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**WILMERDING BOROUGH
ORDINANCE NO. 1024**

AN ORDINANCE AMENDING THE BOROUGH ZONING CODE CHAPTER NO. 300; ADDING ARTICLE X ENTITLED "WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAE" IN NEW ZONING DISTRICT ENTITLED "TOWER OVERLAY" DISTRICT; PROVIDING DEFINITIONS; PROVIDING FOR PERMITTED LOCATIONS; PROVIDING CONDITIONS FOR PERMITTED USES, AND SPECIAL EXCEPTION; PROVIDING FOR PERMITS; SEVERABILITY; REPEALER; EFFECTIVE DATE.

WHEREAS, the Borough has received and anticipates requests to erect wireless communication towers and antennae on Borough property and in public rights of way; and

WHEREAS, the Borough finds that it is in the public interest to regulate the siting of wireless communications towers and antennae and to permit them only in a Telecommunications Overlay District [TO] with reasonable parameters; and

WHEREAS, it is the intent of Wilmerding Borough to regulate the use of wireless communication towers and antennae and to allow such uses only on Borough property and on public rights of way; and

WHEREAS, regulating the siting and use of wireless communications towers and antennae is found by Wilmerding Borough Council to protect and promote public health, safety and welfare; and

WHEREAS, this Ordinance is passed pursuant to Federal and Pennsylvania Statutes regulating towers and antennae.

NOW, THEREFORE, IT IS HEREBY ORDAINED AS FOLLOWS:

Section 1. The Wilmerding Borough Code of Ordinances is amended to add the following as Chapter 300, Article X.

Section 2. Purpose. The purpose of this Ordinance is to establish guidelines for the siting, erection and use of wireless communications towers and antennae on Borough property and within public rights of way. The goals of this Ordinance are to: (1) encourage the location of towers in non-residential areas, where possible; (2) minimize the total number of towers and antennae

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throughout the Borough; (3) strongly encourage the joint use of new and existing tower sites as a primary option.

Section 3. Definitions. As used in this ordinance, the following terms shall have the meanings set forth below:

- a) "Alternative tower structure" means man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennae or towers.
- b) "Antenna" means any transmitting or receiving device, equipment or system standing alone or mounted on a tower, building or structure and used in communications that radiates, captures or transmits electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.
- c) "Backhaul network" means the lines that connect a provider's towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switches telephone network.
- d) "Co-locate" identifies the circumstance where an antenna is erected on or added to an existing tower.
- e) "FAA" means the Federal Aviation Administration.
- f) "FCC" means the Federal Communications Commission.
- g) "Height" means when referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.
- h) "Pre-existing towers and pre-existing antennae" mean any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of this Ordinance, including permitted towers or antennae that have not yet been constructed so long as such approval is current and has not expired.
- i) "Tower" means any structure that is designed and constructed in whole or in part for the purpose of supporting one or more antennae for telephone, radio or similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

- j) "Telecommunications Overlay District" or "TO". A Telecommunications Overlay District is hereby created. This District applies to all Zoning Districts in the Borough and consists of property owned, leased or otherwise controlled by the Borough, including its rights of way, and including the rights of way of state highways within the Borough with the permission or acquiescence of the State.

Section 4: Applicability.

a) New Towers and Antennae: All new towers and antennae in the Borough may only be erected in a TO District, and shall be subject to the within rules and regulations, except as provided in Section 7. No antenna or tower shall be erected in the Borough without first complying with all the requirements of this Ordinance. A written, signed application shall be submitted to the Code Enforcement Officer [CEO] which application shall meet and satisfy all the requirements set forth herein. The CEO shall have full authority to enforce the provisions of this Ordinance. Any person aggrieved by any decision of the CEO may appeal to the Borough Zoning Hearing Board.

b) Amateur Radio Station Operators/Receive Only Antennae: This ordinance shall not govern any tower, or the installation of any antenna, that complies with the pertinent height requirement of the Zoning Code, and is owned and operated by a federally licensed amateur radio station operator and is used exclusively as a receiving only antenna.

c) Pre-existing Towers or Antennae: Pre-existing towers and pre-existing antennae shall not be required to meet the requirements of this ordinance, other than the requirements of Sections 5 (d) and (e).

d) AM Array: For purposes of implementing this ordinance, an AM array, consisting of one or more tower units and supporting ground system which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM Array. Additional tower units may be added within the perimeter of the AM array.

e) Co-location of additional antenna or antennae shall be permitted providing that the applicant provides a current engineering report by a Professional Engineer certified by the Commonwealth of PA that the tower can safely, structurally support such additions.

Section 5. General Requirements.

a) Inventory of Existing Sites: Each applicant for an antenna and/or tower shall provide in its application an inventory of its existing towers, antennae, or sites approved for towers or antennae, that are either within the jurisdiction of the Borough or within one mile of the border thereof, including specific information about the location, height, and design of each tower. All such information shall be deemed to be a public record.

b) Aesthetics: Towers and antennae shall meet the following requirements:

- 1) Towers shall be either blue, reinforced concrete or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
- 2) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
- 3) If an antenna is installed on a structure or a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

c) Lighting: Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternative and design chosen must cause the least disturbance to the surrounding views.

d) State or Federal Requirements: All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennae. If such standards and regulations are changed, then the owners of the towers and antennae governed by this ordinance shall bring such towers and antennae into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennae into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

e) Building Codes; Safety Standards: To ensure the structural integrity of towers, the owner of a tower shall ensure that it is designed, constructed and maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic industries Association, as amended from time to time. All towers shall be designed by a licensed professional Engineer registered in the Commonwealth of Pennsylvania and all drawings submitted for approvals shall be signed and sealed by the same Engineer responsible for the design. All construction shall be supervised by qualified personnel and a certification shall be prepared and presented to the Borough by a licensed professional Engineer registered in the Commonwealth of Pennsylvania that the design and construction conform to the highest standards of engineering and construction. If, at any time, the Borough concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring

such tower into compliance with such standards. Any aggrieved person may appeal to the Borough Zoning Board within thirty days of notice of the decision.

f) Not Essential Services: Towers and antennae shall be regulated and permitted pursuant to this ordinance and shall not be regulated or permitted as public utilities, or private utilities.

g) Franchises: Owners and/or operators of towers or antennae shall certify that all licenses or franchises required by law for the construction and/or operation of a wireless communication system in the Borough have been obtained and shall file a copy of all required licenses or franchises with the CEO.

h) Public Notice: For purposes of this ordinance, any special exception request or appeal from a decision shall require public notice pursuant to State law.

i) Signs: No signs shall be allowed on an antenna or tower, except as required by law.

j) Storage Equipment: The support equipment associated with antennae or towers shall comply with the requirements of Section 8.

k) Multiple Antenna/Tower Plan: The Borough encourages the users of towers and antennae to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.

l) Co-location: In order to reduce the number of towers in the Borough in the future, the proposed tower, if required by the CEO or Zoning Hearing Board, shall be designed to accommodate future additional communication users, including commercial wireless communication companies, local police, fire and ambulance companies.

m) Service to the Borough: Every provider of telecommunications service within the Borough shall make its telecommunications services available to the Borough at its most favorable rate for similar service. However, if the Borough use is for public safety, the telecommunications services shall be provided to the Borough at no cost.

n) The applicant must pay all filing and inspections fees as the same are published and established from time to time by Council by Resolution. In addition, where applicable, the applicant must pay all engineering fees for efforts of the Borough engineer at the prevailing fee schedule approved by Council. In addition the applicant shall pay an application fee as shall be established by the Borough by Resolution from time to time.

Section 6. Permitted Uses.

- a) Towers and antennae are only permitted in a Telecommunications Overlay District.
- b) Towers and antennae are permitted uses provided that the requested use must comply with the Zoning Code, except that there shall be a minimum setback of one hundred (100) feet from any residential property line.
- c) All towers and antennae erected, installed or located as a permitted use shall be located so as to minimize the adverse visual impact of the tower and/or antenna.

Section 7. Special Exception.

a) General. The following provisions shall govern the issuance of a special exception by the Zoning Hearing Board [ZHB] for towers or antennae:

- 1) If the tower or antenna is not permitted pursuant to Section 6 of this ordinance, a special exception may be granted by the ZHB for the construction of a tower or antenna in all zoning districts other than Residential districts.
- 2) Applications for special exceptions under this Section shall be subject to the procedures and requirements of the Zoning Ordinance, including applicable costs and fees.
- 3) In granting a special exception, the ZHB may impose conditions to the extent the ZHB concludes such conditions are necessary to minimize any adverse effect of the proposed tower or antenna on adjoining properties.
- 4) Any information of an engineering nature that the applicant submits, whether civil, mechanical or electrical, shall be certified by a licensed professional engineer registered in the Commonwealth of Pennsylvania.
- 5) An applicant for a special exception shall submit all information described in this Section.

b) Towers:

- 1) Information required. In addition to any information required for applications for a special exception, applicants for a special exception for a tower shall submit the following information:

- a) A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), Master Plan classification of the site and all properties within the applicable separation distances set forth in Section 7(b)(5), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking and other information reasonably deemed to be necessary by the CEO to assess compliance with this ordinance.
 - b) Legal description of the parent tract and leased parcel (if applicable).
 - c) The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.
 - d) The separation distance from other towers described in the inventory of existing sites submitted pursuant to Section 6(a) shall be shown on an updated site plan on map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
 - e) A landscape plan showing specific landscape materials.
 - f) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
 - g) A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennae for future users.
 - h) Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the Borough.
 - i) A description of the feasible location(s) of future towers or antennae within the Borough based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.
- 2) Factors to be Considered in Granting a Special Exception. In addition to any standards for consideration of special exception applications pursuant to the Zoning Ordinance, the ZHB shall consider the following factors in

determining whether to issue a special exception, although it may waive or reduce the burden on the applicant of one or more of these criteria if it concludes that the goals of this ordinance are better served thereby:

- a) Height of the proposed tower;
 - b) Proximity of the tower to residential structures and residential district boundaries;
 - c) Nature of uses on adjacent and nearby properties;
 - d) Surrounding topography;
 - e) Surrounding tree coverage and foliage;
 - f) Design of the apparatus, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - g) Proposed ingress and egress, with particular reference to access via streets in non-residential districts; and
 - h) Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures, as provided herein.
- 3) Availability of Suitable Existing Towers, Other Structures, or Alternative Technology. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Zoning Hearing Board that no existing tower, building, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Borough related to the availability of suitable existing towers, buildings, other structures or alternative technology. Evidence to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:
- a) No existing towers, buildings or structures are located within the geographic area which meet applicant's engineering requirements.
 - b) Existing towers, buildings or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

- c) The applicant's proposed antenna would cause electro-magnetic interference with the antenna on the existing towers, buildings or structures, or the antenna on the existing towers, buildings or structures would cause interference with the applicant's proposed antenna.
 - d) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
 - e) The applicant demonstrates that there are other limiting factors that render existing towers and structures suitable.
 - f) The applicant demonstrates that an alternate technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.
- 4) Setbacks. The following setback requirements shall apply to all towers and antennae for which a special exception is required; provided, however, that the Zoning Hearing Board may reduce the standard setback requirements if the goals of this ordinance would be better served thereby.
- a) Towers must be set back a distance equal to at least twice the applicable setback requirements, but in no case less than 50' from any adjoining lot line.
 - b) Guys and accessory buildings must satisfy the minimum zoning setback requirements.
- 5) Separation. The following separation requirements shall apply to all towers and antennae for which a special exception is required; provided, however, Zoning Hearing Board may reduce the standard separation requirements if the goals of this ordinance would be better served thereby.
- a) Separation from off-site uses/designated areas. Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated area as specified in Table 1, except as otherwise provided in Table 1.

- b) Separation requirements for towers shall comply with the minimum standards established in Table 1.

Table 1

<u>Off-site Use/Designated Area</u>	<u>Separation Distance</u>
Single-family or duplex residential units(1)	500 feet or 300% height of tower whichever is greater
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary subdivision plan approval which is not expired	500 feet or 300% height of tower (2) whichever is greater
Existing multi-family residential units greater than duplex units	250 feet or 150% height of tower whichever is greater

1 - Includes modular homes and mobile homes used for living purposes.

2 - Separation measured from base of tower to closest building setback line.

- (i) Separation distances between towers.
- (a) Separation distances between towers shall be applicable for and measured between the proposed tower and pre-existing towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 2.

Table 2

Existing Towers - Types

	Lattice	Guyed	Monopole 75 Ft. in Height	Monopole less than 75 Ft. in Height
Lattice	5,000	5,000	1,500	750
Guyed	5,000	5,000	1,500	750
Monopole 75 Ft. In Height or Greater	1,500	1,500	1,500	750

- 6) Security fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device; provided however, that the Council or Zoning Hearing Board may waive such requirements, as it deems appropriate.

- 7) Landscaping. The following requirements shall govern the landscaping surrounding towers for which a special exception is required; provided, however, that the Council or Zoning Hearing Board may waive such requirements if the goals of this ordinance would be better served thereby.
 - i) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound.
 - ii) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.
 - iii) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

- (8) Antennae: The applicant shall demonstrate that the antenna(e) is the minimum height required to function satisfactorily to serve the technical requirements of the applicant.

Section 8. Equipment Storage.

- a) **Antennae Mounted on Rooftops:** The equipment cabinet or structure used in association with legally-placed antennae mounted on rooftops shall comply with the following:
- 1) The cabinet or structure shall not contain more than ten (10) square feet of gross floor area or be more than eight (8) feet in height. In addition, for buildings and structures which are less than sixty-five (65) feet in height, the related unmanned equipment structure, if over ten (10) square feet of gross floor area or eight (8) feet in height, shall be located on the ground and shall not be located on the roof of the structure.
 - 2) If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than one percent (1%) of the roof area.
 - 3) Equipment storage cabinets or cabinets shall comply with all applicable building Codes.
 - 4) **All Other Legally-Placed Antennae:** For all other legally-placed antennae, the related unmanned equipment cabinet or structure shall comply with all applicable Building Codes and shall contain no more than sixteen (16) square feet of gross floor area nor be more than twelve (12) feet in height, and may be located:
 - a) In front or side yard provided the cabinet or structure is no greater than six (6) feet in height or sixteen (16) square feet of gross floor area and the cabinet/structure shall be screened by an evergreen hedge with an ultimate height of at least sixty to sixty-six (60-66) inches and a planted height of at least thirty-six (36) inches.
 - b) In a rear yard, provided the cabinet or structure is no greater than six (6) feet in height or sixteen (16) square feet in gross floor area. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least thirty-six (36) inches.
 - c) **Modification of Size Requirements:** The requirements of Section 9 may be modified by the Council in the case of administrative approvals or by the Zoning Hearing Board in the case of a special exception to encourage collocation.

Section 9. Removal of Abandoned Antennae and Towers. Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the CEO notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within said ninety (90) days shall be grounds for the Borough to cause the removal of the tower or antenna at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

Section 10. Nonconforming Uses.

a) Not expansion of Nonconforming Use: Towers that are constructed, and antennae that are installed, in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

b) Pre-existing Towers: Pre-existing towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such pre-existing towers. New construction and co-location [other than routine maintenance] on a pre-existing tower shall comply with the requirements of this ordinance.

c) Rebuilding Damaged or Destroyed Nonconforming Towers or Antennae: Notwithstanding Section 10, pre-existing nonconforming towers or antennae that are damaged or destroyed may be rebuilt, but must apply to the CEO for approval. Further, such applicant will not be required to meet the set back and separation requirements specified in Sections 7 (b) (4) and 7 (b) (5). The type, height, and location of the tower on site shall be of the same type and intensity as the original facility. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is first damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed to have been abandoned.

Section 11. Severability. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any clause, sentence or other provisions of this Ordinance should be declared unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect the remaining provisions of this Ordinance, and Borough Council declares that it would have adopted this Ordinance had such unconstitutional, illegal or invalid provisions not been contained herein.

Section 12. Effective Date. This Ordinance shall take effect immediately.

ORDAINED this 13 day of January, 2015.

ATTEST:

WILMERDING BOROUGH

By J. H. Hartzell
Secretary

By: [Signature]
President

APPROVED by me this 13 day of JANUARY, 2015.

[Signature]
Mayor

CERTIFICATION

I, Joseph Hartzell, hereby certify that I am the Secretary of Wilmerding Borough, and that the within Ordinance was duly advertised and enacted at a regular Council Meeting following a public hearing on the matter by Borough Council, duly convened, at which a quorum was present and voted in favor thereof.

WITNESS, my hand this 13 day of JANUARY, 2015

J. H. Hartzell
Secretary