

**BOROUGH OF ETNA
ALLEGHENY COUNTY, PENNSYLVANIA**

ORDINANCE NO. 1388

WIRELESS COMMUNICATION FACILITIES

**AN ORDINANCE AMENDING CHAPTER 615, ZONING, TO MODIFY
REGULATIONS FOR WIRELESS COMMUNICATIONS FACILITIES**

BE IT RESOLVED AND ORDAINED, by the Council of the Borough of Etna, Allegheny County, Pennsylvania, and the authority of the same, does hereby adopt, made this 21 day of Dec, 2021, by amending the Code of the Borough of Etna, Pennsylvania, with the amendment of Chapter 615, as follows:

SECTION I. AMENDMENT OF CERTAIN WIRELESS COMMUNICATIONS FACILITIES PROVISIONS.

Section 615-21N “Wireless communications facilities” of the Etna Borough Zoning Ordinance is hereby repealed in its entirety and replaced with a new Section 615-21N entitled and provided for as follows:

Section 615-21N. Wireless communications facilities.

- (1) Purpose. The purpose of these provisions is to establish uniform standards for the siting, design, permitting, maintenance, and use of wireless communications facilities in Etna Borough. While the Borough recognizes the importance of wireless communications facilities in providing high quality communications service to its residents and businesses, the Borough 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. The final authority on the regulation of wireless communication facilities are under the jurisdiction of the Federal Telecommunications Act and related regulations adopted by the Commonwealth of Pennsylvania. Zoning regulations on this use are permitted to protect the public, health, safety and welfare, unless specifically excluded by federal and state acts. By enacting this chapter, the Borough intends to:
 - (a) 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 Borough residents and wireless carriers in accordance with federal and state laws and regulations.
 - (b) Establish procedures for the design, siting, construction, installation, maintenance and removal of wireless communications facilities in the Borough, including facilities both inside and outside the public rights-of-way.

- (c) Address new wireless technologies, including but not limited to, small cells, distributed antenna systems, data collection units, and other wireless communications facilities.
 - (d) Encourage applicants to co-locate their wireless communications facilities on existing wireless support structures and other tall structures.
 - (e) Minimize the adverse visual effects and the number of such facilities through proper design, siting, 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 towers.
 - (f) Promote the health, safety and welfare of the Borough's residents.
- (2) General requirements for all wireless communications facilities.
- (a) The following regulations shall apply to all wireless communications facilities located within the Borough:
 - [1] Noncommercial usage exemption. Borough citizens utilizing satellite dishes and antennas 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 chapter.
 - [2] Standard of care.
 - [a] Any 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, and the structural standards of the American Association of State Highway and Transportation Officials or any other industry standard applicable to the structure. 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 damage any property in the Borough.
 - [b] If such standards or regulations are changed, the owner of the WCF shall bring such WCF into compliance with the revised standards within six (6) months of the effective date of such standards or regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring such WCFs into compliance shall constitute grounds for the removal of the WCF at the owner's expense.
 - [c] The WCF applicant shall submit proof of compliance with all applicable federal and state standards, including but not limited to those established by the Federal Communications Commission, as part of any complete WCF application.

- [3] Wind. All WCFs 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, as amended).
- [4] Aviation safety. WCFs shall comply with all federal and state laws and regulations concerning aviation safety.
- [5] Public safety communications. No WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- [6] Signs. All WCFs shall post a sign in a readily visible location on the WCF or wireless support structure 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.
- [7] Permit fees. The Borough may assess appropriate and reasonable permit fees directly related to the Borough's actual costs in reviewing and processing the application for approval of a WCF, as well as related inspection, monitoring and related costs.
- [8] Radio frequency emissions. No 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.
- [9] Indemnification. Each person that owns or operates a WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, 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 WCF. Each person that owns or operates a WCF shall defend any actions or proceedings against the Borough 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 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.
- [10] Engineer signature. All plans and drawings for a WCF shall contain a seal and signature of a professional structural engineer, licensed in the Commonwealth of Pennsylvania certifying the structural integrity of the proposed WCF and its

compliance with all local, state and federal laws and regulations applicable to the proposed WCF.

[11] Maintenance. To the extent permitted by law, the following maintenance requirements shall apply:

[a] The 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 protect the safety and security of the Borough's residents.

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

(3) Specific requirements for non-tower wireless facilities outside the rights-of-way. The following regulations shall apply to non-tower WCFs located outside the rights-of-way that do not meet the definition of a small WCF:

(a) Development regulations. Non-tower WCFs shall be co-located on existing structures, such as existing buildings or tower-based WCFs, if possible, subject to the following conditions:

[1] In accordance with industry standards, all non-tower WCF applicants must submit documentation to the Borough justifying the total height of the non-tower WCF. Such documentation shall be analyzed on an individual basis.

[2] All non-tower WCFs shall be designed to be of the minimum height technically feasible. The total height of any wireless support structure and mounted WCF shall not exceed the maximum height permitted in the underlying zoning district by more than 20 feet.

[3] If the WCF applicant proposes to locate the related equipment in a separate building, the building shall comply with the minimum setback and building requirements for the applicable zoning district.

[4] A security fence of not less than 10 feet shall 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.

[5] 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 Borough.

(b) Removal, replacement, modification. The removal and replacement of non-tower WCFs and/or related equipment for the purpose of upgrading or repairing the WCF is permitted,

so long as such repair or upgrade does not substantially change the dimensions of the wireless support structure. Any modification that constitutes a substantial change to a WCF shall require a prior amendment to the original permit or authorization.

- (c) Reservation of rights. In accordance with applicable law, the Borough reserves the right to deny an application for the construction or placement of any non-tower WCF.
- (d) Inspection. The Borough reserves the right to inspect any WCF to ensure compliance with the provisions of this chapter and any other provisions found within the Borough Code or state or federal law. The Borough and/or its agents shall have the authority to enter the property upon which a WCF is located, upon reasonable notice to the operator, to ensure such compliance.
- (e) Timing of approval.

- [1] Within 30 calendar days of the date that an application for a non-tower WCF is filed with the Borough, the Borough shall notify the applicant in writing of any information that may be required to complete such application.

- [2] Within 90 calendar days of receipt of an application, and subject to applicable tolling procedures as established by federal law, the Borough shall make its final decision on whether to approve the application and shall advise the applicant in writing of such decision.

- [3] If additional information was requested by the Borough to complete an application, the time required by the applicant to provide the information shall not be counted toward the Borough's review period.

- (f) Insurance. Each person that owns or operates a non-tower WCF shall provide the Borough 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 the non-tower WCF.

- (g) Removal. In the event that use of a non-tower WCF is discontinued, the owner shall provide written notice within 90 days to the Borough 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 related equipment shall be removed within two months of the cessation of operations at the site unless a time extension is approved by the Borough.

- [2] If the WCF or related equipment is not removed within two months of the cessation of operations at a site, or within any longer period approved by the Borough, the WCF and/or associated facilities and equipment may be removed by the Borough, and the cost of removal assessed against the owner of the WCF.

(4) Specific requirements for tower-based wireless communications facilities outside the rights-of-way. The following regulations shall apply to all tower-based wireless communications facilities located outside the rights-of-way that do not meet the definition of a small WCF:

(a) Notice. Upon submission of an application for a tower-based WCF and the scheduling of the public hearing upon the application, the WCF applicant shall mail notice to all owners of every property within 500 feet of the proposed facility. Such notice shall be provided a minimum of ten (10) days in advance of such public hearing. The WCF applicant shall provide proof of the notification to the Borough.

(b) Conditional use authorization required. Tower-based WCFs are permitted outside the rights-of-way in the I Industrial District by conditional use and only in such location within such district at the minimum height necessary to satisfy their function in the WCF applicant's wireless communications system. A WCF applicant shall demonstrate the necessity of the proposed height. The WCF applicant shall demonstrate that the antenna, related equipment, and wireless support structure are of the minimum dimensions technically feasible.

[1] Prior to Council'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 Council that the WCF applicant cannot adequately extend or infill its communications system by the use of co-located non-tower WCFs.

[2] 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 equipment.

[3] 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.

[4] Where the tower-based WCF is located on a property with another principal use, the WCF applicant shall present documentation to Council that the owner of the property has granted an easement for the proposed WCF and that vehicular access will be provided to the facility.

[5] The conditional use application shall demonstrate that the proposed facility complies with all other applicable regulations in this subsection.

(c) Development regulations.

[1] Location. Tower-based WCFs may be located outside the rights-of-way in the I Industrial District, subject to the following restrictions:

[a] No tower-based WCF shall be located in an area in which utilities are underground, or within 75 feet of such an area, except as permitted by this chapter.

[b] The WCF may not be sited in any public parks or on municipally-owned property.

[c] The WCF may not be sited along the river area or along any scenic trails or roadways in the Borough.

[d] Sole use on a lot. A tower-based WCF shall be permitted as a sole use on a lot, provided that the underlying lot is at least 6,000 square feet. 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.

(d) Engineer inspection. Prior to the Borough's issuance of a permit authorizing construction and erection of a tower-based WCF, a structural engineer registered in Pennsylvania shall issue to the Borough 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.

(e) Visual appearance. Tower-based WCFs shall employ stealth technology. All wireless communications equipment buildings and other 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.

[1] Borough Council may require that wireless communications equipment buildings which house electrical transmitter equipment be placed underground, unless determined by Borough Council to be not technically feasible.

[2] In making this determination, Council 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.

(f) Co-location and siting. An application for a new tower-based WCF shall not be approved unless the Borough finds that the antenna and related equipment planned for the proposed tower-based WCF cannot be co-located on an existing or approved structure or building or on Borough property. Council may deny an application to construct a new tower-based WCF if the WCF applicant has not made a good faith effort to mount the antenna(s) on an

existing structure as set forth in this section. The WCF applicant shall demonstrate that it contacted the owners of tall structures, buildings and towers within a 1/4 of a mile radius of the site proposed, sought permission to install an antenna on those structures, buildings and towers, and was denied for one of the following reasons:

- [1] 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.
- [2] 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.
- [3] 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.
- [4] A commercially reasonable agreement could not be reached with the owner of such building, structure or tower.

(g) Design regulations.

- [1] The WCF shall employ the most current stealth technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. In addition to the other design requirements enumerated in this section, the application of the stealth technology chosen by the WCF applicant shall be subject to the approval of the Borough.
- [2] To the extent permissible by law, any height extensions to an existing tower-based WCF shall require prior approval of the Borough.
- [3] Any proposed tower-based WCF shall be designed structurally, electrically, and in all respects to accommodate both the WCF applicant's antennas and comparable antennas for future users.
- [4] The tower-based WCF shall be equipped with an anti-climbing device, as approved by the manufacturer, if such anti-climbing device is deemed necessary by Borough Council.

(h) Surrounding environs.

- [1] 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.

[2] Evergreen bushes, 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.

(i) Fence/screen.

[1] A security fence, having a minimum height of 10 feet, shall completely surround any tower-based WCF located outside the rights-of-way, as well as guy wires, or any building housing WCF equipment.

[2] Landscaping. Landscaping shall be required to screen as much of a newly constructed tower-based WCF as possible. Council may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if, in the discretion of Council, they achieve the same degree of screening. Existing vegetation shall be preserved to the maximum extent possible.

(j) Related equipment.

[1] Ground-mounted related equipment associated to, or connected with, a tower-based WCF shall be underground or screened from public view using stealth technologies, as described in this section.

[2] 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 and building requirements of the underlying zoning district.

(k) Permit required for modifications. To the extent permissible under applicable state and federal law, any WCF applicant proposing the modification of an existing tower-based WCF shall first obtain the applicable permit from the Borough Code Enforcement Office, in accordance with the Borough's permitting practices.

(l) Gap in coverage or capacity. An applicant for a tower-based WCF must demonstrate that a significant gap in wireless coverage or capacity exists 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 Borough's decision on an application for approval of tower-based WCFs.

(m) Additional antennas. As a condition of approval for all tower-based WCFs, the WCF applicant shall provide the Borough with a written commitment that it will allow other service providers to co-locate antennas on tower-based WCFs where technically and economically feasible. The owner of a tower-based WCF shall not install any additional antennas without obtaining the prior written approval of the Borough.

(n) Height. Any tower-based WCF shall be designed at the minimum functional height. All tower-based WCF applicants must submit documentation to the Borough justifying the total height of the structure. The maximum total height of any tower-based WCF shall not

exceed 150 feet, as measured vertically from the ground level, including any base pad, to the highest point on the structure, including antennas and subsequent alterations.

- (o) 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.
- (p) Maintenance. The following maintenance requirements shall apply:
 - [1] Any tower-based 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 Borough's residents.
 - [3] All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.
- (q) Historic buildings or districts. No tower-based WCF may be located 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 included in the official historic structures and/or historic districts list maintained by the Borough.
- (r) 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. The applicant shall promptly report any outage or malfunction of FAA-mandated lighting to the appropriate governmental authorities and to the Borough Manager.
- (s) 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 Borough Code, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.
- (t) Retention of experts. The Borough may hire any consultant(s) and/or expert(s) necessary to assist the Borough 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 this chapter. The applicant and/or owner of the WCF shall reimburse the Borough for all costs of the Borough's consultant(s) in providing expert evaluation and consultation in connection with these activities.
- (u) Timing of approval.

- [1] Within 30 calendar days of the date that an application for a tower-based WCF is filed with the Borough, the Borough shall notify the applicant in writing of any information that may be required to complete such application.
 - [2] All applications for tower-based WCFs shall be acted upon within 150 days of the receipt of an application for the approval of such tower-based WCF, and in accordance with applicable tolling procedures as established by federal law, and the Borough shall advise the applicant in writing of its decision.
 - [3] If additional information was requested by the Borough to complete an application, the time required by the applicant to provide the information shall not be counted toward the 150-day review period.
- (v) Nonconforming uses. Nonconforming 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 terms and conditions of this chapter. Co-location on existing nonconforming WCFs is permitted if approved by the Borough.
- (w) Removal. In the event that use of a tower-based WCF is planned to be discontinued, the owner shall provide written notice to the Borough 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 unused or abandoned tower-based WCFs and related facilities shall be removed within six months of the cessation of operations at the site unless a time extension is approved by the Borough.
 - [2] If the WCF and/or related facility is not removed within six months of the cessation of operations at a site, or within any longer period approved by the Borough, the WCF and related facilities and equipment may be removed by the Borough and the cost of removal assessed against the owner of the WCF.
 - [3] Any unused portions of tower-based WCFs, including antennas, shall be removed within six months of the time of cessation of operations. The Borough must approve all replacements of portions of a tower-based WCF previously removed.
- (x) 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.
- (y) Reservation of rights. In accordance with applicable law, the Borough reserves the right to deny an application for the construction or placement of any tower-based WCF.
- (z) Insurance. Each person that owns or operates a tower-based WCF shall provide the Borough 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.

- (aa) 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 Borough 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.
 - (bb) Access road. If deemed necessary by Borough Council, an access road of at least 20 feet in width, turnaround space and 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; surfacing shall be bituminous, brick, concrete or permeable paving material (not including gravel surface, aggregate or the like). 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 Borough that the property owner has granted an easement for the proposed facility.
 - (cc) Parking. If deemed necessary by Borough Council, a tower-based WCF site shall have two off-street parking spaces or one space per employee, whichever is greater.
 - (dd) Inspection. The Borough reserves the right to inspect any tower-based WCF to ensure compliance with the provisions of this chapter and any other provisions found within the Borough Code or state or federal law. The Borough 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.
- (5) Specific requirements for small wireless communications facilities. The following regulations shall apply to all small communications facilities:
- (a) Permitted locations.
 - [1] Small WCFs located in the rights-of-way and co-located small WCFs outside the rights-of-way shall be a permitted use in all Borough zoning districts, subject to the requirements of this Section 615-21N and generally applicable permitting as required by the Borough Code.
 - [2] Small WCFs requiring the installation of a new wireless support structure and located outside the rights-of-way shall be a permitted use in the I Industrial District, subject to the requirements of this Section 615-21N and generally applicable permitting as required by the Borough Code.
 - (b) Applications for small WCFs shall be submitted to the Borough Zoning & Code Enforcement Officer.

(a) Applications for small WCFs shall include the following:

- [1] The name and contact information, including phone number, for both the WCF applicant and the owner of the proposed small WCF.
- [2] A cover letter detailing the location of the proposed site, all equipment being proposed as part of the small WCF, and a certification that the applicant has included all information required by the Borough Code, signed by a representative of the applicant.
- [3] A before-and-after depiction of the proposed site, such as a construction drawing, showing all equipment being proposed as part of the small WCF.
 - [a] If the small WCF is proposed for location on an existing or replacement wireless support structure that currently supports existing attachments, the depiction shall show the location and dimensions of all such attachments.
 - [b] If installation of a new or replacement wireless support structure is being proposed, the depiction shall include the color, dimensions, material and type of wireless support structure proposed.
- [4] The manufacturer and model, proposed location, and physical dimensions (including volume) of each piece of equipment proposed as part of the small WCF.
- [5] An aerial photograph of the proposed site showing the area within 500 feet of the small WCF. The aerial photograph shall identify all structures within such radius.
- [6] Photo simulations depicting the small WCF from at least three locations near the proposed site. The photo simulations should reflect the proposed design and location of all equipment associated with the small WCF.
- [7] A written certification by a structural engineer licensed in the Commonwealth of Pennsylvania confirming that the proposed small WCF and wireless support structure are structurally sound and shall not endanger public health and safety.
- [8] A report by a qualified engineering expert which shows that the small WCF will comply with applicable FCC regulations, including applicable standards for radiofrequency emissions.
- [9] A certificate of insurance as required by Section 615-21N(5)(e).
- [10] All application fees required by the Borough as detailed in the Borough fee schedule.

(c) Timing of Approval.

- [1] Within ten (10) business days of the date that an application for a small WCF is filed with the Borough Zoning & Code Enforcement Officer, the Borough shall notify the applicant in writing of any information that may be required to complete such application. The applicant may then resubmit its application, at which point the applicable timeframe for approval shall restart. Any subsequent notice of incompleteness shall be issued within ten (10) business days of receipt of a resubmitted application and shall toll the applicable timeframe for approval until such time as the application is resubmitted.
- [2] Within sixty (60) days of receipt of an application for co-location of a small WCF on a preexisting wireless support structure, the Borough Zoning & Code Enforcement Officer shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.
- [3] Within ninety (90) days of receipt of an application for a small WCF requiring the installation of a new or replacement wireless support structure, the Borough Zoning & Code Enforcement Officer shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.
- [4] If the Borough denies an application for a small WCF, the Borough shall provide the WCF applicant with written documentation of the basis for denial, including the specific provisions of the Borough Code on which the denial was based, within five (5) business days of the denial.
- [5] The applicant may cure the deficiencies identified by the Borough and resubmit the application within thirty (30) days of receiving the written basis for the denial without being required to pay an additional application fee. The Borough shall approve or deny the revised application within thirty (30) days of the application being resubmitted for review.
- (d) Consolidated applications. A single applicant may not submit more than one consolidated or 20 single applications for co-located small WCFs in a 30-day period. If the Borough receives more than one consolidated application or 20 single applications within a 45-day period, the applicable timeframe under Section 615-21N(5)(c) shall be extended by 15 days.
- (e) Time, Place and Manner. Once approved, the Borough shall determine the time, place and manner of construction, maintenance, repair and/or removal of all small WCFs in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations.
- (f) Attachment to municipal structures. The Borough shall allow the co-location of small WCFs to structures owned by the Borough in accordance with the hierarchy detailed in this section. If the WCF applicant is proposing the co-location of a small WCF on a lower priority structure, it shall be a condition to the approval of the application that the WCF applicant provide evidence that co-location on a higher priority structure or wireless

support structure owned by a third-party is not technically feasible. In order from most preferable to least preferable, the Borough's co-location preferences are as follows.

[1] Power poles;

[2] Traffic signage poles without traffic signals;

[3] Traffic signal poles;

[4] Decorative light poles.

- (g) Obstruction. Small WCFs and related equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, create safety hazards to pedestrians and/or motorists, or to otherwise inconvenience public use of the ROW as determined by the Borough.
- (h) Graffiti. Any graffiti on a small WCF, including the wireless support structure and any related equipment, shall be removed at the sole expense of the owner within ten (10) calendar days of notification by the Borough.
- (i) Design standards. All small WCFs in the Borough shall comply with the requirements of the Borough *Small Wireless Communications Facility Design Manual*. A copy of such shall be kept on file at the Borough Code Enforcement Office.
- (j) Obsolete equipment. As part of the construction, modification or replacement of a small WCF, the WCF applicant shall remove any obsolete or abandoned equipment from the wireless support structure.
- (k) Relocation or Removal of Facilities. Within ninety (90) days following written notice from the Borough, or such longer period as the Borough determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a small WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the Borough, 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:
- [1] The construction, repair, maintenance or installation of any Borough or other public improvement in the right-of-way;
- [2] The operations of the Borough or other governmental entity in the Right-of-Way;
- [3] Vacation of a street or road or the release of a utility easement; or
- [4] An emergency that constitutes a clear and immediate danger to the health, welfare, or safety of the public as determined by the Borough.

- (l) Insurance. Each person that owns or operates a small WCF shall provide the Borough 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 the small WCF.
- (m) Permit fees. The Borough may assess appropriate and reasonable permit fees directly related to the Borough's actual costs in reviewing and processing the application for approval of a small WCF, as well as related inspection, monitoring and related costs.
- (n) Reimbursement for ROW use. In addition to permit fees as described in this chapter, every small WCF in the ROW is subject to the Borough'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 Borough'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 Borough. The owner of each small WCF shall pay an annual fee to the Borough to compensate the Borough for the Borough's costs incurred in connection with the activities described above.

SECTION II. AMENDMENT OF CERTAIN DEFINITIONS

Section 615-39 "Definitions" of the Etna Borough Zoning Ordinance is hereby amended by removing the definitions of "Antenna," "Co-location," "Related Equipment," "Substantially Change," and "Tower-Based Wireless Communications Facility (Tower-Based WCF)" and adding the following terms and definitions:

- A. *Antenna* — an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of wireless service and any commingled information services.
- B. *Co-location*—the mounting of one or more WCFs, including antennas, on a pre-existing structure, or modifying a structure for the purpose of mounting or installing a WCF on that structure.
- C. *Related Equipment* — any equipment serving or being used in conjunction with a wireless communications facility or wireless support structure, including but not limited to utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.
- D. *Small Wireless Communications Facility* — a wireless communications facility that meets the following criteria:

- (1) the wireless support structure on which antenna facilities are mounted—

(i) is 50 feet or less in height, or

(ii) is no more than 10 percent taller than other adjacent structures, or (iii) is not extended to a height of more than 50 feet or by more than 10 percent above its height prior to the co-location of any WCF as a result of the co-location of new antenna facilities; and

(2) each antenna associated with the deployment (excluding the related equipment) is no more than three cubic feet in volume; and

(3) all related equipment associated with the wireless support structure including the wireless equipment associated with the antenna and any pre-existing associated equipment on the wireless support structure, is cumulatively no more than 28 cubic feet in volume.

(4) the wireless communications facility does not require antenna structure registration under 47 CFR part 17;

(5) the wireless communications facility is not located on tribal lands, as defined under 36 CFR 800.16(x); and

(6) the wireless communications facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b).

E. *Substantial Change* – A modification substantially changes the physical dimensions of a support structure if it meets the criteria established by 47 CFR §1.6100.

F. *Technically Feasible* -- By virtue of engineering or spectrum usage, the proposed placement for a WCF or its design or site location can be implemented without a material reduction in the functionality of the WCF.

G. *Tower-Based Wireless Communications Facility (Tower-Based WCF)*—any structure that is used for the primary purpose of supporting one or more antennas, including, but not limited to, self-supporting lattice towers, guy towers and monopoles, and the accompanying antenna and related equipment.

SECTION III. Miscellaneous

A. *Police powers.* The Borough, by granting any permit or taking any other action pursuant to this chapter, does not waive, reduce, lessen, or impair the lawful police powers vested in the Borough under applicable federal, state and local laws and regulations.

B. *Severability.* If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this Chapter invalid.

C. Effective Date. This Ordinance shall become effective five (5) days after enactment by the Council of the Borough of Etna.

ENACTED AND ORDAINED this *21* day of *December*, 2021.

ATTEST:

ETNA BOROUGH COUNCIL:


Borough Manager


Council President