

**WILLISTOWN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2 OF 2016

AN ORDINANCE PURSUANT TO ARTICLE VI, SECTION 609 OF THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE, AMENDING CHAPTER 139 OF THE CODE OF ORDINANCES OF WILLISTOWN TOWNSHIP, BEING THE ZONING ORDINANCE; PROVIDING FOR PURPOSES AND INTENT RELATED TO THE ADOPTION OF NEW STANDARDS FOR WIRELESS COMMUNICATION FACILITIES; PROVIDING FOR DEFINITIONS; ESTABLISHING GENERAL AND SPECIFIC STANDARDS RELATING TO LOCATION, PLACEMENT, CONSTRUCTION AND MAINTENANCE OF TOWER-BASED WIRELESS COMMUNICATION FACILITIES AND NON-TOWER WIRELESS COMMUNICATION FACILITIES; PROVIDING FURTHER FOR THE REGULATION OF SUCH FACILITIES WITHIN AND OUTSIDE THE PUBLIC RIGHT-OF-WAY; PROVIDING FOR ENFORCEMENT OF SAID REGULATIONS. EFFECTIVE FIVE DAYS FROM ENACTMENT.

Section 1. The Code of the Township of Willistown, Chapter 139 thereof, being the Willistown Township Zoning Ordinance, Article II, §139-6, Definitions, is amended by repealing the following definitions: “ANTENNA”, “ANTENNA HEIGHT”, “ANTENNA SUPPORT STRUCTURE”, and “WIRELESS COMMUNICATIONS FACILITY”.

Section 2. The Code of the Township of Willistown, Chapter 139 thereof, being the Willistown Township Zoning Ordinance, Article II, §139-6, Definitions, is amended by adding the following terms and definitions therefore in the correct alphabetical sequence:

ANTENNA - A system of wires, rods, discs, panels, flat panels, dishes, whips, or other similar devices used for the transmission or reception of wireless signals. An Antenna may include an omnidirectional Antenna (rod), directional Antenna (panel), parabolic Antenna (disc) or any other wireless Antenna. An Antenna shall not include Tower-Based Wireless Communications Facilities as defined below.

CO-LOCATION OR CO-LOCATED - The mounting of one or more WCFs, including Antennae, on an existing Tower-Based WCF, or on any structure that already supports at least one Non -Tower WCF.

DISTRIBUTED ANTENNA SYSTEMS (DAS) - Network of spatially separated Antenna sites connected to a common source that provides wireless service within a geographic area or structure.

ELECTRICAL TRANSMISSION STRUCTURE - Transmission poles and towers in Rights-of-Way, easements and electric company property.

EMERGENCY - a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the Rights-of-Way to be unusable and result in loss of the services provided.

FCC - Federal Communications Commission.

HEIGHT OF A TOWER-BASED WCF - The vertical distance measured from the ground level, including any base pad, to the highest point on a Tower-Based WCF, including Antennae mounted on the tower and any other appurtenances.

MONOPOLE - A WCF or site which consists of a single pole structure, designed and erected on the ground or on top of a structure, to support communications Antennae and connecting appurtenances.

NON -TOWER WIRELESS COMMUNICATIONS FACILITY (Non-Tower WCF) - All non – tower wireless communications facilities, including but not limited to, Antennae and Related Equipment. Non-Tower WCF shall not include support structures for Antennae or any Related Equipment that is mounted to the ground or at ground-level.

RELATED EQUIPMENT - Any piece of equipment related to, incidental to, or necessary for, the operation of a Tower-Based WCF or Non-Tower WCF. By way of illustration, not limitation, " Related Equipment" includes generators and base stations.

RIGHT-OF-WAY OR ROW - The surface of and space above and below any real property in the Township in which the Township or Commonwealth has ownership, or interest as a trustee for the public, as such ownership and/ or interests now or hereafter exist, including, but not limited to, all Streets, highways, avenues, roads, alleys, crosswalks, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the Township or Commonwealth, and any unrestricted public or utility easements established, dedicated, platted, improved or devoted for utility purposes, but excluding lands other than Streets that are owned by the Township. The phrase "in the Right(s)-of-Way" means in, on, over, along, above and/ or under the Right(s)-of-Way.

STEALTH TECHNOLOGY - Camouflaging methods applied to wireless communications towers, Antennae and other facilities which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted Antennae, building-mounted Antennae painted to match the existing structure and facilities constructed to resemble trees, shrubs, flag poles, farm silos, and light poles.

SUBSTANTIALLY CHANGE - (1) Any increase in the height of a Wireless Support Structure by more than 10%, or by the height of one additional Antenna array with separation from the nearest existing Antenna not to exceed twenty (20) feet, whichever is greater, except that the mounting of the proposed Wireless Communications Facility may exceed the size limits set forth in this Chapter or the WBCA if necessary to avoid interference with existing Antennae; or (2)

Any further increase in the height of a Wireless Support Structure which has already been extended by more than 10% of its originally approved height or by the height of one additional Antenna array.

TOWER-BASED WIRELESS COMMUNICATIONS FACILITY (Tower-Based WCF) - Any structure that is used for the purpose of supporting one or more Antennae, including, but not limited to, self-supporting lattice towers, guy towers and monopoles, utility poles and light poles. DAS and DAS Hub facilities mounted to the ground are considered to be Tower-Based WCFs.

WBCA - Pennsylvania Wireless Broadband Collocation Act (53 P. S. § 11702. 1 et. seq.)

WIRELESS - transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.

WIRELESS COMMUNICATIONS FACILITY (WCF) - the Antennae, nodes, control boxes, towers, poles, conduits, ducts, pedestals, electronics and other equipment used for the purpose of transmitting, receiving, distributing, providing, or accommodating wireless communications services.

WIRELESS SUPPORT STRUCTURE - a freestanding structure, such as a Tower-Based Wireless Communications Facility or any other support structure that could support the placement or installation of a Wireless Communications Facility if approved by the Township.

Section 3 The Code of the Township of Willistown, Chapter 139 thereof, being the Willistown Township Zoning Ordinance, Article XVII, §139-93.1, Wireless communications facilities, is repealed in its entirety and replaced with a new §139-93.1, Wireless communications facilities, as follows:

§139-93.1. Wireless communications facilities.

A. Purpose and Intent.

- (1) The purpose of this section is to establish uniform standards for the siting, design, permitting, maintenance, and use of Wireless Communications Facilities in Willistown Township (referred to herein as the "Township"). While the Township recognizes the importance of Wireless Communications Facilities in providing high quality communications service to its residents and businesses, the Township also recognizes that it has an obligation to protect public safety and to minimize the adverse visual effects of such facilities through the standards set forth in the following provisions.
- (2) By enacting these provisions, the Township intends to:
 - (a) Accommodate the need for Wireless Communications Facilities while regulating their location and number so as to ensure the provision for necessary services;

- (b) Provide for the managed development of Wireless Communications Facilities in a manner that enhances the benefits of wireless communication and accommodates the needs of both Township residents and wireless carriers in accordance with federal and state laws and regulations;
- (c) Establish procedures for the design, siting, construction, installation, maintenance and removal of both Tower-Based and Non-Tower based Wireless Communications Facilities in the Township, including facilities both inside and outside the public rights-of-way;
- (d) Address new wireless technologies, including but not limited to, distributed antenna systems, data collection units, cable Wi-Fi and other Wireless Communications Facilities;
- (e) Encourage Applicants to seek joint use of existing wireless communications facilities and other tall structures;
- (f) Minimize the adverse visual effects and the number of such facilities through proper design, siting, vegetative screening, material, color and finish and by requiring that competing providers of wireless communications services co-locate their commercial communications antennas and related facilities on existing structures, including utility poles, public utility structures, buildings and other structures, where permitted;
- (g) Ensure the structural integrity of commercial communications antenna support structures through compliance with applicable industry standards and regulations;
- (h) Preserve the rural, suburban and urban character of neighborhoods adjacent to wireless communication facilities; and
- (i) Promote the health, safety and welfare of the Township's residents.

B. General Requirements for All Tower-Based Wireless Communications Facilities.

The following regulations shall apply to all Tower-Based Wireless Communications Facilities (WCFs) in the Township:

- (1) Standard of care. Any Tower-Based WCF shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety- related codes, including but not limited to, the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, National Electrical Code, as well as the accepted and responsible workmanlike industry practices of the National Association of Tower Erectors. Any Tower-Based WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Township.

- (2) Notice. Upon submission of an application for a Tower-Based WCF and the scheduling of the public hearing upon the application, the Applicant shall mail notice to all owners of every property within one thousand-five hundred (1500) feet of the property upon which the proposed facility is located. The Applicant shall provide proof of the notification to the Township.
- (3) Monopole design. All Tower-Based WCFs shall be monopoles. Such facilities shall be architecturally screened and landscaped to simulate other structures existing in the district, such as light poles, flag poles, farm silos or trees; structures erected adjacent to trees or woodlands shall be camouflaged to resemble woody trees with single trunks and branches.
- (4) Uses by right. Uses by right on parcels owned or controlled by Willistown Township. Tower-Based WCFs may be permitted on any parcel owned or controlled by Willistown Township following review and recommendation by the Planning Commission. Location of said antenna(s) shall be at the discretion of the Township. Antenna(s) mounted on an existing structure shall be constructed to simulate the architectural facade and/or color of the building, structure or object to which they are attached. Freestanding WCFs shall abide by the requirements of (3), above. If a separate wireless communications equipment building is proposed as part of the WCF, such building shall be constructed to simulate the architectural facade and color of adjacent buildings.
- (5) Conditional uses. Tower-Based WCFs are permitted in the Restricted Industrial District by conditional use and only in such location within said district and at a height necessary to satisfy their function in the Applicant' s wireless communications system. No Applicant shall have the right under these regulations to erect a tower to the maximum height specified in this section unless it proves the necessity for such height. The Applicant shall demonstrate that the antenna/ tower/pole for the Tower-Based WCF is the minimum height necessary for the service area.
 - (a) Prior to the Board of Supervisor' s approval of a conditional use authorizing the construction and installation of Tower-Based WCF in a Zoning District where the same is a permitted conditional use, it shall be incumbent upon the Applicant for such conditional use approval to prove to the reasonable satisfaction of the Board that the Applicant cannot adequately extend or infill its communications system by the use of Antennae and/ or Non-Tower WCFs.
 - (b) The conditional use application shall be accompanied by a propagation study evidencing the need for the proposed tower or other communication facilities and equipment, as well as a description of the type and manufacturer of the proposed transmission/ radio equipment.
 - (c) The conditional use application shall also be accompanied by documentation demonstrating that the proposed Tower-Based WCF complies with all state and federal laws and regulations concerning aviation safety.
 - (d) Where the Tower-Based WCF is located on a property with another principal use,

the Applicant shall present documentation to the Board that the owner of the property has granted an easement for the proposed WCF and that vehicular access will be provided to the facility.

- (e) The conditional use application shall demonstrate that the proposed WCF complies with all other applicable regulations required in the conditional use process.
- (6) Engineering inspection. Prior to the Township's issuance of a permit authorizing construction and erection of a Tower-Based WCF, a structural engineer registered in Pennsylvania shall issue to the Township a written certification of the proposed WCF's ability to meet the structural standards offered by either the Electronic Industries Association or the Telecommunication Industry Association and certify the proper construction of the foundation and the erection of the structure.
- (7) Visual appearance. Tower-Based WCFs shall employ Stealth Technology. As discussed herein, all Related Equipment shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of a like facade to blend with the existing surroundings and neighboring buildings to the greatest extent possible.
 - (a) The Board of Supervisors may require that Related Equipment and buildings which house electrical transmitter equipment be placed underground, unless determined to be detrimental to the functioning and physical integrity of such equipment.
 - (b) In making this determination, the Board of Supervisors shall consider whether its decision will promote the harmonious and orderly development of the zoning district involved; encourage compatibility with the character and type of development existing in the area; benefit neighboring properties by preventing a negative impact on the aesthetic character of the community; preserve woodlands and trees existing at the site to the greatest possible extent; and encourage sound engineering and land development design and construction principles, practices and techniques.
- (8) Co-location and siting. An application for a new Tower-Based WCF shall not be approved unless the Township finds that the Antenna and Related Equipment planned for the proposed Tower-Based WCF cannot be accommodated on an existing or approved structure or building. The Board of Supervisors may deny an application to construct a new Tower-Based WCF if the Applicant has not made a good faith effort to mount Antenna(e) on an existing structure as set forth in this section. The Applicant shall demonstrate that it contacted the owners of tall structures, buildings, and towers within a one quarter (1/4) of a mile radius of the site proposed, sought permission to install Antenna on those structures, buildings, and towers and was denied for one of the following reasons:

- (a) The proposed Antenna and Related Equipment would exceed the structural capacity of the existing building, structure or tower, and its reinforcement cannot be accomplished at a reasonable cost.
 - (b) The proposed Antenna and Related Equipment would cause radio frequency interference with other existing equipment for that existing building, structure, or tower and the interference cannot be prevented at a reasonable cost.
 - (c) Such existing buildings, structures, or towers do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.
 - (d) A commercially reasonable agreement could not be reached with the owner of such building, structure, or tower.
- (9) Gap in coverage. An Applicant for a Tower-Based WCF must demonstrate that a significant gap in wireless coverage exists with respect to all wireless operators in the applicable area and that the type of WCF being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or non- existence of a gap in wireless coverage shall be a factor in the Township' s decision on an application for approval of Tower-Based WCFs.
- (10) Additional Antennae. As a condition of approval for all Tower-Based WCFs, the WCF Applicant shall provide the Township with a written commitment that it will allow other service providers to Co-locate Antennae on Tower-Based WCFs where technically and economically feasible. The owner of a Tower-Based WCF shall not install any additional Antennae without obtaining the prior written approval of the Township.
- (11) Wind. Any Tower-Based WCF structures shall be designed to withstand the effects of wind according to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/EIA/TIA-222-E, as amended).
- (12) Height. Tower-Based WCFs shall be designed at the minimum functional height. All Tower-Based WCF Applicants must submit documentation to the Township justifying the total height of the structure. The maximum total height of any Tower-Based WCF, which is not located in the public ROW, shall not exceed one hundred (100') feet, as measured vertically from the ground level, including any base pad, to the highest point on the structure, including Antennae and subsequent alterations. Should the WCF Applicant prove that another provider of wireless communications services has agreed to collocate Antennae on the Applicant's Tower-Based WCF and requires a greater tower height to provide satisfactory service for wireless communications than is required by the Applicant, the total height of such Tower- Based WCF may exceed one hundred (100') feet if the Applicant is granted a waiver from the Board; however, in no event, shall the Tower-Based WCF exceed one hundred fifty (150') feet.

- (13) Related equipment building. Any building or other structure housing Related Equipment shall comply with the required yard and height requirement of the applicable Zoning District for an accessory structure.
- (14) Public safety communications. No Tower-Based WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties. If measurable interference does result from the installation and use of the Tower-Based WCF, the owner of the Tower-Based WCF shall take immediate appropriate measures to abate the interference or cease operation.
- (15) Maintenance. The following maintenance requirements shall apply:
 - (a) Any Tower-Based WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
 - (b) Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Township's residents.
 - (c) All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.
- (16) Radio frequency emissions. No Tower-Based WCF may, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- (17) Historic buildings or districts. No Tower-Based WCF shall be located on property and/ or on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or eligible to be so listed, or is included in the official historic structures and/ or historic districts list maintained by the Township.
- (18) Signs. All Tower-Based WCFs shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency. The only other signage permitted on the WCF shall be those required by the FCC, or any other federal or state agency.
- (19) Lighting. No Tower-Based WCF shall be artificially lighted, except as required by law. If lighting is required, the Applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations.
- (20) Noise. Tower-Based WCFs shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and the Township Code, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.

- (21) Aviation safety. Tower-Based WCFs shall comply with all federal and state laws and regulations concerning aviation safety.
- (22) Retention of experts. The Township may hire any consultant(s) and/ or expert(s) necessary to assist the Township in reviewing and evaluating the application for approval of the Tower-Based WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of the Zoning Ordinance. The WCF Applicant and/ or owner of the WCF shall reimburse the Township for all costs of the Township' s consultant(s) in providing expert evaluation and consultation in connection with these activities.
- (23) Timing of approval. Within thirty (30) calendar days of the date that an application for a Tower-Based WCF is filed with the Township, the Township shall notify the WCF Applicant in writing of any information that may be required to complete such application. All applications for Tower-Based WCFs shall be acted upon within one hundred fifty (150) days of the receipt of a fully completed application for the approval of such Tower-Based WCF and the Township shall advise the WCF Applicant in writing of its decision. If additional information was requested by the Township to complete an application, the time required by the WCF Applicant to provide the information shall not be counted toward the one hundred fifty (150) day review period.
- (24) Non-conforming uses. Non-conforming Tower-Based WCFs which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored at their former location, but must otherwise comply with the applicable terms and conditions of this section. Co-location on existing non-conforming WCFs is permitted.
- (25) Removal. In the event that use of a Tower-Based WCF is planned to be discontinued, the owner shall provide written notice to the Township of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:
 - (a) All unused or abandoned Tower-Based WCFs and accessory facilities shall be removed within ninety (90) days of the cessation of operations at the site unless a time extension is approved by the Township.
 - (b) If the WCF and/ or accessory facility is not removed within ninety (90) days of the cessation of operations at a site, or within any longer period approved by the Township, the WCF and accessory facilities and equipment may be removed by the Township and the cost of removal assessed against the owner of the WCF or the owner of the property upon which the WCF is located.
 - (c) Any unused portions of Tower-Based WCFs, including Antennae, shall be removed within ninety (90) days of the time of cessation of operations. The Township must approve all replacements of portions of a Tower-Based WCF previously removed.

- (26) Permit fees. The Township may assess appropriate and reasonable permit fees directly related to the Township's actual costs in reviewing and processing the application for approval of a Tower-Based WCF, as well as related inspection, monitoring, and related costs. Such fees shall be adopted by Resolution of the Willistown Township Board of Supervisors.
- (27) FCC license. Each Person that owns or operates a Tower-Based WCF shall submit a copy of its current FCC license, including the name, address, and emergency telephone number for the operator of the facility.
- (28) Reservation of Rights. In accordance with applicable law, the Township reserves the right to deny an application for the construction or placement of any Tower-Based WCF for numerous factors, including but are not limited to, visual impact, design, and safety standards.
- (29) Insurance. Each Person that owns or operates a Tower-Based WCF greater than forty (40) feet in height shall provide the Township with a certificate of insurance evidencing general liability coverage in the minimum amount of \$ 5,000,000 per occurrence and property damage coverage in the minimum amount of \$5,000,000 per occurrence covering the Tower-Based WCF. Each Person that owns or operates a Tower-Based WCF forty (40') feet or less in height shall provide the Township with a certificate of insurance evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering each Tower -Based WCF.
- (30) Indemnification. Each person that owns or operates a Tower-Based WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Township, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the Tower-Based WCF. Each person that owns or operates a Tower-Based WCF shall defend any actions or proceedings against the Township in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of Tower-Based WCF. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.
- (31) Facility security. All Tower-Based WCFs shall have an integral security platform, or other means with locked access, to prevent unauthorized climbing of the tower.
- (32) Engineer signature. All plans and drawings for a Tower-Based WCF structure/tower and Antenna shall contain a seal and signature of a professional structural engineer, licensed in the Commonwealth of Pennsylvania.

(33) Financial security. Prior to receipt of a zoning permit for the construction or placement of a Tower-Based WCF, the Applicant shall provide to the Township financial security sufficient to guarantee the removal of the Tower-Based WCF. Said financial security shall remain in place until the Tower-Based WCF is removed.

(34) Proof of Annual Inspection

(a) The owner of a Tower-Based Wireless Communications Facility shall submit, on an annual basis, proof of inspection of the facility as required by the ANSI/EIA/TIA-222-E Code, as amended. Based on the results of such inspection, the Board of Supervisors may require removal or repair of the Tower-Based Wireless Communications Facility.

(b) In the event that the annual inspection referred to above is not performed in a timely manner or if the owner of the Wireless Communications Facility fails to make the necessary repairs or to remove the facility when directed by the Board of Supervisors, the owner shall be subject to civil enforcement proceedings in accordance with §139-138.

C. Tower-Based WCF Outside the Rights-of-Way

The following additional regulations shall apply to Tower-Based Wireless Communications Facilities located outside the Rights-of-Way:

(1) Location. Tower-Based WCF which are forty (40') feet or higher in height shall not be located within seventy-five (75) feet of any underground utilities (except for sewer and water) and except as otherwise permitted by the Zoning Ordinance. Such Tower-Based WCFs may be located in the following Zoning Districts:

(a) As a use by-right on parcels owned or controlled by Willistown Township per B(4), above.

(b) As a conditional use in the Restricted Industrial District per B(5), above.

(2) Sole use on a lot. A Tower-Based WCF may be permitted as a sole use on a lot, provided that the underlying lot is at least one acre. The minimum distance between the base of a Tower-Based WCF and any adjoining property line or street right-of-way line shall equal 110% of the proposed WCF structure height.

(3) Combined with another use. A Tower-Based WCF may be permitted on a property with an existing use or on a vacant parcel in combination with another use subject to the following conditions:

(a) The existing use on the property shall be any permitted use in the applicable district, and need not be affiliated with the WCF.

- (b) Minimum setbacks. The minimum distance between the base of a Tower-Based WCF and any adjoining property line or street right-of-way line shall equal 110% of the proposed height of the Tower-Based WCF. At the Board's sole discretion, the Board may allow a reduced setback if it is demonstrated to the reasonable satisfaction of the Board that in the event of failure the WCF is designed to collapse upon itself within a setback area less than the required minimum setback without endangering such adjoining uses and their occupants.
- (4) Gap in coverage. An applicant for a Tower-Based WCF must demonstrate that a significant gap in wireless coverage exists with respect to the applicant's operation in the applicable area and that the type of WCF being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or nonexistence of a gap in wireless coverage shall be a factor in the Township's decision on an application for approval of Tower-Based WCF.
- (5) Design regulations.
- (a) The WCF shall employ the most current Stealth Technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact which shall be subject to the final approval of the Township.
 - (b) To the extent permissible by law, any height extensions to an existing Tower-Based WCF shall require prior approval of the Township.
 - (c) Any proposed Tower-Based WCF shall be designed structurally, electrically, and in all respects to accommodate both the WCF Applicant's Antennae and comparable Antennae for future users.
- (6) Surrounding Environs.
- (a) The WCF Applicant shall ensure that the existing vegetation, trees and shrubs located within proximity to the WCF structure shall be preserved to the maximum extent possible.
 - (b) Evergreen bushes or other appropriate native plant opaque shrubs, a minimum of five feet in height, shall be planted immediately adjacent to the fencing at an interval not greater than three feet on center, except adjacent to that portion of the fence at which is located an access gate.
 - (c) Soil report. The applicant shall submit a soil report to the Township complying with the standards of Appendix I: Geotechnical Investigations, ANSI/ETA 222-B, as amended, to document and verify the design specifications of the foundation of the tower-based WCF, and anchors for guy wires, if used.
- (7) Screening.

- (a) A security fence constructed of wood or wood-like composite material, having a maximum height of ten (10') feet shall completely surround any Tower-Based WCF greater than forty (40') feet in height, as well as guy wires, or any building housing WCF equipment. The fence shall not be topped with barbed wire.
 - (b) Landscaping. The applicant shall provide a plan prepared by a landscape architect showing landscaping proposed to be installed to screen and buffer the wireless communications facility. The landscape plan shall incorporate a mix of native vegetation, including evergreens, shrubbery and trees which shall not be less than the height of the fence and shall be of sufficient density to screen the facility. Fences shall be designed and constructed in such a manner that unauthorized entry onto the site is precluded. Existing vegetation on and around the wireless communications facility shall be preserved to the greatest extent possible. All proposed landscaping shall comply with the requirements of the Township's Environmental Protection Ordinance and Subdivision and Land Development Ordinance. Applicants shall submit a visual survey from mutually agreed upon vantage points in order to support the proposed landscaping plan's mitigation of visual impacts.
- (8) Accessory Equipment.
- (a) Ground-mounted equipment associated to, or connected with, a Tower-Based WCF shall be underground unless the applicant can demonstrate to the satisfaction of the Township that the equipment cannot be located underground, in which case the ground mounted equipment shall be screened from public view using Stealth Technologies, as described herein.
 - (b) All utility buildings and accessory structures shall be architecturally designed to blend into the environment in which they are situated and shall meet the minimum setback requirements of the underlying zoning district.
- (9) Access road. An access drive, turnaround space and necessary parking shall be provided to ensure adequate emergency and service access to a Tower-Based WCF. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and minimize soil erosion. Where applicable, the WCF owner shall present documentation to the Township that the property owner has granted an easement for the proposed facility.
- (10) Parking. For each Tower-Based WCF greater than forty (40) feet in height, there shall be two off-street parking spaces.
- (11) Inspection. The Township reserves the right to inspect any Tower-Based WCF to ensure compliance with the provisions of this section and any other provisions found within the Township Code or state or federal law. The Township and/or its agents shall have the authority to enter the property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

D. Tower-Based WCF in the Rights-of-Way

The following regulations shall apply to Tower-Based Wireless Communications Facilities located in the Rights-of-Way:

(1) Location. Tower-Based WCF which are forty (40') feet or shorter in height shall not be located within fifty (50) feet of any underground utilities (except for sewer and water) and shall not be located within any Right-of-Way that directly fronts or abuts the front yard setback area of a residential dwelling. Such Tower-Based WCFs are permitted within certain districts and along certain corridors and roadways, regardless of the underlying zoning district, as follows:

(a) Planned Highway Corridor District.

(b) Paoli Pike.

(c) Route 30.

(c) Sugartown Road.

(d) Delchester Road.

(e) Goshen Road.

(f) Industrial Boulevard.

(2) Time, place and manner. The Township shall determine the time, place and manner of construction, maintenance, repair and/ or removal of all Tower-Based WCFs in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the Township and the requirements of the Public Utility Code.

(3) Permit required. A road opening permit shall be required.

(4) Equipment location. Tower-Based WCFs and Related Equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the ROW as determined by the Township. In addition:

(a) In no case shall ground-mounted equipment, walls, or landscaping be located within 18 inches of the edge of the roadbed or the face of the curb.

(b) Ground-mounted equipment that cannot be undergrounded shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Township.

- (c) Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Township.
 - (d) Any graffiti on the tower or on any accessory equipment shall be removed at the sole expense of the owner within ten (10) business days of notice of the existence of the graffiti.
 - (e) Any underground vaults related to Tower-Based WCFs shall be reviewed and approved by the Township.
- (5) Design regulations.
- (a) The WCF shall employ the most current Stealth Technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact, subject to the approval of the Township.
 - (b) Tower-Based WCFs in the public ROW shall not exceed forty (40) feet in height.
 - (c) To the extent permissible under state and federal law, any height extensions to an existing Tower-Based WCF shall require prior approval of the Township, and shall not increase the overall height of the Tower-Based WCF to more than forty (40) feet.
 - (d) Any proposed Tower-Based WCF shall be designed structurally, electrically, and in all respects to accommodate both the WCF Applicant's Antennae and comparable Antennae for future users.
- (6) Relocation or removal of facilities. Within sixty (60) days following written notice from the Township, or such longer period as the Township determines is reasonably necessary or such shorter period in the case of an emergency, an owner of Tower-Based WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the Township, consistent with its police powers and applicable Public Utility Commission regulations, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
- (a) The construction, repair, maintenance or installation of any Township or other public improvement in the Right-of-Way;
 - (b) The operations of the Township or other governmental entity in the Right-of-Way;
 - (c) Vacation of a street or road or the release of a utility easement; or
 - (d) An emergency as determined by the Township.
- (7) Reimbursement for ROW use. In addition to permit fees as described in this Ordinance, every Tower-Based WCF in the ROW is subject to the Township's right to fix annually a

fair and reasonable compensation to be paid for use and occupancy of the ROW. Such compensation for ROW use shall be directly related to the Township's actual ROW management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other ROW management activities by the Township. The owner of each Tower-Based WCF shall pay an annual fee to the Township to compensate the Township for the Township's costs incurred in connection with the activities described above.

E. General Requirements for All Non-Tower Wireless Communications Facilities.

- (1) The following regulations shall apply to all Non-Tower Wireless Communications Facilities located within the Township:
 - (a) Accessory use to existing electrical transmission structures. Non-Tower WCFs shall be considered to be an accessory use to existing electrical transmission structures, when affixed to such transmission structures, and shall be permitted in all zoning districts in the Township.
 - (b) Standard of care. Any Non-Tower WCF shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including but not limited to the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code. Any WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Township.
 - (c) Wind. All Non-Tower WCF shall be designed to withstand the effects of wind according to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/TIA-222, as amended).
 - (d) Aviation safety. Non-Tower WCFs shall comply with all federal and state laws and regulations concerning aviation safety.
 - (e) Public safety communications. Non-Tower WCFs shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties. If measurable interference does result from the installation and use of the Non-Tower WCF, the owner of the Non-Tower-Based WCF shall take immediate appropriate measures to abate the interference or cease operation.
 - (f) Radio frequency emissions. Non-Tower WCFs shall not, by themselves or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC

Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.

- (g) Removal. In the event that use of a Non-Tower WCF is discontinued, the owner shall provide written notice to the Township of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:
 - [1] All abandoned or unused WCFs and accessory facilities shall be removed within two (2) months of the cessation of operations at the site unless a time extension is approved by the Township.
 - [2] If the WCF or accessory facility is not removed within two (2) months of the cessation of operations at a site, or within any longer period approved by the Township, the WCF and/or associated facilities and equipment may be removed by the Township and the cost of removal assessed against the owner of the WCF.
- (h) Timing of approval. Within thirty (30) calendar days of the date that an application for a Non-Tower WCF is filed with the Township, the Township shall notify the Applicant in writing of any information that may be required to complete such application. Within ninety (90) calendar days of receipt of a complete application, the Township shall make its final decision on whether to approve the application and shall advise the Applicant in writing of such decision. If additional information was requested by the Township to complete an application, the time required by the Applicant to provide the information shall not be counted toward the Township's ninety (90) day review period. This timing of approval shall not apply to any Non-Tower WCF required to proceed through Conditional Use Approval.
- (i) Insurance. Each Person that owns or operates a Non-Tower WCF shall provide the Township with a certificate of insurance evidencing general liability coverage and property damage coverage; coverage amounts shall be established in consultation with the Board of Supervisors. In no case shall general liability coverage be less than \$1,000,000 per occurrence and property damage coverage be less than \$1,000,000 per occurrence covering the Non-Tower WCF.
- (j) Indemnification. Each Person that owns or operates a Non-Tower WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Township, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the Person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the Non-Tower WCF. Each Person that owns or operates a Non-Tower WCF shall defend any actions or proceedings against the Township in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of a Non-Tower WCF. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries,

liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.

(k) Maintenance. To the extent permitted by law, the following maintenance requirements shall apply:

[1] The Non-Tower WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.

[2] Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Township' s residents.

[3] All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.

(l) Reservation of rights. In accordance with applicable law, the Township reserves the right to deny an application for the construction or placement of any Non-Tower WCF for numerous factors, which include but are not limited to, visual impact, design, and safety standards.

(m) Historic buildings. No Non-Tower WCF may be located upon any property, or on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or is eligible to be so listed, or is listed on the Historic Resources List maintained by the Township, or has been designated by the Township to be of historical significance.

(n) Proof of Annual Inspection

[1] The owner of a Non-Tower Wireless Communications Facility shall submit, on an annual basis, proof of inspection of the facility as required by the ANSI/EIA/TIA-222-E Code, as amended. Based on the results of such inspection, the Board of Supervisors may require removal or repair of the Non-Tower Wireless Communications Facility.

[2] In the event that the annual inspection referred to above is not performed in a timely manner or if the owner of the Wireless Communications Facility fails to make the necessary repairs or to remove the facility when directed by the Board of Supervisors, the owner shall be subject to civil enforcement proceedings in accordance with § 139-138.

(2) In addition to the regulations of Part (1) of this section, the following regulations shall apply to all Non-Tower WCFs that do not Substantially Change the physical dimensions of the Wireless Support Structure to which they are attached:

(a) Non-Tower WCFs that do not Substantially Change the physical dimension of the Wireless Support Structure may be eligible for a sixty (60) day timeframe for review. The Applicant shall assert such eligibility in writing to the Township and provide

documentation reasonably related to the determining whether the application is eligible for the shortened review timeframe. If warranted, such application shall be reviewed within the sixty (60) day timeframe.

- (b) Related equipment. Ground-mounted related equipment greater than three (3) cubic feet shall not be located within twenty-five (25) feet of a lot in residential use or zoned residential.
 - (c) Permit required. Applicants proposing the modification of an existing Tower-Based WCF, in order to accommodate a Non-Tower WCF, shall obtain the applicable permit from the Township zoning office. In order to be considered for such permit, the WCF Applicant must submit a permit application to the Township in accordance with applicable permit policies and procedures.
 - (d) Permit fees. The Township may assess appropriate and reasonable permit fees directly related to the Township's actual costs in reviewing and processing the application for approval of a Non-Tower WCF, as well as related inspection, monitoring and related costs. Such fees shall be adopted by Resolution of the Willistown Township Board of Supervisors or \$1,000, whichever is less.
- (3) In addition to the regulations in Part (1) of this section, the following additional regulations shall apply to all Non-Tower Wireless Communications Facilities that do Substantially Change the Wireless Support Structure to which they are attached:
- (a) Prohibited on certain structures. Non-Tower WCFs shall not be located on single-family detached residences, single-family attached residences, or any residential accessory structure.
 - (b) Conditional use authorization. When the Pennsylvania Wireless Broadband Collocation Act does not apply to the proposed siting of a new Non-Tower WCF application, the approval process for such application shall be conditional use. When a conditional use application is required, the regulations set forth in this section shall apply to the facility, dependent upon its proposed location. New construction and modifications that do not fall within the provisions of the WBCA shall be prohibited without conditional use authorization.
 - (c) Historic buildings. Non-Tower WCFs shall not be located on a property, and/or on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or is eligible to be so listed, or is listed on the official historic structures and/or historic districts list maintained by the Township, or has been designated by the Township to be of historical significance.
 - (d) Retention of Experts. The Township may hire any consultant(s) and/ or expert(s) necessary to assist the Township in reviewing and evaluating the application for approval of the WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of these provisions. The Applicant and/or owner of the WCF shall reimburse the Township for all costs of the Township's

consultant(s) in providing expert evaluation and consultation in connection with these activities.

- (e) Permit Fees. The Township may assess appropriate and reasonable permit fees directly related to the Township's actual costs in reviewing and processing the application for approval of a Non-Tower WCF, as well as related inspection, monitoring and related costs. Such fees shall be adopted by Resolution of the Willistown Township Board of Supervisors.

F. Non-Tower Wireless Communication Facilities Outside the Rights-of-Way

The following additional regulations shall apply to Non-Tower WCFs located outside the rights-of-way that Substantially Change the Wireless Support Structure to which they are attached:

- (1) Development regulations. Non-Tower WCFs shall be Co-located on existing structures, such as existing buildings or Tower-Based WCFs subject to the following conditions:
 - (a) In accordance with industry standards, all Non-Tower WCF Applicants must submit documentation to the Township justifying the total dimensions, including height, of the Non-Tower structure. Such documentation shall be analyzed on an individual basis.
 - (b) The height of a Non-Tower WCF affixed to an electrical transmission structure, including the height of the underlying structure, shall be no higher than one hundred twenty (120) feet.
 - (c) The total height of any non-electrical transmission support structure and mounted WCF shall not exceed the maximum height permitted in the underlying zoning district, unless the WCF Applicant applies for, and subsequently obtains a variance.
 - (d) If the WCF Applicant proposes to locate the Related Equipment in a separate building, the building shall comply with the minimum requirements for the applicable zoning district.
 - (e) A security fence constructed of wood or wood-like composite material, having a maximum height of ten (10) feet shall completely surround any separate communications equipment building. Vehicular access to the communications equipment building shall not interfere with the parking or vehicular circulations on the site for the principal use.
 - (f) Landscaping shall be required to screen as much of the newly constructed WCF, equipment building, and Related Equipment as possible. Landscaping shall include a mix of native vegetation, including evergreens, shrubbery and trees which shall not be less than the height of the fence and shall be of sufficient density to screen the facility. All proposed landscaping shall comply with the requirements of the Township's Environmental Protection Ordinance and Subdivision and Land

Development Ordinance. Applicants shall submit a visual survey from mutually agreed upon vantage points in order to support the proposed landscaping plan's mitigation of visual impacts.

(2) Design regulations.

(a) Non -Tower WCFs shall employ Stealth Technology and be treated to match the supporting structure in order to minimize aesthetic impact. The application of the Stealth Technology chosen by the WCF Applicant shall be subject to the approval of the Township.

(b) Non-commercial usage exemption. Township citizens utilizing satellite dishes and Antennae for the purpose of maintaining television, phone, and/ or internet connections at their respective residences shall be exempt from the design regulations enumerated in this Section.

(3) Removal, replacement and modification. The removal and replacement of Non-Tower WCFs and/ or accessory equipment for the purpose of upgrading or repairing the WCF is permitted, so long as such repair or upgrade does not increase the overall size of the WCF or the numbers of Antennae. Any material modification to a WCF shall require a prior amendment to the original permit or authorization.

(4) Inspection. The Township reserves the right to inspect any WCF to ensure compliance with the provisions of the Zoning Ordinance and any other provisions found within the Township Code or State or Federal law. The Township and/or its agents shall have the authority to enter the property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

G. Non-Tower Wireless Communication Facilities in the Public Rights-of-Way

The following additional regulations shall apply to all Non-Tower Wireless Communication Facilities located in the Public Rights-of-Way:

(1) Co-location. Non -Tower WCFs in the ROW shall be Co-located on existing poles, such as existing utility poles or light poles. If Co-location is not technologically feasible, the Applicant shall locate its Non Tower WCFs on existing poles that do not already act as Wireless Support Structures with Township approval.

(2) Design requirements.

(a) WCF installations located above the surface grade in the public ROW including, on streetlights and joint utility poles, shall consist of equipment components that are no more than six (6) feet in height and that are compatible in scale and proportion to the structures upon which they are mounted. All equipment shall be the smallest and least visibly intrusive equipment feasible.

- (b) Antennae, support equipment, and Related Equipment shall be treated to match the supporting structure. WCFs and accompanying equipment shall be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.
- (3) Time, place and manner. The Township shall determine the time, place and manner of construction, maintenance, repair and/ or removal of all Non-Tower WCFs in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the Township and the requirements of the Public Utility Code.
- (4) A road opening permit shall be required.
- (5) Equipment location. Non-Tower WCFs and accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the ROW as determined by the Township. In addition:
- (a) In no case shall ground-mounted equipment, walls, or landscaping be located within eighteen (18) inches of the edge of the cartway or the face of the curb or within an easement extending onto a privately-owned lot.
 - (b) Ground-mounted equipment that cannot be undergrounded shall be screened, to the fullest extent possible, through the use of landscaping and other decorative features, as needed, to the satisfaction of the Township. Landscaping shall include a mix of native vegetation, including evergreens, shrubbery and trees which shall not be less than the height of the fence and shall be of sufficient density to screen the facility. All proposed landscaping shall comply with the requirements of the Township's Environmental Protection Ordinance and Subdivision and Land Development Ordinance. Applicants shall submit a visual survey from mutually agreed upon vantage points in order to support the proposed landscaping plan's mitigation of visual impacts.
 - (c) Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Township.
 - (d) Any graffiti on the tower or on any accessory equipment shall be removed at the sole expense of the owner within ten (10) business days of notice of the existence of the graffiti.
 - (e) Any proposed underground vault related to Non-Tower WCFs shall be reviewed and approved by the Township.
- (6) Relocation or Removal of Facilities. Within sixty (60) days following written notice from the Township, or such longer period as the Township determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a WCF in the ROW shall,

at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the Township, consistent with its police powers and applicable Public Utility Commission regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:

- (a) The construction, repair, maintenance or installation of any Township or other public improvement in the right-of-way;
- (b) The operations of the Township or other governmental entity in the right-of-way;
- (g) Vacation of a street or road or the release of a utility easement; or
- (d) An Emergency as determined by the Township.

Section 4. This Ordinance shall be effective five (5) days from the date of enactment.

ENACTED and **ORDAINED** this 25th day of January, 2016.

Attest:



David R. Burman
Township Secretary

Board of Supervisors:



William R. Shoemaker, Chairman

George J. McHugh, IV, Vice-Chairman



Robert T. Lange, Supervisor