

"A Historic Past"



"A Bright Future"

THE CITY OF DELAWARE CITY
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**CITY OF DELAWARE CITY
DELAWARE CITY, DELAWARE
Ordinance No. 22-0516-01**

**ORDINANCE TO AMEND CHAPTER 46 OF THE CITY OF
DELAWARE CITY CODE BY AMENDING SECTION 46-28(b)
REGARDING SPECIAL USE PERMITS**

WHEREAS, pursuant to Article V, Section 5-02(A) of the City of Delaware City Charter ("Charter"), and pursuant to the "Powers of the City," outlined in Article II, §2-01 of the Charter, the Mayor and the City Council of the City of Delaware City ("City Council" possess the authority to adopt, amend, modify, or repeal the City of Delaware City Code ("Code"); and

WHEREAS, the Mayor and the City Council, in accordance with the City of Delaware City Comprehensive Plan and with reasonable consideration, among other things, as to the continuity and clarity of the City Code, seeks to amend certain sections concerning special use permits and related fees.

NOW THEREFORE, making the express finding that the below changes enhance and perpetuate the City of Delaware City's cultural, social, economic, religious, political or architectural history, as set forth in Chapter 49 of the Code, and work to further clarify and alleviate any confusion within the City Code, the Mayor and the City Council of the City of Delaware City hereby ordain and adopt the following Code changes and revisions:

Section 1. Section 46-28(b) of the Code is hereby amended by substituting the term "special use permit" with "special exception," and shall now read as

follows:

(b) The following uses require special exception approved by the Board of Adjustments:

(1) Tower, broadcasting and telecommunications, subject to the following special requirements:

a. Tower applications shall be accompanied by a professional engineer's report containing the following:

1. A technical evaluation of the utilization of existing towers for telecommunications or other equipment intended for the installation on the proposed towers.

2. A technical evaluation of the feasibility of attaching the tower or antenna to existing buildings.

3. Written certification of compliance with Federal Communications Commission Safety Standards for exposure to nonionizing electromagnetic radiation

4. Copies of all applicable state and federal permits.

b. Any principal part of the tower, excluding guy cables, shall be set back from the nearest property line of a church, library, school, nursing home, hospital, historic or residential lot not less than three times the height of the tower or 350 feet, whichever is greater. The setback shall be measured from the nearest point of the base of the tower to the nearest point of the property line of the protected use.

c. No artificial light shall be installed upon any such tower unless required by the Federal Aviation Administration. If such light is required, it shall be screened so as not to project its light below the horizontal plane in which it is located.

d. Towers over 200 feet in height shall be guyed and not self-supporting nor consisting of lattice type structures, unless the applicant demonstrates that a guyed tower shall have a greater negative visual impact than a self-supporting tower.

e. Towers located on existing buildings or structures shall not extend beyond 22 feet above the highest point of the building or structure. Accessory buildings or facilities for towers located on existing buildings or structures shall be located either in or on top of such buildings or structures.

f. Landscaping shall be provided around the base of the tower and adjacent to a required security fence that shall be at least ten feet high. The landscaping shall consist of a minimum 25-foot wide planting strip with ground cover and/or grass, including at least one row of six-foot high evergreen trees providing a solid screen adjacent or proximate to the fence, and 15-foot high, two-

inch caliper deciduous trees, interspersed within the buffer area and no more than 20 feet apart. Applicants may substitute alternative landscape plans that meet the purposes of this subsection to limit the visual impact of the lower portion of the tower and adjoining accessory facilities. Camouflaged towers designed to look like trees may be exempt from this subsection, subject to Board of Adjustment approval. Towers located on top of buildings three stories or more in height and telecommunication antennas located on existing buildings shall be exempt from this subsection, except that a six-foot high solid evergreen screen shall be required between any telecommunications antenna or tower accessory building and adjoining properties. A ten-foot high security fence and an adjoining six-foot high solid evergreen screen adjacent or proximate to the fence shall be provided around the anchoring facilities for guy wires and guyed towers.

g. No outdoor storage shall be permitted at the tower site.

h. Unless otherwise required by the Federal Communications Commission or the Federal Aviation Administration, towers shall be light gray in color. Camouflaged towers designed to look like trees may be exempt from this subsection, subject to council approval. Telecommunication antennas with colors designed to match buildings or structures to which they are attached shall be exempt from this subsection.

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

j. Towers higher than 100 feet must be a minimum of 500 feet from the nearest similar tower, measured from the base of the towers.

k. New telecommunication facilities may be attached to an approved tower without applying for an additional special use permit so long as the new facility is in compliance with the requirements and standards of this section.

l. No interference with existing television, cable television, radio signals, or other electronic devices shall be permitted from the tower. If interference occurs, it shall be immediately remedied by the operators of the tower.

m. If a tower is abandoned, unused for two years, or no longer operable, it shall be removed within six months of its abandonment. If a tower is not dismantled as specified in this subsection, the city shall arrange to have the facility dismantled and will assess the landowner all costs associated with the removal of the tower. If the full amount due the city is not paid by the owner, or person in control of the property, or his or her agent, within 90 days of receipt of a bill from the city, the city shall cause a special assessment

to be recorded. The recordation of such special assessment shall constitute a lien on the property and shall remain in full force and effect for the amount due in principal and interest until final payment has been made.

n. That the owner of such tower shall provide proof to the city that the tower has undergone a triennial inspection for structural integrity. Said inspection is to be performed by a certified engineer, or other qualified professional, at the expense of the owner of the tower. If structural deterioration is found to be present, and such deterioration affects the physical stability or aesthetic integrity of the tower, the owner shall be required to correct such deterioration within a time limit to be established by the building department.

o. In addition, the operator of such tower shall provide annual proof to the city that the tower has undergone field measurements to ensure compliance with all applicable Federal Communications Commission safety standards for exposure to nonionizing electromagnetic radiation. Such field measurements, and submission of the results to the city, shall be conducted upon start up of the facility and annually thereafter; except that every third year, such proof of compliance shall be submitted on behalf of the operator by an independent nonionizing electromagnetic radiation evaluator. All such field measurements, and submission of the results, are to be performed by a certified engineer, or other qualified professional, at the expense of the operator. If such field measurements demonstrate noncompliance with Federal Communication Commission safety standards specified in this section, transmission at the facility shall be suspended until such time as full Federal Communication Commission safety standards compliance is demonstrated to the satisfaction of the city.

p. The owner of such tower shall give proof to the city that any damages which may occur to surrounding properties or injury which may occur to persons, which damages or injuries are caused by a failure of the tower and/or its associated structural supports, regardless of whether such failure is a result of human error or an act of God, shall be paid by the owner of the tower and/or insurers of the tower.

(c) Area regulations and other special requirements.

- a. Height of buildings. The permissible height for all buildings shall be set forth in the Table codified at Article VI, Section 46-31.
- b. Building Dimensional Requirements. Except as otherwise specified herein, each story or part of a building, exclusive of cornices and uncovered steps and uncovered porches, shall be governed by the building dimensional requirements set forth in

Section 46-31.

- c. **Parking.** Off-street parking requirements and loading space requirements shall be determined in accordance with the minimum standards for the proposed use as set forth in Sections 46-96 – 46-99.
- d. **Building design.** Regarding building design, the following standards shall apply:
 - a. Detailed elevation drawings of all proposed buildings shall be submitted including all signage; building materials; building height; the location, height and material of landscaping and screening walls and fences; outdoor trash and recyclable material storage areas; and electrical, mechanical and gas metering equipment.
 - b. To maintain a high standard of construction and appearance and to provide architectural unified and interesting design the exterior walls of each building are to be constructed of durable, permanent materials, (including appropriately selected brick, treated concrete, glass, and other architectural panels). Buildings should complement and harmonize with the overall design of the HPR District.
 - c. Signage, intended to guide motorists and pedestrians from perimeter streets, shall correspond to the overall design, color and finishing of the buildings upon which they are displayed; that is, signage shall be designed as integral architectural elements of proposed architecture.
- e. **Site design.** Regarding site design, except as otherwise specified herein, the following special regulations shall apply:
 - a. Sidewalk and pathways shall be installed and designed to enhance the pedestrian experience; off road bicycle circulation paths shall be designed to complement pedestrian ways.
 - b. Building sites and roadways shall be designed to facilitate way finding through the district.
 - c. Exterior and interior lighting features shall be integrated to help provide visual understanding of the building's composition and function

based on the following guidelines:

1. Use lighting fixtures primarily for important building elements such as entries.
 2. Favor the use of defused lighting system over those generating a strong point source of lighting.
 3. Enhance the visibility of interior building lighting to the exterior giving a sense of light emanating from the building.
 4. Avoid dramatic changes of illumination levels which can produce glare and disorientation.
 5. Enhance the illumination, where appropriate, of landscape features.
 6. Lighting shall be designed to limit impact on adjacent properties.
- d. Landscaping or screening shall be installed to screen parking areas, mechanical equipment, refuse storage areas and related appurtenances and to enhance the visual appeal of the buildings and facilities in the district.
- e. New utility lines and related appurtenances shall be installed underground unless a variance is granted by the Board of Adjustment.
- f. Review of plans to determine compliance with the provisions of subsection (c) herein shall be performed by designated officials of the City of Delaware City, which shall issue approvals upon satisfaction that all such provisions, and other applicable provisions of the Delaware City Code have been met. Applications for subdivisions for the purposes of establishing lot and/or lease lines for real estate taxation and related purposes shall be subject to the procedural requirements of the Delaware City Code. All permitted uses in the HPR district shall be subject to applicable City and State Code requirements, standards, and procedural requirements (including, but not limited

to, building, zoning, sidewalk, plumbing, mechanical, and subdivision standards).

- g. It is anticipated that the Ft. DuPont Redevelopment Authority will adopt its own use, design and construction standards, which may be more restrictive than the standards of the Delaware City Code. In case of conflict between the use, design and construction standards of the Ft. DuPont Redevelopment Authority and Delaware City standards, the stricter of the two standards shall govern.

(d) For the avoidance of doubt, the following uses are expressly prohibited in the HPR District:

(1) Manufacture of corrosive acids, gelatin, paint, oils, fertilizer, linoleum, cork products, bleaching compounds or soap; tanning or curing of hides; crude oil refining; rubber treatment or manufacture; ore smelting; blast furnace, garbage of offal reduction or dumping; asphalt manufacture or refining; abattoir; junk storage; automobile wrecking; animal rendering; oil storage; except for the exclusion of distribution or warehouse operations, unless such operations are incidental to and intended primarily to serve uses permitted in this district.

(2) Any use prohibited by the Delaware Coastal Zone Act, industrial, manufacturing, and institutional uses not expressly authorized herein, fossil fuel fired power plants, trash to steam plants, concrete crushing, rock crushing, hot mix plants, drive through restaurants, and other similar uses.

(3) Any use determined by the Ft. DuPont Redevelopment Authority to be inconsistent with the Master Plan for Ft. DuPont and/or any use inconsistent with the purposes and requirements of HB 310 as may be amended from time to time.

(4) Uses not expressly authorized by Sections (a) and (b) above.

(d) Subdivision Amenities

Notwithstanding the requirements of any other law, common areas not associated with a condominiums in the HPR district, such as roads, active open space, passive open space, recreational amenities, and parks as depicted and outlined on any subdivision or other land development plan (collectively "Subdivision Amenities") may be owned, maintained and operated by the State of Delaware or any of its agencies, the City of Delaware City, or any entity that is a public instrumentality of the State exercising essential governmental functions. Subdivision Amenities shall be governed by such

requirements as established by ordinance and/or such other requirements as the owner of the Subdivision Amenities shall establish by rule, regulation, guidelines, or through recorded restrictions. If the owner of the Subdivision Amenities is the State of Delaware or any of its agencies, the City, or any entity that is a public instrumentality of the State exercising essential governmental functions, such owner may charge proportional assessments, common area maintenance fees, or other fees to subdivision property owners for the maintenance and upkeep of Subdivision Amenities and other similar amenities.

Section 2. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that City Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the City Council's intent.

Section 3. Effective Date. This Ordinance shall become effective immediately upon its adoption by City Council.

ADOPTED BY THE MAYOR AND COUNCIL, this 31 day of
JUNE, 2022

ATTEST:

Ina Pincus
City Secretary

APPROVED AS TO FORM:

[Signature]
City Solicitor

[Signature]
Mayor

[Signature]
Council Member

Elizabeth Kentz
Council Member

Linda Price
Council Member

Betty Barnett
Council Member

Michelle M. Cornish
Council Member

First Reading on 5/16/22.

Second Reading, Public Hearing, and Final Passage on 6/27/22.