telecommunication facilities shall be permitted as a Special Exception. Such facilities may be permitted the A-1, C-N, C-1, M-1 districts under the criteria set forth hereafter and upon the approval of the Planning and Zoning Board.

(2) No development permit, including building permit, shall be issued until after a public hearing is held on the application and the Special Exception is approved by Planning and Zoning Board authorizing the construction of the proposed tower or other telecommunication facility.

(e) *Applicability regulations and exemptions to existing structures.*

(1) All new communication towers in the Town shall be subject to this chapter and all other applicable building and construction codes. In the event of any conflict between the zoning district regulations and the regulations contained in this section, the provisions of this section shall override and supersede such other regulations unless otherwise specifically set forth herein.

(2) The provisions of this section, other than the minimum distance requirements from residential districts, shall not apply to communication towers and communication antenna located on property, rights-of-way or easements owned by any governmental entity.

- (3) Communication towers existing on July 1, 2020, shall be allowed to continue to be used as they presently exist. Routine maintenance including replacement with a new tower of like construction and height and modifications to accommodate the co-location of an additional user or users shall be permitted on such existing towers. New construction, other than routine maintenance and modification to accommodate co-location on an existing communication tower, shall comply with the requirements of this section.
- (f) *Location on lot.* A communication tower may be located on a lot utilized for other principal uses and on a parcel smaller than the minimum lot size required in the zoning district. This parcel shall be considered as the tower site. The tower site, but not the entire lot, shall be subject to all of the requirements of this section, except as specifically provided herein.
- (g) *Minimum distance of towers from residential zones.*
  - (1) Regardless of the zoning district in which the communication tower is located, the minimum distance of the tower shall be not less than 200 feet from the nearest residential lot line of any residential districts or from any parcel containing a residence in an agricultural district except that in the agricultural districts the communication tower may be closer to a parcel boundary provided it remains a minimum of 400 feet from any residence existing at the time of approval.
  - (2) Minimum distances shall be measured from the center of the base of the communication tower to the lot line of the applicable residential zoning district or parcel, as the case may be.
  - (3) Notwithstanding anything to the contrary in this chapter, no communication tower other than a monopole (freestanding) tower or alternative tower structure shall be located in any residential zoning district.
- (h) *Maximum height.*
  - (1) The maximum height of communication towers shall be:
    - a. If constructed for a single user, up to 150 feet in height;
    - b. If constructed for two users, up to 250 feet in height;
    - c. If constructed for three or more users, up to 330 feet in height.
  - (2) A communication tower shall be considered to be constructed for more than one user if:
    - a. It is constructed so as to provide sufficient excess capacity over the initial single user loading for one or more additional comparable users; and
    - b. The applicant consents in writing with the Town to permit one or more additional comparable communication providers to use the proposed tower where feasible and subject to reasonable terms.
  - (3) Measurement of communication tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the tower site.
- (i) *Minimum yard requirements.* There are no minimum yard requirements for communication towers.
- (j) *Illumination.* Communication towers shall not be artificially lighted except as may be required by Federal Aviation Administration. If lighting is required, the applicant must present the Town with available lighting alternatives and obtain approval of the Town Council so that the Town

is ensured that the design utilized will cause the least possible disturbance to the surroundings.

- (k) *Finished color.* Communication towers not requiring FAA painting/markings shall have either a galvanized finish or painted a dull blue or gray finish.
- (l) *Structural design.* Communication towers shall be designed and constructed to ensure that the structural failure or collapse of the tower will not create a safety hazard to adjoining properties. Communication towers shall be constructed to EIA/TIA 222-F Standards or the most current equivalent standards, as published by the Electronic Industries Association, which may be amended from time to time, and all applicable building codes. All plans for the construction of towers shall be sealed by a state-registered professional engineer. Further, any improvements and/or additions (i.e., antenna, satellite dishes, etc.) to existing communication towers shall require submission of site plans sealed and verified by a professional engineer which demonstrates compliance with EIA/TIA 222-F Standards or most current equivalent standards in effect at the time of said improvement or addition. Said plans shall be submitted to, reviewed and approved by the planning and zoning department at the time building permits are requested. A fall zone shall be provided to the extent that is required by EIA/TIA 222-F Standards or the most current equivalent standards.
- (m) *Fencing.* A six-foot finished masonry wall or fence, with not less than 85 percent opacity shall be required as a minimum around all communication towers located in a residential or commercial zoning district. In all other zoning districts, the fence may be any type of security fence provided that is at least six feet in height. Access to all towers shall be through a locked gate.
- (n) *No advertising.* Neither the communication tower nor the tower site shall be used for advertising purposes and shall not contain any signs for the purpose of advertising.
- (o) *Landscaping.* The visual impacts of communication towers shall be mitigated through landscaping or the screening materials at the base of the tower and ancillary structures.
  - (1) The following landscaping and buffering of communication towers shall be required around the perimeter of the tower and accessory structures:
    - a. A row of shade trees a minimum of ten feet tall and a maximum of 20 feet apart shall be planted around the perimeter of the fence;
    - b. A continuous hedge at least 36 inches high at the time of planting, capable of growing to at least 48 inches in height within 18 months, shall be planted in front of the tree line referenced in subsection (o)(1)a of this section;
    - c. All required landscaping shall be of the evergreen variety;
    - d. All required landscaping shall be native drought tolerant species and/or irrigated and properly maintained to ensure good health and vitality.
  - (2) Required landscaping shall be installed outside the fence or wall.
  - (3) Existing vegetation shall be preserved to the maximum extent practicable and may be credited as appropriate toward landscaping requirements.
  - (4) These standards may be waived by the Planning and Zoning Board for those sides of the proposed tower that are located adjacent to undevelopable lands and lands not in public view or for good cause on any side.
- (p) *Abandonment.*

- (1) In the event the use of any communication tower has been discontinued for a period of 180 consecutive days, the tower shall be deemed abandoned. Determination of the abandonment shall be made by the Land Use Administrator. Upon the Land Use Administrator's determination of such abandonment, the owner/operator of the tower shall have an additional 180 days within which to:
    - a. Reactivate use of the tower or transfer the tower to another owner/operator who makes actual use of the tower; or
    - b. Dismantle and remove the tower.
  - (2) After that date, the Town may dismantle and remove the tower at the owner's expense. The owner/operator shall be responsible for all costs associated therewith. At the earlier of 185 days from the date of abandonment without reactivation or upon completion of dismantling and removal, any special use permit, exception and/or variance approval for the tower shall automatically expire.
- (q) *Certification of compliance.* Prior to receiving final inspection, adequate proof shall be submitted to the zoning and planning and zoning department documenting that the communication tower complies with all current FCC regulations and non-ionizing electromagnetic/radiation (NICER) and that the radio frequency levels meet the American National Standards Institute.
- (r) *Supplemental information required for applications.* The applicant must also submit the following information in addition to the standard information required of all Special Exception applicants:
- (1) A scaled site plan clearly indicating the tower site, type and height of the proposed tower, the location of the accessory building, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, distances from property lines, elevation drawings of the proposed tower, and any other proposed structures;
  - (2) A current zoning or tax map or aerial, showing the location of the proposed tower;
  - (3) A legal description of the parent tract and tower site (if applicable);
  - (4) Engineering specifications for the proposed tower setting forth the number of users the tower is designed to accommodate and the number of antennas to be located on the tower;
  - (5) If the proposed tower site meets the required minimum distance from residential zones, the approximate distance between the proposed tower and the nearest residential dwelling, platted residentially zoned properties, or unplatted residentially zoned properties. If the proposed tower site does not meet the minimum distance requirements, then exact distances, locations and identifications of said properties shall be shown on an updated zoning or tax map;
  - (6) A landscape plan showing specific landscape materials;
  - (7) The method of fencing, finished color if applicable, the method of aesthetic mitigation and illumination;
  - (8) If the applicant is not co-locating (sharing space) on the proposed communication tower of another communication provider, evidence that it has made diligent but unsuccessful efforts to co-locate its antenna and associated equipment on an existing structure. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antenna may consist of any of the following:

- a. No existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements;
  - b. Existing towers or structures are not of sufficient height to meet applicants engineering requirements;
  - c. Existing towers or structures do not have sufficient structural strength to support applicants proposed antenna and related equipment;
  - d. The applicants proposed antenna would cause impermissible electromagnetic interference, as determined by the FCC, with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause impermissible interference, as determined by the FCC, with the applicants proposed antenna;
  - e. The fees or costs required to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Cost exceeding new tower development are presumed unreasonable;
  - f. Property owners or owners of existing towers or structures are unwilling to accommodate the applicant's needs; or
  - g. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable; and
  - h. If the applicant demonstrates and provides evidence that the proposed facility is designed to accommodate five or more users, the applicant shall be exempt from the provisions of this subsection (r)(8);
- (9) The written consent by the applicant that any Special Exception shall be conditioned upon requiring the applicant to:
- a. Construct the proposed communication tower so as to provide sufficient excess capacity over the initial single user loading for one or more additional comparable users; and
  - b. Permit at least one other comparable communication provider to use the proposed tower where feasible and subject to reasonable terms. The term where feasible, as it applies to co-location, means that utilization of a tower by another tower carrier which would, at the time of such utilization, comply with sound engineering principles, would not materially degrade or impair the communication tower's utilization by existing users, would not unduly burden the tower structurally, and would not otherwise materially and adversely impact existing users. Reasonable terms for use of a communication tower that may be imposed by the owner including a requirement for reasonable rent or fees, taking into consideration the capitalized cost of the communication tower and land, the amount of lease payments by the owner, the incremental cost of designing and constructing the tower so as to accommodate additional users, increases in maintenance expenses relating to the tower and a fair return on investment, provided such amount is also consistent with rates paid by other co-locators at comparable tower sites.
- (s) *Criteria for Special Exception.* In addition to meeting the requirements set forth in this chapter, the following findings must be made before the Planning and Zoning Board may grant a Special Exception for the construction of a communication tower:
- (1) The communication tower shall be compatible with the existing contiguous uses or with the general character and aesthetics of the neighborhood or the area, considering the

design and height of the communication tower, the mitigating effect of any existing or proposed landscaping, fencing or other structures, and similar factors;

- (2) The communication tower shall not have any significant detrimental impact on adjacent property values.
- (t) *Waiver and variance standards and criteria.* Notwithstanding any other variance criteria, with respect to action upon applications for zoning variances from the minimum distances required pursuant to subsection (g) of this section and maximum height requirements of subsection (h) of this section:
  - (1) The Planning and Zoning Board shall grant a variance only if it finds from a preponderance of the evidence that the variance meets all of the following standards and criteria:
    - a. Certification by a radio frequency engineer, whose credentials are acceptable to the Planning and Zoning Board, that the proposed communication tower is reasonably necessary to serve an adjacent or nearby residential area or other areas.
    - b. The variance sought is the minimum necessary to address the need for the variance, subsequent to exploring all reasonable siting alternatives.
    - c. The location of the proposed communication tower in relation to the existing structures, trees and other visual buffers shall minimize, to the greatest extent reasonably practicable under the circumstances, any impacts on affected residentially zoned property.
    - d. The location of the communication tower will not have a significant detrimental impact on adjacent property values and any property formally designated by the comprehensive plan as protected or environmentally sensitive or judged to possess unique environmental or cultural qualities as determined by current permitting regulations of the Town.

### **Section 3.**

#### **Effective Date.**

This Ordinance shall become effective upon passage.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the Hilliard Town Council,  
Hilliard, Florida.

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John P. Beasley  
Council President

ATTEST:

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Lisa Purvis  
Town Clerk

APPROVED:

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Floyd L. Vanzant  
Mayor

Planning & Zoning Board Publication:	June 10, 2020
Planning & Zoning Board Public Hearing:	July 7, 2020
Town Council First Publication:	June 10, 2020
Town Council First Public Hearing:	July 16, 2020
Town Council First Reading:	July 16, 2020
Town Council Second Publication:	July 22, 2020
Town Council Second Public Hearing:	August 6, 2020
Town Council Second & Final Reading:	August 6, 2020