

**AN ORDINANCE**

**NO. 4271**

**An Ordinance To Amend The Code Of The Township Of Lower Merion, Chapter 155, Zoning To Provide For Purposes Related To The Adoption Of Amendments; To Provide For Definitions; To Establish Certain General And Specific Standards Relating To The Location, Placement, Construction And Maintenance Of Tower-Based Wireless Communications Facilities, Non-Tower Wireless Communications Facilities, And Small Wireless Communications Facilities Outside The Public Rights-Of-Way; And To Provide For An Effective Date.**

The Board of Commissioners of the Township of Lower Merion does hereby ordain as follows:

Section 1: The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article X, Supplemental Use Regulations and Nonconformities, § 10.10 Wireless Communications Facilities, is hereby repealed and replaced with a new Section 155-10.10 , to provide as follows:

**§155-10.10 Wireless Communications Facilities**

**A. Definitions.**

- (1) **Accessory Equipment** — Any equipment serving or being used in conjunction with a wireless communications facility or wireless support structure. The term “Accessory Equipment” includes but is not limited to utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.
- (2) **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.
- (3) **Applicant**—Any person that applies for a wireless communication facility building permit, zoning approval and/or permission to use the public right-of-way (ROW) or other Township-owned land or property.
- (4) **Collocation** — The mounting of one or more WCFs, including antennae, on a pre-existing structure, or modifying a structure for the purpose of mounting or installing a WCF on that structure.

- (5) **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.
- (6) **Equipment Compound** — An area surrounding or adjacent to a wireless support structure within which base stations, power supplies, or accessory equipment are located.
- (7) **FCC** — Federal Communications Commission.
- (8) **Modification or Modify** — The improvement, upgrade or expansion of existing wireless communications facilities or base stations on an existing wireless support structure or the improvement, upgrade, or expansion of the wireless communications facilities located within an existing equipment compound, if the improvement, upgrade, expansion or replacement does not substantially change the physical dimensions of the wireless support structure.
- (9) **Non-Tower Wireless Communications Facility (Non-Tower WCF)** — Wireless communications facilities collocated on existing structures, such as, but not limited to buildings, water towers, electrical transmission towers, utility poles, light poles, traffic signal poles, flag poles and other similar structures that do not require the installation of a new tower. This term includes the replacement of an existing structure with a similar structure that is required to support the weight of the proposed WCF.
- (10) **Person** — Individuals, corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, corporations and other entities established pursuant to statutes of the Commonwealth of Pennsylvania, provided that “Person” does not include or apply to the Township, or to any department or agency of the Township.
- (11) **Replacement** — The replacement of existing wireless communications facilities on an existing wireless support structure or within an existing equipment compound due to maintenance, repair or technological advancement with equipment composed of the same wind loading and structural loading that is substantially similar in size, weight and height as the wireless communications facilities initially installed and that does not substantially change the physical dimensions of the existing wireless support structure.
- (12) **Small Wireless Communications Facility (Small WCF)** — A wireless communications facility that meets the following criteria:
  - (a) The structure on which antenna facilities are mounted—
    - [1]. is 50 feet or less in height, or
    - [2]. is no more than 10 percent taller than other adjacent structures, or

- [3]. is not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and
  - (b) Each antenna associated with the deployment (excluding the associated equipment) is no more than three cubic feet in volume; and
  - (c) All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
  - (d) The facilities do not require antenna structure registration under 47 CFR Part 17; and
  - (e) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and
  - (f) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b).
- (13) **Stealth Technology** — Camouflaging methods applied to wireless communications facilities and accessory equipment 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, and light poles.
- (14) **Technically Feasible** – By virtue of engineering or spectrum usage, the proposed placement for a wireless communications facility or its design or site location can be implemented without a material reduction in the functionality of the wireless communications facility.
- (15) **Tower-Based Wireless Communications Facility (Tower-Based WCF)** — Any structure that is used for the primary purpose of supporting one or more antennae, including, but not limited to, self-supporting lattice towers, guy towers and monopoles, and the accompanying Antenna and Accessory Equipment.
- (16) **Utility Pole** – A pole or similar structure that is or may be used, in whole or in part, by or for telecommunications, electric distribution, lighting, traffic control, signage or a similar function or for collocation. The term includes the vertical support structure for traffic lights but does not include Utility Poles or horizontal structures to which signal lights or other traffic control devices are attached.
- (17) **Wireless** — Transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.

- (18) **Wireless Communications Facility (WCF)**— an antenna facility or a wireless support structure that is used for the provision of wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.
- (19) **Wireless Support Structure** — A pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of wireless service (whether on its own or comingled with other types of services).

**B. Purposes.** The purpose of this article is to establish general guidelines for the siting of wireless communications facilities. The goals of this article are to:

- (1) Provide procedures and guidelines for the location, placement and construction of wireless communications facilities in the Township and for payment of fees and charges that are uniformly applied to all persons.
- (2) Provide clear performance standards and review requirements addressing the siting of wireless communications facilities.
- (3) Encourage the collocation of wireless communications facilities on existing structures, including water towers, buildings and other wireless communications facilities where technically feasible.
- (4) Ensure that wireless communications facilities will be safe and blend into their environment to the greatest extent possible.
- (5) Encourage collocation and site sharing of new and existing wireless communications facilities.
- (6) Encourage the use of public property and structures for wireless communications facilities to the greatest extent possible and provide for mechanisms to achieve fair and equitable rental for the use of such property in compliance with state and federal law.
- (7) Enhance the ability of providers of wireless communication services to provide such services to the Township quickly, effectively and efficiently.
- (8) Preserve the residential character of adjacent neighborhoods.
- (9) Comply with applicable state and federal laws and regulations, including but not limited to the Telecommunications Act of 1996 and subsequent orders of the Federal Communications Commission.

### **C. Applicability.**

- (1) Pre-existing wireless communications facilities. Wireless communications facilities for which a permit has been issued prior to the effective date of this article shall not be required to meet the requirements of this article, except as provided in § 155-10.10(I), nonconforming wireless communications facilities.
- (2) Exclusion for amateur radio facilities. This article shall not govern the installation of any amateur radio facility that is owned or operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.
- (3) Relationship to other chapters. This article shall supersede all conflicting requirements of other chapters of this Code regarding the locating and permitting of wireless communications facilities.

### **D. Regulations applicable to all wireless communications facilities outside the right-of-way.**

- (1) All applications for installation of a wireless communications facility shall include a sworn affidavit from a radio frequency engineer that the placement of the wireless communications facility will not interfere with public safety communications and the usual and customary transmission or reception of radio, television or other communication services enjoyed by adjacent residential and nonresidential properties in compliance with federal law.
- (2) The Telecommunications Act of 1996 gives the FCC sole power to regulate radio frequency ("RF") emissions and does not allow the Township to condition or deny on the basis of RF impacts the approval of any wireless communications facilities which meet or exceed FCC standards. In order to make available information to Township citizens, the applicant shall provide to the Township copies of ongoing FCC information and RF emission standards for transmissions from a wireless communications facility. Applicants shall be required to submit information on the proposed power intensity of their wireless communications facilities. Applicants shall demonstrate that the proposed wireless communications facilities comply with all FCC standards relating to radio frequency emissions and shall supplement that information upon the request of the Township no less frequently than annually. Once installed, any technical change that could increase power or output of the wireless communications facility shall be immediately reported to the Township.
- (3) If applicable, all applications shall include a copy of the provider's current Federal Communications Commission license. The provider shall maintain with the Township the current name, address and emergency telephone number of the owner or operator of the support or wireless support structure on which the WCF is mounted.
- (4) Upon receipt of an application, the applicant shall mail notice thereof to the owner or owners, if their residence is known, or to the occupier or occupiers of every residentially zoned property on the same street within 500 feet of the site of the proposed facility and

of every residentially zoned property not on the same street within 150 feet of the proposed facility and provide documentation to the Township that such notice has been provided.

- (5) Applicants proposing an Eligible Facilities Request pursuant to 47 U.S.C. §1455 shall be required only to obtain a building permit from the Director of Building and Planning. In order to be considered for such permit, the Applicant must submit a permit application to the Township in accordance with applicable permit policies and procedures.
- (6) An application for a wireless communications facility requiring the installation of a new wireless support structure shall demonstrate that the proposed wireless communications facility cannot be accommodated on an existing building, structure or tower. The Township may deny an application to construct a new wireless support structure if the Applicant has not made a good faith effort to mount the WCF on an existing building, structure or tower. The Applicant shall demonstrate that it contacted the owners of tall structures, buildings, and towers within a one-quarter (1/4) mile radius of the site proposed, sought permission to install the proposed WCF on those structures, buildings, and towers and was denied for one of the following reasons:
  - (a) The proposed antenna and accessory 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 accessory 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.
- (7) Insurance.
  - (a) Each Person that owns or operates a tower-based WCF shall provide the Director of Building and Planning 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.
  - (b) Each Person that owns or operates a non-tower WCF or small WCF shall provide the Director of Building and Planning 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 WCF.

- (8) The owner or operator of a 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 WCF. The owner or operator of a 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 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.
- (9) All plans and drawings for a WCF shall contain a seal and signature of a professional structural engineer, licensed in the Commonwealth of Pennsylvania.
- (10) WCFs shall be permitted to collocate upon non-conforming tower-based wireless communications facilities and other non-conforming structures. Collocation of WCFs upon existing tower-based wireless communications facilities is encouraged even if the WCF is non-conforming as to use within a zoning district.
- (11) All WCFs 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, or to the 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 Township.
- (12) All WCFs shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, National Electrical Safety Code, National Electrical Code, or to the industry standard applicable to the structure.
- (13) WCFs shall comply with all federal and state laws and regulations concerning aviation safety.
- (14) Any graffiti on the wireless support structure or on any accessory equipment shall be removed at the sole expense of the owner within thirty (30) days of notification by the Township.

**E. Wireless communications facilities outside right-of-way.**

(1) Small WCFs. A Small WCF may be erected outside of a ROW upon application to the Director of Building and Planning. The provider's application shall include:

- (a) The name, address and telephone number of the owner and lessee of the parcel of land upon which the small WCF is proposed to be situated. If the applicant is not the owner of the parcel of land or of the wireless support structure, the written authorization of the owner shall be evidenced in the application.
- (b) The legal description, parcel number, block and unit number and address of the parcel of land upon which the small WCF is to be situated.
- (c) A description and illustration of the stealth design, which shall be subject to the approval of the Communication Facilities Committee.
- (d) Documentation demonstrating compliance with the requirements of the Small WCF Design Manual;
- (e) Proof of compliance with all applicable requirements of this Section 155-10.10.

(2) Regulations Applicable to Tower-Based WCFs.

- (a) Tower-based WCFs shall be permitted by special exception in VC, TC, RHR, BMV, CAD and LI Districts, except for land within 500 feet of a day-care, preschool, primary and secondary school facility. In residence zoning districts, a tower-based WCF is permitted by special exception only if the property is owned by the Township of Lower Merion and used for municipal purposes or if the property is a cemetery use conducted on a lot of at least 10 acres in size.
- (b) For any proposed tower-based WCF, the special exception application shall be made to the Zoning Officer. The provider's application shall include:

[1] A scaled plan and a scaled elevation view and other supporting drawings, calculations and documentation showing the location and dimensions of the wireless communications facility and all improvements associated therewith, including information concerning wireless support structure specifications, antenna locations, accessory equipment facility, landscaping, fencing and, if relevant, topography, adjacent uses and existing vegetation.

[2] The name, address and telephone number of the owner and lessee of the parcel of land upon which the wireless communications facility is proposed to be located. If the applicant is not the owner of the parcel of land or of the wireless support structure, the written authorization of the owner shall be evidenced in the application.



- [3] The legal description, parcel number, block and unit number and address of the parcel of land upon which the wireless communications facility is to be situated.
- [4] A description and illustration of the stealth design, which shall be subject to the approval of the Communication Facilities Committee. In order to assist the Township in evaluating visual impact, the applicant shall submit with its application color photo simulations showing the proposed site of the wireless communications facility with a photo-realistic representation of the proposed wireless communications facility as it would appear viewed from the closest residential property, adjacent roadways and additional locations as necessary.
- [5] Written, technical evidence from an Engineer acceptable to the Fire Marshal and the Director of Building and Planning that the proposed wireless communications facility does not pose a risk of explosion, fire or other danger to life or property due to its proximity to volatile, flammable, explosive or hazardous materials, such as LP gas, propane, gasoline, natural gas or corrosive or other dangerous chemicals.
- [6] Proof of compliance with all applicable requirements of this Section 155-10.10.

(c) Height.

- [1] The maximum height of any tower-based WCF shall be 200 feet.
- [2] The applicant shall demonstrate that the tower-based WCF is the minimum height required to function satisfactorily within the applicant's network. No such WCF that is taller than this minimum height shall be approved, except to facilitate collocation.
- [3] The measurement of height for the purpose of determining compliance with these requirements shall be from grade and shall include the wireless support structure itself, the base pad and any facilities attached thereto.

(d) Setbacks from base of WCF. The minimum distances between the base of a tower-based WCF, including any guy-wire anchors, and any property line or ROW line shall be the largest of the following:

- [1] In residence zoning districts, all tower-based WCFs shall be set back a minimum distance equal to the height of the tower-based WCF. If the wireless support structure is self-collapsing, the setback may be reduced to 50 feet, plus one foot for each additional foot in height above 100 feet, provided that it is placed within the setback envelope at a location which

the Director of Building and Planning determines will make it least visible from a property or ROW line.

[2] In VC, TC, RHR, BMV, CAD and LI Districts, all tower-based WCFs shall be set back a minimum distance of 25 feet, plus one foot for each additional foot in height above 100 feet. In no case shall the set back from a residential zoning district be less than that required if the property were zoned residential.

[3] These setback provisions shall not apply to Township property.

[4] Setback requirements may be modified by conditional use if the Board of Commissioners finds that placement of a tower-based WCF in a particular location will reduce its visual impact; for example, if adjacent to trees or a structure which may provide a visual screen.

(e) **Stealth design.** Wireless communication facilities shall be of stealth design, as required by the Township, and must comply with the following standards relating to aesthetics, placement, materials and colors:

[1] Tower-based WCFs shall be designed so as to blend in with the existing surroundings feasibly, including the use of compatible colors and disguised structures.

[2] Accessory equipment shall, to the extent practicable, use materials, colors and textures that blend in with the natural setting and built environment.

(f) **Wireless support structure safety.** The applicant shall demonstrate that the proposed wireless communication facility and wireless support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice or other debris or radio frequency interference. All wireless support structures shall be fitted with anti-climbing devices, as approved by the manufacturers.

(g) **Fencing.** A fence shall be required around the tower-based WCF and any accessory equipment. The fence shall be a maximum of eight feet in height and shall conform to the provisions of § 155-3.7 Fences and walls.

(h) **Landscaping.** The applicant shall submit a planting plan with its application, preserving existing vegetation on and around the site to the greatest extent possible. The Township will utilize the guidelines of the Natural Features Conservation Code, Chapter 101, prior to granting approval.

(i) **Support structures shall meet all Federal Aviation Administration (FAA) regulations.** No support structure may be artificially lighted except when required by the FAA.

(l) Surrounding Environs. The 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.

(m) Accessory Equipment.

[1] Ground-mounted accessory equipment associated or connected with a tower-based WCF shall not be located within fifty (50) feet of a lot with a residential use.

[2] Accessory equipment associated, or connected, with a tower-based WCF shall be placed underground or screened from public view using stealth technology. All ground-mounted accessory equipment, 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 in #1 above and the underlying zoning district, whichever is greater.

[3] Either one single-story wireless communications equipment building not exceeding five hundred (500) square feet in area or its equivalent may be permitted for each unrelated company sharing Antenna space on the tower-based WCF.

(n) Additional Antennae. As a condition of approval for all tower-based WCFs, the applicant shall provide the Zoning Hearing Board with a written commitment that it will allow other service providers to collocate antennas on tower-based WCFs where technically and economically feasible. To the extent permissible under state and federal law, the owner of a tower-based WCF shall not install any additional Antennae without complying with the applicable requirements of this Section 155-10.10.

(3) Regulations Applicable to Non-Tower WCFs.

(a) Non-tower WCFs shall be a permitted use in all zoning districts, except for land within 500 feet of a day-care, preschool, primary and secondary school facility.

(b) Prohibited on certain structures. Non-tower WCFs shall not be located on any single-family attached dwelling, single-family dwelling or townhomes.

(c) Height.

[1] Non-tower WCFs must be more than 35 feet above ground on all sides of the wireless support structure and are prohibited on all wireless support structure 35 feet or less in height.

- [2] The height from grade of the non-tower WCF may not exceed the height from grade of the wireless support structure by more than 20 feet.
- [3] If a non-tower WCF or its accessory equipment extend above the primary roof of any wireless support structure, they must be set back one foot from the edge of the primary roof for each one foot in height above the primary roof which the wireless communication facility extends unless the non-tower WCF is appropriately screened from view through the use of panels, walls or other screening techniques approved by the Zoning Officer. Setback requirements shall not apply to a wireless communication facility which is mounted on the exterior of a wireless support structure below the primary roof, and which does not protrude more than 18 inches from the side of such wireless support structure. In all cases, non-tower WCFs shall be designed and constructed so as to be minimally visible from ground level.
- (d) Stealth design. Wireless communication facilities shall be of stealth design, to the satisfaction of the Township, and must comply with the following standards relating to aesthetics, placement, materials and colors:
- [1] Non-tower WCFs shall be designed and maintained so as to blend in with the existing structure to the extent technically feasible, including placement in a location which is consistent with proper functioning of the wireless communication facility and use of compatible or neutral colors.
- [2] Non-tower WCFs shall be screened in a reasonable and achievable manner.
- [3] The Township shall have the right to impose additional Stealth Technology requirements if multiple Non-tower WCFs are attached to a single structure. Such requirements may include increased setback from the edge of a structure, additional screening, or limitation of the number of Non-tower WCFs permitted.
- [4] To the extent permitted by federal and state law, no more than three (3) Non-tower WCFs may be permitted on a single wireless support structure.
- (e) Fencing. A fence shall be required around any ground-mounted accessory equipment. The fence shall be a maximum of eight feet in height and shall conform to the provisions of § 155-3.7 Fences and walls.
- (f) Support structure safety. The applicant shall demonstrate that the proposed wireless communication facility and wireless support structure are safe and the surrounding areas will not be negatively affected by wireless support structure failure, falling ice or other debris or radio frequency interference.

- (g) Aviation safety. Non-tower WCFs shall comply with all federal and state laws and regulations concerning aviation safety.

(4) Variance Procedure.

- (a) Variance. If a variance is requested from the Zoning Hearing Board from any of the requirements of this section, in addition to the normal application requirements, the application for variance shall include the following:

- [1] A description of how the applicant's construction plan addresses any adverse impact which might occur as a result of approving the variance.

- [2] A description of off-site or on-site factors which mitigate any adverse impacts which might occur should the variance be granted.

- [3] A technical study which documents and supports the criteria submitted by the applicant upon which the request for variance is based. Such technical study shall be certified by an engineer and shall document the existence of the facts related to the proposed variance and its relationship to the surrounding ROW and properties

- [4] For a variance to the setback requirement, the application shall identify all property where the proposed tower could be located, attempts by the applicant to contact and negotiate an agreement for location or collocation and the result of such attempts.

**F. Payments to Township.**

- (1) The fees, charges and rental prescribed by the Board of Commissioners and which must be paid for the installation and maintenance of a wireless communications facility in the Township are set forth in the Telecommunications Fee Schedule contained in Chapter A167, Fees, hereof.

(2) Application fee and escrow deposit.

- (a) The applicant shall pay the Township an application fee as described in the Telecommunications Fee Schedule at the time of filing the application.

- (b) An applicant seeking to install one or more wireless communications facilities outside the ROW shall also establish a single escrow deposit with the Township, as set forth in the Telecommunications Fee Schedule, out of which the Township will make payment of the fees and charges of those consultants and professional advisors as deemed necessary by the Township for the processing of the application. The applicant shall be requested to replenish the escrow if sufficient funds are not available to make such payments and shall make such additional payments within 10 business days of the request, in default of which the

processing of any of applicant's applications shall be suspended. Failure to make such payment within 30 business days of the request shall result in all pending applications being rejected.

- (c) If requested, the Township shall supply the applicant with an itemized statement of the use of the escrow funds at the time any request for additional payment is made and at the time the escrow is closed out, at which time any balance in the account shall be returned.
- (3) Payments and charges applicable to wireless communications facilities on Township owned lands and wireless support structures not in ROW. The Township Manager or his/her designee is authorized to negotiate the terms of a lease agreement and the appropriate rental for the use of Township owned lands and wireless support structures. The availability of space on Township facilities shall be determined on a case-by-case basis and made available to providers on a first-come first-served basis. No building permit for a wireless communications facility will be issued with respect to Township property until the lease agreement has been accepted by the Township.
- (4) Timing and place of payment. Unless otherwise agreed to in writing, all fees shall be paid with the submission of a permit application. Payments shall be delivered to the attention of the director of the Building & Planning Department.
- (5) Taxes and assessments. To the extent taxes or other assessments are imposed by taxing authorities on the use of Township property as a result of an applicant's use or occupation of the ROW or of Township owned or leased property, the applicant shall be responsible for payment of such taxes, payable annually unless otherwise required by the taxing authority. No rental payment shall constitute a payment in lieu of any tax, fee or other assessment, except as specifically provided in this article or as required by applicable law.
- (6) Interest on late payments. In the event that any fee is not actually received by the Township on or before the applicable date fixed in the use agreement, interest thereon shall accrue from such date until received at 15% per annum.

#### **G. Maintenance.**

- (1) Wireless communications facility providers shall at all times employ ordinary and reasonable care and install and maintain in use nothing less than the best available technology for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.
- (2) Wireless communications facility providers shall install and maintain wireless communications facilities, wires, cables, fixtures and other equipment in substantial compliance with the requirements of the National Electric Code, the industry standard applicable to the structure, and all federal, state and local regulations and in such manner that will not interfere with the use of other property.

- (3) Wireless communications facilities 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 menace or endanger the life or property of any person.
- (4) Noise. Wireless communications facilities shall be operated and maintained so as not to produce noise in excess of the applicable noise standards under state law or the Township code, except in emergency situations requiring the use of a backup generator, where the noise standards may be exceeded on a temporary basis.
- (5) In the event that the use of a wireless communications facility 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. If such wireless communications facility is not removed within 90 days of such notice, the Township may remove it at the owner's expense.
- (6) Inspections. The Township and/or its agents shall have authority to enter onto the property upon which a wireless communications facility is located at any time, upon reasonable notice to the provider (which notice shall provide an opportunity for the provider's supervision of such entry), for any purposes associated with the permitted use of the property, including, but not limited to, the purpose of determining whether the wireless communications facility complies with this article, Chapter 62, Building Construction, of the Lower Merion Township Code and all other construction standards provided by the Township's code and federal and state law.

#### **H. Decision on application.**

- (1) Eligible Facilities Requests.
  - (a) Within ten (10) calendar days of receipt of an application for an Eligible Facilities Request pursuant to 47 U.S.C. §1455, the Director of Building and Planning shall notify the applicant in writing of any information that may be required to complete such application.
  - (b) Within sixty (60) days of receipt of an application, and subject to applicable tolling procedures, for an Eligible Facilities Request pursuant to 47 U.S.C. §1455, the Director of Building and Planning shall issue the required building and zoning permits authorizing construction of the WCF. All applications for such WCF shall designate that the proposed WCF meets the requirements of an Eligible Facilities Request.
- (2) Small Wireless Communications Facilities.
  - (a) Within ten (10) business days of the date that an application for a small WCF is filed with the Director of Building and Planning, the Director of Building and

Planning shall notify the Applicant in writing of any information that may be required to complete such application.

- (b) Within sixty (60) days of receipt of an application for collocation of a small WCF on a preexisting wireless support structure, unless extended by the Applicant and subject to applicable tolling procedures, the Director of Building and Planning shall make a final decision on whether to approve the application and shall notify the Applicant in writing of such decision.
- (c) Within ninety (90) days of receipt of an application for a small WCF requiring the installation of a new wireless support structure, unless extended by the Applicant and subject to applicable tolling procedures, the Director of Building and Planning shall make a final decision on whether to approve the application and shall notify the Applicant in writing of such decision.

(3) Non-Tower Wireless Communications Facilities.

- (a) Within thirty (30) calendar days of the date that an application for a Non-Tower WCF is filed with the Director of Building and Planning, and subject to applicable tolling procedures, the Director of Building and Planning shall notify the Applicant in writing of any information that may be required to complete such application.
- (b) Within ninety (90) days of receipt of a complete application for a Non-Tower WCF on a preexisting Wireless Support Structure that Substantially Changes the Wireless Support Structure to which it is attached, unless extended by the Applicant, and subject to applicable tolling procedures, the Director of Building and Planning shall make a final decision on whether to approve the application and shall notify the Applicant in writing of such decision.

(4) Tower-Based Wireless Communications Facilities.

- (a) Within thirty (30) calendar days of the date that an application for a Tower-Based WCF is filed with the Zoning Officer, the Zoning Officer shall notify the Applicant in writing of any information that may be required to complete such application.
- (b) Within one hundred fifty (150) days of receipt of a complete application for a Tower-Based WCF, unless extended by the Applicant and subject to applicable tolling procedures, the Zoning Hearing Board shall make a final decision on whether to approve the application and shall notify the Applicant in writing of such decision.

- (5) A decision to deny the application shall be preliminary and shall become final only after the applicant has received the preliminary decision and has been given 10 days within which to request a hearing before the Building and Planning Committee of the Board of



Commissioners. If such a hearing is not requested, the decision shall become final at the end of the ten-day period. If a hearing is requested, a written record shall be made, and the Building and Planning Committee shall render a final, written decision supported by substantial evidence contained in the written record within 45 days of the close of the hearing.

- (6) The Township reserves the right to deny any application on its merits and also where any one of the following conditions exist:
  - (a) The applicant is not licensed by the Federal Communications Commission as a provider or is not authorized to conduct business in the Commonwealth of Pennsylvania; or
  - (b) The applicant is presently not in full compliance with the requirements of this article; or
  - (c) The applicant is in default of its obligation to pay to the Township fees imposed by this article.
- (7) The placement of any wireless communications facility in an historic district or on a historic building, must receive a certificate of appropriateness from the Board of Commissioners.

#### **I. Nonconforming wireless communications facilities.**

Wireless communications facilities in existence on the date of the adoption of this article, which do not comply with the requirements of this article (nonconforming wireless communications facilities), are subject to the following provisions:

- (1) Additional wireless communications facilities (belonging to the same or another provider) may be added to a nonconforming wireless communications facility in conformance with the application procedures set forth in this article.
- (2) Nonconforming wireless communications facilities which are hereafter damaged or destroyed due to any reason or cause may be repaired or restored at their former location, but must otherwise comply with the Township Code.
- (3) A provider may replace, repair, rebuild and/or expand its wireless communications facility in order to improve the structural integrity of the facility, to allow the facility to accommodate collocated antennas or facilities or to upgrade the facility to current engineering, technological or communication standards without having to conform to the provisions of this article, so long as such facilities are not increased in height by more than 10% and/or setbacks are not decreased by more than 10%.

Section 2. Nothing in this ordinance or in Chapter 155 of the Code of the Township of Lower Merion, as hereby amended, shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the said Chapter 155 prior to the adoption of this amendment.

Section 3. The provisions of this Ordinance are severable, and if any section, sentence, clause, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such decision of this court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this ordinance. It is hereby declared to be the intent of the Board that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, sentence, clause, part, or provision had not been included herein.

Section 4. This Ordinance shall take effect and be in force on and after its enactment as provided by law.

Approved by the Board this 19th day of July, 2023.

BOARD OF COMMISSIONERS OF THE  
TOWNSHIP OF LOWER MERION

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Todd M. Sinai, President

ATTEST:

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Jody L. Kelley, Secretary