



TOWNSHIP OF FERGUSON

3147 Research Drive • State College, Pennsylvania 16801
Telephone: 814-238-4651 • Fax: 814-954-7642
www.twp.ferguson.pa.us

BOARD OF SUPERVISORS Monthly Work Session Agenda Tuesday April 12, 2022 2:00 p.m.

MEETING PARTICIPANT OPTIONS

VIRTUAL:

Join Zoom Meeting Link:

<https://us02web.zoom.us/j/88010397783>

MEETING ID: 880 1039 7783

Zoom Access Instructions

IN-PERSON:

Ferguson Township Municipal Building
Main Meeting Room
3147 Research Drive
State College, PA 16801

- I. CALL TO ORDER
- II. CITIZEN'S INPUT
- III. UNFINISHED BUSINESS
 1. CONTINUED DISCUSSION ON CHAPTER 10, HEALTH, AND SAFETY; PART 3, NOISE ORDINANCE AMENDMENT
Chris Albright, Chief of Police

Narrative

Included in the agenda for the Board's worksession, are some recommendations to update the Township's noise ordinances. The current recommendations add and clarify some language. Before moving forward, staff is seeking the Board's input on proposed changes as well as discussion on additional items, direction or changes important to the Board. In attendance is the solicitor to answer questions as the Board discusses amendments to the noise ordinance.

Staff Recommendation

That the Board of Supervisors *discuss* the ordinance and proposed recommendations.

2. CONTINUED DISCUSSION ON CHAPTER 27, ZONING; SECTION 710, WIRELESS COMMUNICATIONS ORDINANCE AMENDMENT
Jenna Wargo, Director of Planning and Zoning

Narrative

On September 20, 2021, the Board of Supervisors authorized staff to prepare an amendment to the Wireless Communications Facilities ordinance in the wake of the Small Wireless Facilities Deployment Act (Act 50), signed into law on June 30, 2021. The legislation provides for fair and equitable treatment of small wireless facilities and

comprehensive protections for the municipality to ensure proper maintenance of public rights-of-way.

Included in the agenda is a draft ordinance amendment to §27-710—Wireless Communication Facilities and §27-1102—Definitions. These amendments are proposed in response to the Act 50 update that was signed into law. Planning Commission reviewed this amendment at the March 28, 2022, meeting and recommended the draft ordinance to the Board of Supervisors.

Staff Recommendation

That the Board of Supervisors *discuss* the proposed draft ordinance amendment.

IV. CALENDAR ITEMS – March

- a. Neighborhood Association Open Forum, April 13
- b. Coffee and Conversation, Saturday, April 16, Discovery Space
- c. Ferguson Township Upcoming Meetings
 - 1. Parks and Recreation Committee, April 14
 - 2. Tree Commission, April 18
 - 3. Planning Commission, April 25
 - 4. Pine Grove Mills Small Area Advisory Committee, April 28

V. ADJOURNMENT

10-303 Exemptions

(Add) Snow Removal – The operation of snow removal equipment necessary for the removal of snow or ice from public or private streets, alleys, drives, driveways, sidewalks and parking areas provided that any motorized vehicle or motorized equipment used for snow removal shall be equipped with an exhaust system including an unmodified muffler in proper working order that prevents excessive or unusual noise.

(Add) Highway and utility maintenance and construction. Emergency work or necessary excavations or repairs of bridges, streets, highways or any public utility during the night or Sunday when the public health, safety or welfare necessitates the performance of the work at such time.

10-308 Noise Limitations

(Add) – In addition to the procedures established under 10-305, Police Officers and the Ordinance Enforcement Officer are authorized to investigate noise complaints, issue warnings and or citations for violations under this subsection.

(Add) Power Equipment – It is unlawful to operate or permit to be operated any lawn and garden equipment, any saw, sander, drill, grinder or other household power tools of similar nature outdoors between 9:00 p.m and 7:00 a.m weekdays and between 9:00 p.m and 9:00 a.m on weekends. This section shall not apply to agricultural activities.

(Add) Radios, Stereos and Musical Instruments – It shall be unlawful for any person to create, assist to create as an owner, lessee or occupant of the property on which the activity is located any of the following acts:

- The playing of any radio, stereo, television, amplified or unamplified musical instrument, loudspeaker, tape recorder, compact disc player, or other such electronic sound-producing devices, in such a manner or volume that is:
 - Plainly audible beyond the property line of a single-family dwelling unit from which it is generated or outside of the duplex dwelling unit or individual dwelling unit of a multi-family dwelling unit from which it is generated; or
 - Plainly audible at a distance of 50 feet from the vehicle which it is generated; or

- Plainly audible at a distance of 50 feet from its location on public or private property open to the general public.

(Modify) Excessive Barking – It shall be unlawful for any owner or keeper to harbor any dog which barks repetitively or continuously for a period in excess of 10 consecutive minutes in any given one-hour period, annoying a person of ordinary sensibilities.

§ 10-308. Noise Limitations. [Ord. 241, 9/28/1982, § 8; as amended by Ord. 292, 4/2/1985, § 2; and by Ord. 820, 12/8/2003]

1. General. No person shall make, permit or cause to be made, any excessive noise of any kind by crying, calling or shouting, or by means of any whistle, rattle, bell, gong, clapper, hammer, drum, horn, hand organ, mechanically-operated piano, other musical instrument, wind instrument, mechanical device, radio, phonograph, sound amplifying or other similar electronic device unless said person has obtained a special permit from the Township Manager as provided in this Part.
2. Musical Instruments. No person shall use or perform on any hand organ or other musical instrument or device, in any public way or public open space of the Township before 7:00 a.m. or after 7:00 p.m. of the day (except on Sunday, before 9:00 a.m. or after 7:00 p.m. of the day) unless said person has obtained a special permit from the Township Manager.
3. Noise from Premises. No person owning, or in possession or control of any building or premises, shall use the same, permit the use of the same, or rent the same to be used for any business or employment or residential use, or for any purpose of pleasure or recreation, if such use shall, by its boisterous nature, disturb or destroy the peace of the neighborhood as determined at the property line in which such building or premise is situated, or be dangerous or detrimental to health.
4. Equipment Noise. It shall be unlawful for any person to use any pile driver, shovel, hammer, derrick, hoist, tractor, roller or other mechanical equipment operated by fuel or electric power in building or construction operations from 7:00 p.m. to 7:00 a.m. of the following day (Monday through Saturday), and all day Sunday until 7:00 a.m. Monday, except for emergency work on public improvements, work of public service utilities, and municipal services.
5. Noise in Handling Refuse Cans. No person shall make any unnecessary noise in the handling of ash, trash and garbage cans, either in loading or unloading, whether full or empty.
6. Noise in Vicinity of Hospitals, Schools and Churches. No person shall make any unnecessary noise in the vicinity of any hospital, or church during hours of public worship, or school during school hours.
7. Unlawful to Keep Noisy Animals. No person shall keep, or permit to be kept, harbor, or otherwise maintain any animal which shall disturb the quiet of any public street or other public place, or of any neighborhood. Provided, however, that a noisy animal shall be defined as one or more animals which makes noises habitually, so as to constitute annoyance to a person of ordinary sensibilities.
8. Noise by Peddlers. No peddler or other person who plies a trade or calling of any nature on the streets of the Township shall use any horn, bell, or other sound instrument to make any noise tending to disturb the peace and quiet of the neighborhood, for the purpose of directing attention to his wares, trade or calling.
9. Use of Horns and Other Devices on Vehicles. No person, operating any vehicle,

other than police, fire, public service or ambulance operators shall sound any horn, bell, gong, siren, or whistle, except for the ordinary horn installed on such vehicle by the manufacturer, or sound any type of horn except when reasonably necessary to prevent accidents or to otherwise comply with the law of motor vehicles.

- 10. The operational performance standards established by this Part shall not apply to any public performance being conducted in accordance with provisions of a special permit obtained from the Township Manager for the conduct thereof.
- 11. Vehicles. No person shall operate either a motor vehicle of a type subject to registration, except in police, fire equipment, ambulances or other government emergency vehicles at any time or under any condition of grade, load, acceleration or declaration in such a manner as to exceed the following noise limits for the category of minor vehicles based on a distance of 50 feet from the center of the lane traveled on within the speed limit specified in this section under test procedures established by § 10-310 of this Part.

Type of Vehicle	Speed Limit of 35 MPH __ or less __	Speed Limit of more than __ 35 MPH __
(1) Any motor vehicle with a manufacturer's gross combination weight rating of 10,000 lbs. or more and any combination of vehicles towed by such motor vehicle:	86 dB(A)	90 dB(A)
(2) Any other vehicle or any combination of vehicles towed by such motor vehicle:	76 dB(A)	82 dB(A)
(3) Any motorcycle or motor driven cycle:	78 dB(A)	82 dB(A)

- A. This section applies to the total noise from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of this code relating to motor vehicle mufflers for noise control.
- B. No person shall modify or change the exhaust muffler, intake muffler or any other noise abatement device of a motor vehicle so that the noise level is increased above that emitted by the vehicle as originally manufactured. Procedures used to establish compliance with this paragraph shall be those used to establish compliance of a new motor vehicle with the requirements of this Part.
- C. No person shall sell or lease or offer for sale or lease a new or second-hand vehicle that produces a maximum noise exceeding the noise limit at a distance of 50 feet from the center line of travel as stated above. The manufacturer, distributor, importer or designated agent shall if requested certify in writing to

the Township that his vehicles sold or leased within the Township comply with the provisions of this Part.

12. Equipment. No person shall operate any powered equipment or powered hand tool that produces a maximum noise level exceeding the following noise limits at a distance of 50 feet, under test procedures established by § 10-308 of this Part.

Type of Equipment	Noise Limit
(1) Construction and industrial machinery, such as crawler-tractors, dozers, rotary drills and augers, loaders, power shovels, cranes, derricks, motor graders, paving machines, off-highway trucks, ditches, trenchers, compactors, scrapers, pavement breakers, compressors and pneumatic power equipment, but not including pile drivers:	86 dB(A)
(2) Agricultural tractors and equipment:	86 dB(A)
(3) Powered commercial equipment of 2HP or less intended for infrequent use in residential areas, such as chain saws, pavement breakers, log chippers, powered hand tools, etc.:	84 dB(A)
(4) Powered equipment intended for repetitive use in residential areas, such as lawn mowers, small lawn and garden tools, riding tractors, snow removal equipment, etc.:	70 dB(A)

- A. No person shall sell or lease or offer for sale or lease new or second-hand equipment that produces a maximum noise exceeding the noise limit at a distance of 50 feet as stated in § 10-308, Subsection 11, of this Part. The manufacturer, distributor, importer or designated agent shall if requested certify in writing to the Township that his equipment sold or leased within the Township complies with the provisions of this Part.

§ 27-710 Wireless Communications Facilities.
[Ord. No. 1049, 11/18/2019]

1. Intent. The wireless communications facilities (WCF) regulations are intended to achieve the following:
 - A. To provide a competitive and wide range of communications services.
 - B. To encourage the shared use of existing communication towers, buildings and structures.
 - C. To ensure compliance with federal and state regulations.
 - D. To promote the health, safety and welfare of Township residents and businesses with respect to wireless communications facilities.
 - E. To address modern and developing technologies including, but not limited to, distributed antenna systems, data collection units, cable Wi-Fi and other communications facilities.
 - F. To establish procedures for design, siting, construction, installation, maintenance and removal of both tower-based and non-tower-based wireless communications facilities in the Township, including facilities both inside and outside of the public rights-of-way.
 - G. To protect Township residents and businesses from potential adverse impacts of wireless communications facilities and preserve, to the extent permitted under law, the visual character of established communities and the natural beauty of the landscape.
2. General Requirements for All Tower-Based Wireless Communications Facilities. The following regulations shall apply to all tower-based wireless communications facilities:
 - A. Standard of Care. Any tower-based WCF shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety, and safety-related codes including, but not limited to, the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, National Electrical Code, as well as the accepted and responsible workmanlike industry practices of the National Association of Tower Erectors. Any tower-based WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Township.
 - B. Wind. Any tower-based WCF structures shall be designed to withstand the effects of wind according to the standard designed by the ANSI as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry (ANSFEINTIA-222-E Code, as amended).
 - C. Height. Any tower-based WCF shall be designed at the minimum functional height and shall not exceed a maximum total height of 200 feet, or ~~40~~50 feet when located within the ROW, which height shall include all subsequent additions or alterations. Height shall be measured from the average natural grade to the top point of the communications tower or antenna, whichever is greater. All tower-based WCF applicants must submit documentation to the Township justifying the total height of the structure. Tower-based WCF constructed outside the ROW shall be

permitted as a conditional use in the RA, AR, RR, C, FG, TTD, I and IRD zoning districts by the Board of Supervisors if the following criteria are met:

- (1) The applicant shall provide documentation to the Township which details the commitment to provide capacity on the proposed tower-based WCF to more than one provider. The document must also describe whether additional tower height is required to provide the capacity to the additional provider(s) and if so, also show that by providing the additional height and capacity, there will not be a need from the involved companies for an additional tower outside the ROW within a radius of one mile of the site. The burden of proof shall be on the applicant to show that the proposed tower is the minimum height needed to provide the required service.
 - (2) If the proposed tower-based WCF is greater than 199 feet and less than 300 feet in height, the applicant shall provide documentation to the Township that the additional height will render the construction of two or more towers as nonessential and that by permitting an increase in the height of the tower, only one tower will be required. The burden of proof shall be on the applicant to show that the proposed tower is the minimum height needed to provide the required services. The purpose of this provision is to permit an increase in the height of one tower to reduce the need for additional towers.
 - (3) Tower-based WCFs shall employ stealth technology, which may include painting the tower portion silver or another color, utilizing a galvanized or “self-rusting” finish, or designing as a tree or other structure as approved by the Board of Supervisors.
 - (4) A plan shall be required for all wireless communication facilities showing the antenna array, support structure, building, fencing, buffering, access, and such other information as the Township may require illustrating the relationship between the proposed facility and adjacent structures and property lines.
 - (5) Setback and Location requirements may be modified by conditional use if the Board of Supervisors finds that placement of a wireless communication facility with support structure in a particular location will reduce its visual impact, or for other reasons as presented during the hearing.
 - (6) Comply with the standards of approval for all wireless communication facilities as set forth in this chapter §27-710.
- D. Public Safety Communications. No tower-based WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- E. 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, except as permitted and in accordance this section.
 - (2) Such maintenance shall be performed to ensure the upkeep of the facility in order to promote

the safety and security of the Township's residents.

- (3) All maintenance and activities shall utilize the best available technology for preventing failures and accidents.
- F. Radio Frequency Emissions. No tower-based WCF may, by itself or in conjunction with other WCF, generate radio frequency emissions in excess of the standards and regulations of the Federal Communications Commission (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. The applicant shall provide, upon request, a statement from a qualified licensed and professional registered engineer that the non-ionizing electromagnetic radiation (NIER) emitted from the tower-based WCF, when measured in conjunction with the emissions from all communications antenna on the tower, does not result in an exposure at any point on or outside such facility which exceeds the lowest applicable exposure standards established by the FCC or the ANSI.
- G. Historic Buildings or Districts. No tower-based WCF may be located on or within 200 feet of a site that is listed on an historic register, a site listed for inclusion on the historic register, or in an officially designated state or federal historic district.
- H. Identification. All tower-based WCF shall post a notice in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency, subject to approval by the Township. The notice shall not exceed two square feet in gross surface area and shall maintain the contact party.
- I. Lighting. Tower-based WCF shall not be artificially lighted, except as required by the Federal Aviation Administration and as may be approved by the Township. 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. No flag shall be located on the structure that requires lighting.
- J. Appearance. Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color as determined by the Township Planning and Zoning Director to harmonize with the surroundings.
- K. Noise. Tower-based WCF shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and Chapter **10**, Part **3**, of the Ferguson Township Code of Ordinances, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.
- L. Aviation Safety. Tower-based WCF shall comply with all federal and state laws and regulations concerning aviation safety.
- M. Retention of Experts. The Township may hire any consultant(s) and/or expert(s) necessary to assist the Township in reviewing and evaluating the application for approval of the tower-based WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this section. The applicant and/or owner of the WCF shall reimburse the Township

for all costs of the Township's consultant(s) in providing expert evaluation and consultation in connection with these activities.

- N. **Timing of Approval.** Within 30 calendar days of the date that an application for a tower-based WCF is filed with the Township, the Township shall notify the applicant, in writing, of any information that may be required to complete such application. All complete applications for tower-based WCF shall be acted upon within 150 days of the receipt of a fully completed application for the approval of such tower-based WCF, and the Township shall advise the applicant, in writing, of its decision. If additional information is requested by the Township to complete an application, the time required by the applicant to provide the information shall not be counted toward the 150-day review period.
 - O. **Nonconforming Uses.** Nonconforming tower-based WCF 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 section. Co-location of facilities may be permitted on nonconforming structures in accordance with standards established in the Pennsylvania Wireless Broadband Collocation Act.
 - P. **Removal.** In the event that use of a tower-based WCF is planned to be discontinued, the owner shall provide written notice to the Township of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCF or portions of WCF shall be removed as follows:
 - (1) All unused or abandoned tower-based WCF and accessory facilities shall be removed within six months of the cessation of operations at the site unless a time extension is approved by the Township.
 - (2) If the WCF and/or accessory facility is not removed within six months of the cessation of operations at a site, or within any longer period approved by the Township, the WCF and accessory facilities and equipment may be removed by the Township and the cost of removal assessed against the owner of the WCF.
 - (3) Any unused portions of tower-based WCF, including antennas, shall be removed within six months of the time of cessation of operations. The Township must approve all replacements of portions of a tower-based WCF previously removed.
 - Q. **Application Fees.** The Township may assess appropriate and reasonable application fees directly related to the Township's actual costs in reviewing and processing the application for approval of a tower-based WCF, as well as related inspection, monitoring and related costs.
3. **Tower-Based Wireless Communications Facilities Outside the Rights-of-Way.** The following regulations shall apply to tower-based wireless communications facilities located outside of the right-of-way (ROW):
- A. **Tower Setbacks and Location.** A tower-based WCF located outside of the ROW shall comply with the following:

- (1) The tower shall be located at least half (1/2) the height of the tower from all adjoining property lines.
- (2) Towers shall not be closer than 300 feet to any residential building.
- (3) Towers shall not be closer than 3,000 feet to any other existing tower-based WCF located outside of the ROW.
- (4) Tower-based WCF shall only be permitted as designated in zoning districts as identified within the chapter.

B. Evidence of Need. It is required that the applicant for the placement of a tower-based WCF that will exceed 4050 feet in height shall submit to Ferguson Township evidence of the need for the tower-based WCF in the proposed location and that the applicant has exhausted all alternatives to locate on an existing tower or structure (co-location). In addition, the applicant must demonstrate via written evidence from a qualified, licensed, and professional engineer that, in terms of location and construction, there are no existing towers, tower-based WCF, buildings, structures, elevated tanks or similar uses able to provide the platform for the antenna within a one-mile radius of the chosen location, unless the applicant can demonstrate to the satisfaction of the Township that a different distance is more reasonable. Co-location is not possible if:

- (1) Coverage diagrams and technical reports demonstrate that co-location on an existing tower-based WCF is not technically possible in order to serve the desired need.
- (2) Planned equipment would exceed the structural capacity of existing towers within the Township, considering existing and planned use of those towers and existing towers cannot be reinforced to accommodate planned or equivalent equipment at a reasonable cost.
- (3) Planned equipment will cause radio frequency (RF) interference with other existing or planned equipment for that tower and the interference cannot be prevented at a reasonable cost.
- (4) Existing or approved towers do not have the space on which planned equipment can be placed so it can function effectively and at least in parity with other similar equipment in place or planned.
- (5) Other reasons can be demonstrated to the satisfaction of the Township that make it impractical to place the equipment planned by the applicant on existing and approved towers.

C. Sole Use on a Lot. A tower-based WCF is permitted as the sole use on a lot subject to the minimum lot size and setbacks complying with the requirements of the applicable zoning district.

D. Combined with Another Use. A tower-based WCF may be permitted on a property with an existing use or on a vacant parcel in combination with another agricultural, industrial, commercial, or municipal use, subject to the following conditions:

- (1) The existing use on the property may be any permitted use in the applicable zoning district

and need not be affiliated with the communications facility.

- (2) Minimum Lot Area. The minimum lot shall comply with the requirements for the applicable zoning district and shall be the area needed to accommodate the tower-based WCF, the communications facility building, security fence, and buffer planting.
 - (3) Minimum Setbacks. The accompanying communications facility building and equipment shall comply with the requirements for the applicable zoning district.
- E. Notice. Upon receipt of a letter of a complete application by the Township for a tower-based WCF, the applicant shall mail notice thereof to the owner or owners of every property within 500 radial feet of the parcel or property of the proposed facility. The applicant shall provide the Township with evidence that the notice was mailed out to applicable property owners.
- F. Design and Construction.
- (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. The application of the stealth technology chosen by the WCF applicant shall be subject to the approval of the Township.
 - (2) To the extent permissible under applicable law, any height extensions to an existing tower-based WCF shall require prior approval of the Township. The Township reserves the right to deny such requests based upon aesthetic and land use impact, or any other lawful considerations related to the character of the Township.
 - (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 at least two additional users if the tower is over 100 feet in height or for at least one additional user if the tower is over 60 feet in height. Tower-based WCF must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at various heights.
 - (4) Guy wires are not permitted. The monopole must be self-supporting.
- G. Surrounding Environs. A soil report complying with the standards of Appendix I: Geotechnical Investigations, ANSI/EIA/TIA-222-G Manual, as amended, shall be submitted to the Township to document and verify design specifications of the foundation for the tower-based WCF.
- H. Fence/Screen.
- (1) A security fence of approved design, of not less than eight feet in height and no greater than 10 feet in height, shall completely enclose the tower-based WCF. The fencing required in must also have a one-foot barbed arm slanted at a 45° angle facing outwards which runs along the entire top of the fence unless the Board of Supervisors waives such requirement.
 - (2) The applicant shall submit a landscaping plan. Sites in which communications towers are

located shall be required to comply with the following landscape requirements:

- (a) Landscaping, consisting of evergreen plantings which shall reach a height of at least eight feet within five years of planting shall be required at the perimeter of the security fences and WCF. Existing wooded areas, tree lines and hedgerows adjacent to the facility shall be preserved and used to substitute or meet a portion of the buffer yard requirements. When the WCF is located in a developed area, the Board of Supervisors may waive the buffer yard regulations in exchange for another type of screening which is compatible with the surrounding land use.
- (3) Where feasible/appropriate, the tower or antenna shall be constructed to blend in with the surrounding area.
- (4) No signs or any form of advertising of any kind shall be permitted on the WCF or antennas. However, one sign, not to exceed two square feet in gross surface area, which identifies the phone number and contact in the event of an emergency is required. In addition, "No Trespassing" signs may be placed on the security fencing in accordance with the Township's Sign Ordinance (Chapter 19).

I. Accessory Equipment.

- (1) Ground-mounted equipment associated with, or connected to, a tower-based WCF shall be underground, if possible. In the event that an applicant can demonstrate that the equipment cannot be located underground to the satisfaction of the Township Engineer, then the ground-mounted equipment shall be screened from public view using stealth technologies, as described above.
- (2) All buildings and structures associated with a tower-based WCF shall be architecturally designed to blend into the environment in which they are situated and shall meet the minimum setback requirements of the underlying zoning district.

J. Access Road. An access road, turnaround space and parking shall be provided to ensure adequate emergency and service access to tower-based WCF. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and minimize soil erosion. The vehicular access to the tower-based WCF and communications facility building shall meet the applicable municipal street standards for private streets and/or driveway standards. Where applicable, the WCF owner shall present documentation to the Township that the property owner has granted an easement for the proposed facility.

K. Inspection. The Township reserves the right to inspect any tower-based WCF to ensure compliance with the provisions of this section and any other provisions found within the Township Code of Ordinances or state or federal law. The Township and/or its agents shall have the authority to enter the property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

~~4. Tower Based Wireless Communications Facilities Inside the Rights of Way. The following regulations shall apply to tower based wireless communications facilities located in the rights of way (ROW):~~

- ~~A. Permitted Where Aboveground Utility Infrastructure Exists. No tower based wireless communications facilities shall be located in areas where utility infrastructure is installed underground.~~
- ~~(1) In areas not served by aboveground utility infrastructure, tower based WCF may be constructed at intersections of arterial and arterial street classifications and arterial and collector street classifications to provide coverage and capacity.~~
- ~~B. Evidence of Need. It is required that the applicant for the placement of a tower based WCF shall submit to Ferguson Township evidence of the need for the tower based WCF in the proposed location and that the applicant has exhausted all alternatives to locate on an existing tower or structure (co location). In addition, the applicant must demonstrate via written evidence from a qualified, licensed, professional engineer that, in terms of location and construction, there are no existing towers, tower based WCF, buildings, structures, elevated tanks or similar uses able to provide the platform for the antenna within a 1/2 mile radius of the chosen location, unless the applicant can demonstrate to the satisfaction of the Township that a different distance is more reasonable. Co location is not possible if:~~
- ~~(1) Capacity diagrams and technical reports demonstrate that co location on an existing tower based WCF is not technically possible in order to serve the desired need.~~
- ~~(2) Planned equipment would exceed the structural capacity of existing towers within the Township, considering existing and planned use of those towers and existing towers cannot be reinforced to accommodate planned or equivalent equipment at a reasonable cost.~~
- ~~(3) Planned equipment will cause radio frequency (RF) interference with other existing or planned equipment for that tower and the interference cannot be prevented at a reasonable cost.~~
- ~~(4) Existing or approved towers do not have the space on which planned equipment can be placed so it can function effectively and at least in parity with other similar equipment in place or planned.~~
- ~~(5) Other reasons can be demonstrated to the satisfaction of the Township that make it impractical to place the equipment planned by the applicant on existing and approved towers.~~
- ~~C. Notice. Upon submission of an application for a tower based WCF, the applicant shall mail notice thereof to the owner or owners of every property within 500 feet of the parcel or property of the proposed facility. The applicant shall provide the Township with evidence that the notice was mailed out to applicable property owners.~~
- ~~D. Co-Location. An application for a new tower based WCF in the ROW shall not be approved unless the Township finds that the proposed wireless communications equipment cannot be~~

~~accommodated on an existing structure, such as a utility pole. Any application for approval of a tower-based WCF shall include a comprehensive inventory of all existing towers and other suitable structures within a 1/2 mile radius from the point of the proposed tower, unless the applicant can show to the satisfaction of the Township that a different distance is more reasonable, and shall demonstrate conclusively why an existing tower or other suitable structure cannot be utilized. Co-location shall not be permitted on ornamental streetlight fixtures.~~

~~E. — Time, Place, and Manner. The Township shall determine the time, place, and manner of construction, maintenance, repair, and/or removal of all tower-based WCF in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. For public utilities, the time, place, and manner requirements shall be consistent with the police powers of the Township and the requirements of the Public Utility Code.~~

~~F. — Equipment Location. Tower-based WCF and accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the ROW as determined by the Township in addition:~~

- ~~(1) — In no case shall ground-mounted equipment, walls, or landscaping be located within 18 inches of the face of the curb. In the absence of a curb, facility must be located outside the safe clear zone of the roadway as determined by Public Works Director.~~
- ~~(2) — Ground-mounted equipment that cannot be underground shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Township.~~
- ~~(3) — Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Township.~~
- ~~(4) — Any graffiti on the tower or any accessory equipment shall be removed at the sole expense of the owner within 10 business days of notice of the existence of the graffiti.~~
- ~~(5) — Any underground vaults related to tower-based WCF shall be reviewed and approved by the Township.~~

~~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 the aesthetic impact. The application of the stealth technology chosen by the WCF applicant shall be subject to the approval of the Township.~~
- ~~(2) — Any height extensions to an existing tower-based WCF shall require prior approval of the Township, and shall not increase the overall height of the tower-based WCF to more than 50 feet. The Township reserves the right to deny such requests based upon aesthetic and land use impact or any other lawful considerations related to the character of the Township.~~

~~(3) — Guy wires are not permitted. The monopole must be self-supporting.~~

~~H. — Additional Antennas. As a condition of approval for all tower-based WCF in the ROW, the WCF applicant shall provide the Township with a written commitment that it will allow other service providers to co-locate antennas on tower-based WCF 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 Township.~~

~~I. — Relocation or Removal of Facilities. Within 60 days following written notice from the Township, or such longer period as the Township determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a tower-based WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change, or alter the position of any WCF when the Township, consistent with its police powers and the 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 Township or other public improvement in the right-of-way.~~

~~(2) — The operations of the Township or other governmental entity in the right-of-way.~~

~~(3) — Vacation of a street or road or the release of a utility easement.~~

~~(4) — An emergency as determined by the Township.~~

~~J. — Compensation for ROW Use. In addition to the permit fees, every tower-based WCF in the ROW is subject to the Township's right to fix annually a fair and reasonable compensation to be paid for use and occupancy of the ROW. Such compensation for ROW use shall directly related to the Township's actual ROW management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising, and other ROW management activities by the Township. The owner of each tower-based WCF shall pay an annual fee to the Township to compensate the Township for the Township's costs incurred in connection with the activities described above. The annual ROW management fee for tower-based WCF shall be determined by the Township and authorized by resolution of the Board of Supervisors and shall be based on the Township's actual ROW management costs as applied to such tower-based WCF.~~

~~K. — Restoration Deposit. Prior to the issuance of a permit, the owner of each individual tower-based WCF shall, at its own cost and expense, deliver a restoration deposit in an amount determined by the Director of Public Works, or his designee. The return of the deposit shall be contingent upon the proper restoration of the ROW and compliance with the terms and conditions of this section. Upon installation of the tower-based WCF, the applicant shall notify the Township that the site is ready for inspection. The Public Works Director or his designee shall inspect the site and, if it is found to be satisfactory, the restoration deposit shall be refunded to the applicant within 30 days. The restoration deposit may be forfeited in whole or in part to the Township if any work is found to be incomplete or not in compliance with all applicable standards.~~

5. General Requirements for All Non-Tower-Based Wireless Communications Facilities.

- A. For the purposes of this section, the regulations shall only apply to non-tower-based wireless communications facilities that are not regulated by the Pennsylvania Wireless Broadband Collocation Act, except where noted or where otherwise permitted by law.
- B. The following regulations shall apply to all non-tower-based wireless communications facilities that do not substantially change the physical dimensions of the wireless support structure to which they are attached, as defined above:
- (1) Permitted in All Zones Subject to Regulations. Non-tower-based WCF are permitted in all zones subject to the restrictions and conditions prescribed below and subject to the prior written approval of the Township.
 - (2) Standard of Care. Any non-tower-based WCF shall be designed, constructed, operated, maintained, repaired, modified, and removed in strict compliance with all current applicable technical, safety, and safety-related codes, including, but not limited to, the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code. Any non-tower-based WCF shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Township.
 - (3) Wind. Any non-tower-based WCF structure 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-G, as amended).
 - (4) Public Safety Communications. No non-tower-based WCF shall interfere with public safety communications or the reception of broadband, television, radio, or other communication services enjoyed by occupants of nearby properties.
 - (5) Aviation safety Non-tower-based WCF shall comply with all federal and state laws and regulations concerning aviation safety.
 - (6) Radio Frequency Emissions. No non-tower-based WCF shall, by itself or in conjunction with other WCF, 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.
 - (7) Removal. In the event that the use of a non-tower-based WCF is discontinued, the owner shall provide written notice to the Township of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCF or portions of WCF shall be removed as follows:
 - (a) All abandoned or unused WCF and accessory facilities shall be removed within three

months of the cessation of operations at the site unless a time extension is approved by the Township.

- (b) If the WCF and/or accessory facilities are not removed within three months of the cessation of operations, or within any longer period of time approved by the Township, the WCF and/or associated facilities and equipment may be removed by the Township and the cost of removal assessed against the owner of the WCF.
- (8) **Timing of Approval.** Within 30 calendar days of the date that an application for a non-tower-based WCF is filed with the Township, the Township shall notify the applicant, in writing, of any information that may be required to complete such application. Within 60 calendar days of receipt of a complete application, the Township shall make its final decision on whether to approve the application and shall advise the applicant, in writing, of such decision. If additional information was requested by the Township to complete an application, the time required by the applicant to provide the information shall not be counted toward the Township's sixty-day review period. This standard shall only apply to facilities that are regulated by the Pennsylvania Wireless Broadband Collocation Act.
- (9) **Application Fees.** The Township may assess appropriate and reasonable permit fees directly related to the Township's actual costs in reviewing and processing the application for approval of a non-tower-based WCF, as well as related inspection, monitoring and related costs. Such fees may be assessed by applicable federal or state statute for relevant co-located facilities and other non-tower-based WCF.

C. The following regulations shall apply to all non-tower-based wireless communications facilities that substantially change the wireless support structure to which they are attached:

- (1) **Permitted in All Zones Subject to Regulations.** Non-tower-based WCF are permitted in all zones subject to the restrictions and conditions prescribed below and subject to the prior written approval of the Township.
- (2) **Standard of Care.** Any non-tower-based WCF shall be designed, constructed, operated, maintained, repaired, modified, and removed in strict compliance with all current applicable technical, safety, and safety-related codes, including but not limited to the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code. Any non-tower-based WCF shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Township.
- (3) **Wind.** Any non-tower-based WCF structure 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-G, as amended).
- (4) **Public Safety Communications.** No non-tower-based WCF shall interfere with public safety communications or the reception of broadband, television, radio, or other communication

services enjoyed by occupants of nearby properties.

- (5) **Historic Buildings.** Non-tower WCF may not be located on a building or structure that is on an historic register or a building or structure listed for inclusion on a historic register.
- (6) **Aviation Safety.** Non-tower-based WCF shall comply with all federal and state laws and regulations concerning aviation safety.
- (7) **Maintenance.** The following maintenance requirements shall apply:
 - (a) The non-tower-based WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
 - (b) Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Township's residents.
 - (c) All maintenance activities shall utilize nothing less than the best available technologies for preventing failures and accidents.
- (8) **Radio Frequency Emissions.** No non-tower-based WCF shall, by itself or in conjunction with other WCF, 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) **Removal.** In the event that the use of a non-tower-based WCF is discontinued, the owner shall provide written notice to the Township of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCF or portions of WCF shall be removed as follows:
 - (a) All abandoned or unused WCF and necessary facilities shall be removed within three months of the cessation of operations at the site unless a time extension is approved by the Township.
 - (b) If the WCF or accessory facility is not removed within three months of the cessation of operations, or within any longer period of time approved by the Township, the WCF and/or associated facilities and equipment may be removed by the Township and the cost of removal assessed against the owner of the WCF.
 - (c) **Timing of Approval.** Within 30 calendar days of the date that an application for a non-tower-based WCF is filed with the Township, the Township shall notify the applicant, in writing, of any information that may be required to complete such application. Within 60 calendar days of receipt of a complete application, the Township shall make its final decision on whether to approve the application and shall advise the applicant, in writing, of such decision. If additional information was requested by the Township to complete an application, the time required by the applicant to provide the information shall not be counted toward the Township's

sixty-day review period. This standard shall only apply to facilities that are regulated by the Pennsylvania Wireless Broadband Collocation Act.

- (d) **Retention of Experts.** The Township may hire any consultant(s) and/or expert(s) necessary to assist the Township in reviewing and evaluating the application for approval of the non-tower-based WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this section. The applicant and/or owner of the WCF shall reimburse the Township for all costs of the Township's consultant(s) in providing expert evaluation and consultation in connection with these activities.
- (e) **Restoration Deposit.** Prior to the issuance of a permit, the owner of each individual tower-based WCF shall, at its own cost and expense, deliver a restoration deposit in an amount determined by the Director of Public Works, or his designee. The return of the deposit shall be contingent upon, where applicable, the proper restoration of the ROW and compliance with the terms and conditions of this section. Upon installation of the tower-based WCF, the applicant shall notify the Township that the site is ready for inspection. The Public Works Director or his designee shall inspect the site and, if it is found to be satisfactory, the restoration deposit shall be refunded to the applicant within 30 days. The restoration deposit may be forfeited in whole or in part to the Township if any work is found to be incomplete or not in compliance with all applicable standards.
- (f) **Permit Fees.** The Township may assess appropriate and reasonable permit fees directly related to the Township's actual costs in reviewing and processing the application for approval of a non-tower-based WCF, as well as related inspection, monitoring and related costs.

6. **Non-Tower-Based Wireless Communications Facilities Outside the Rights-of-Way.** The following additional regulations shall apply to non-tower-based wireless communications facilities located outside the rights-of-way that substantially change the wireless support structure to which they are attached:

- A. **Development Regulations.** Non-tower-based WCF shall be co-located on existing structures such as existing building or tower-based WCF subject to the following conditions:
 - (1) Such WCF does not exceed a maximum height of 10 feet above the permitted height of any structure in the applicable zoning district.
 - (2) If the WCF applicant proposes to locate the communications equipment in a separate building, the building shall comply with the minimum requirements for the applicable zoning district.
 - (3) A six-foot-high security fence with evergreen screening 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.

B. Design Regulations.

- (1) Non-tower-based WCF shall employ stealth technology and be treated to match the supporting structure in order to minimize the aesthetic impact. The application of the stealth technology chosen by the WCF applicant shall be subject to the approval of the Township.
- (2) Non-tower-based WCF which are mounted to a building or similar structure may not exceed a height of 15 feet above the roof or parapet, whichever is higher, unless the WCF applicant obtains a conditional use approval.
- (3) All non-tower-based WCF applicants must submit documentation to the Township justifying the total height of the non-tower structure. Such documentation shall be analyzed in context of such justification on an individual basis.
- (4) Antennas, and their respective accompanying support structures, shall be no greater in diameter than any cross-sectional dimension that is reasonably necessary for their proper functioning.
- (5) Noncommercial Usage Exemption. The design regulations enumerated in § 27-710, Subsection 6A(2), shall not apply to direct broadcast satellite dishes installed for the purpose of receiving video and related communications services at residential dwellings.

C. Removal, Replacement, and Modification.

- (1) The removal and replacement of non-tower-based WCF and/or accessory equipment for the purpose of upgrading or repairing the WCF is permitted, so long as such repair or upgrade does not increase the overall size of the WCF or the numbers of antennas.
- (2) Any material modification to a WCF shall require prior amendment to the original permit or authorization.

D. Inspection. The Township reserves the right to inspect any WCF to ensure compliance with the provisions of this section and any other provisions found within the Township Code of Ordinances or state or federal law. The Township and/or its agents shall have the authority to enter the property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

7. ~~Non-Tower Based Wireless Communications Facilities in the Rights of Way. The following additional regulations shall apply to all non-tower based wireless communications facilities located in the rights-of-way:~~

~~A.— Location. Non-tower based WCF in the ROW shall be co-located on existing poles, such as utility poles. Co-location shall not be permitted on ornamental streetlight fixtures.—~~

~~B.— Design Requirements.~~

~~(1) WCF installations located above the surface grade in the public ROW including, but not limited to, those on streetlights and joint utility poles, shall consist of equipment components that are no more than six feet in height and that are compatible in scale and proportion to the structures upon which they are mounted. All equipment shall be the smallest and least visibly intrusive equipment feasible.~~

~~(2) Antennas and all support equipment shall be treated to match the supporting structure. WCF and accompanying equipment shall be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.~~

~~C. Compensation for ROW Use. In addition to the permit fees as described in § 27-710, Subsection 5B(9), and otherwise herein, every non-tower based WCF in the ROW is subject to the Township's right to fix annually a fair and reasonable compensation to be paid for use and occupancy of the ROW. Such compensation for ROW use shall directly related to the Township's actual ROW management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising, and other ROW management activities by the Township. The owner of each non-tower based WCF shall pay an annual fee to the Township to compensate the Township for the Township's costs incurred in connection with the activities described above. The annual ROW management fee for non-tower based WCF shall be determined by the Township and authorized by resolution of the Board of Supervisors and shall be based on the Township's actual ROW management costs as applied to such non-tower based WCF.~~

~~D. Time, Place, and Manner. The Township shall determine the time, place, and manner of construction, maintenance, repair, and/or removal of all non-tower based WCF in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. For public utilities, the time, place, and manner requirements shall be consistent with the police powers of the Township and the requirements of the Public Utility Code.~~

~~E. Equipment Location. Non-tower based WCF and accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the ROW as determined by the Township. In addition:~~

~~(1) In no case shall ground-mounted equipment, walls, or landscaping be located within 18 inches of the face of the curb. In the absence of a curb, facility must be located outside the safe clear zone of the roadway as determined by Public Works Director.~~

~~(2) Ground-mounted equipment shall be located underground. In the event an applicant can demonstrate, to the satisfaction of the Township Engineer, that ground-mounted equipment cannot be underground, then all such equipment shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Township.~~

~~(3) Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Township.~~

~~(4) Any graffiti on the tower or any accessory equipment shall be removed at the sole expense of the owner within 10 business days of notice of the existence of the graffiti.~~

~~(5) Any underground vaults related to tower-based WCF shall be reviewed and approved by the Township.~~

~~F. Relocation or Removal of Facilities. Within 60 days following written notice from the Township, or such longer period as the Township determines is seasonably necessary, or such other period in the case of an emergency, an owner of a WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change, or alter the position of any WCF when the Township, consistent with its police powers and applicable Public Utility Commission regulations, shall have determined that such removal, relocation, change, or alteration is reasonably necessary under the following circumstances:~~

~~(1) The construction, repair, maintenance, or installation of any Township or other public improvement in the right-of-way.~~

~~(2) The operations of the Township or other governmental entity in the right-of-way.~~

~~(3) Vacation of a street or road or the release of a utility easement.~~

~~(4) An emergency as determined by the Township.~~

~~G. Visual and/or Land Use Impact. The Township retains the right to deny an application for the construction or placement of a non-tower based WCF based upon visual and/or land use impact.~~

8. Violations Applicable to All Wireless Communications Facilities.

A. Penalties. Any person violating any provision of this section shall be subject, upon finding by a Magisterial District Judge, to a penalty not exceeding \$500, for each and every offense, together with attorneys' fees and costs. A separate and distinct violation shall be deemed to be committed each day on which a violation occurs or continues to occur. In addition to an action to enforce any penalty imposed by this section and any other remedy at law or in equity, the Township may apply to a federal district court for an injunction or other appropriate relief at law or in equity to enforce compliance with or restrain violation of any provision of this section.

B. Determination of Violation. In the event a determination is made that a person has violated any provision of this section, such person shall be provided written notice of the determination and the reasons therefor. Except in the case of an emergency, the person shall have 30 days to cure the violation. If the nature of the violation is such that it cannot be fully cured within such time period, the Township may, in its reasonable judgment, extend the time period to cure, provided that person has commenced to cure and is diligently pursuing its efforts to cure. If the violation has not been cured within the time allowed, the Township may take any and all actions authorized by this section and/or federal and/or Pennsylvania law and regulations.

9. Miscellaneous.

- A. Police Powers. The Township, by granting any permit or taking any other action pursuant to this section, does not waive, reduce, lessen, or impair the lawful police powers vested in the Township under applicable federal, state, and local laws and regulations.
- B. Severability. If any section, subsection, sentence, clause, phrase, or word of this section 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 section invalid.

§ 27-710A Small Wireless Facilities

1. Purpose and Intent.

- A. The purpose of this Chapter is to establish procedures and standards, consistent with all applicable federal and state, laws, for the consideration, permitting, siting, construction, installation, collocation, modification, operation, regulation and removal of Small Wireless Facilities (“SWF”) in the public right-of-way of streets and roads.
- B. The intent of this Chapter is to:
 - (1) Establish basic criteria for applications to install and/or collocate SWFs in the public right-of-way;
 - (2) Ensure that SWFs are appropriately designed, constructed, modified, maintained, and removed when no longer in use in conformance with all applicable health and safety regulations;
 - (3) Preserve the character of the Township by minimizing the potentially adverse visual impact of SWFs through careful design, siting, landscaping and camouflaging techniques to blend these facilities into their environment to the maximum extent practicable;
 - (4) Establish an application process and structure for payment of fees and charges to be uniformly applied to all applicants, operators and owners of SWFs for such facilities;
 - (5) Comply with, and not conflict with or preempt, all applicable state and federal laws, as may be amended or superseded, and all FCC rules and regulation to interpret and implement applicable federal statutes; and
 - (6) Limit interference with the use of streets, sidewalks, alleys, parkways, public utilities, public views, certain Township corridors, and other public ways and places.
- C. Zoning. Applications to collocate a SWF or install or modify an associated utility pole in the rights-of-way shall be treated as a permitted use pursuant to Act 50 of 2021, the *Small Wireless Facilities Deployment Act*, and exempt from local zoning where required by the Act. All other wireless facilities not meeting the definition of a small wireless facility shall remain subject to applicable zoning requirements.
- D. This Chapter is intended to implement the requirements of the *Small Wireless Facilities*

Deployment Act, Failure of the Township to include all language set forth in that Act in this Ordinance does not constitute a waiver of any right under the Act.

2. Applicability.

- A. The provisions of this Chapter shall only apply to activities of a wireless provider within the right-of-way to deploy SWFs and associated new utility poles with small wireless facilities attached.

3. Definitions.

The following words and phrases when used in this Chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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 it not limited to utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, or similar structures.

APPLICABLE CODES

Any of the following: (1) uniform building, fire, electrical, plumbing or mechanical codes adopted by a recognized code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons. (2) Ferguson Township zoning, land use, streets and sidewalks, rights-of-way and permitting ordinances.

APPLICANT

A communications service provider that submits an application.

APPLICATION

A request submitted by an applicant to the Township (1) for a permit to collocate small wireless facilities; or (2) to approve the installation, modification or replacement of a utility pole with a small wireless facilities to be attached.

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.

FEDERAL COMMUNICATIONS COMMISSION OR “FCC”

The Federal Communications Commission.

MICRO WIRELESS FACILITY

A small wireless facility that (1) does not exceed two cubic feet in volume and (2) has an exterior antenna no longer than 11 inches.

MODIFICATION OR MODIFY

The improvement, upgrade, expansion or replacement of a wireless communications facility or base station on an existing wireless support structure or the improvement, upgrade, or expansion

of the wireless communications facility located within an existing equipment compound, if the improvement, upgrade, or expansion does not substantially change the physical dimensions of the wireless support structure.

TECHNICALLY FEASIBLE

By virtue of engineering or spectrum usage, the proposed placement for a wireless facility or its design or site location can be implemented without a material reduction in the functionality of the wireless facility.

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 wireless support structures or horizontal structures to which signal lights or other traffic control devices are attached.

WIRELESS PROVIDER

A wireless infrastructure provider or a wireless services provider.

WIRELESS SERVICES

Services, whether at a fixed location or mobile, using a licensed or unlicensed spectrum, provided to the public using wireless facilities.

WIRELESS SERVICES PROVIDER

A person who provides wireless services.

4. Right-of-Way Rates and Fees.

Wireless providers shall be required to pay an annual Wireless Use Fee for the use of the right-of-way. The Wireless Use Fee shall be set by Resolution of the Township Board of Supervisors. The Township may amend the fee from time to time by resolution of the Township Board of Supervisors to a rate not to exceed the maximum rate which it demonstrates is a reasonable approximation of the Township's costs to manage the right-of-way, consistent with law.

5. Right of Access.

A. In accordance with the Small Wireless Facilities Deployment Act, and with the permission of the owner of the structure, a wireless provider shall have the right to perform the following within the public right-of-way:

(1) Collocate a small wireless facility.

(2) Replace an existing utility pole or install a new utility pole with attached small wireless facilities.

B. Collocation. In accordance with the Small Wireless Facilities Deployment Act, collocation on Township-owned poles may be permitted unless the small wireless facility would cause structural or safety deficiencies to the municipal pole, in which case the Township and applicant shall work together for any make-ready work or modifications or replacements that are needed to accommodate the small wireless facility.

C. All structures and facilities shall be installed and maintained so as not to obstruct nor hinder travel or public safety within the right-of-way or obstruct the legal use of the right-of-way by the Township and utilities.

6. Permitted Use; Application and Fees

A. Permit Required. No person shall place a SWF or associated utility pole in the ROW, without first filing an application and obtaining a permit therefore, except as otherwise provided in this Chapter.

B. Application. All applications for the permits filed pursuant to this Chapter shall be on a form, paper or electronic, provided by the Township.

C. Application Requirements. An application shall be made by the wireless provider or its duly authorized representative, and shall contain at a minimum the following:

- (1) The wireless provider's name, address, telephone number, and e-mail address.
- (2) The applicant's name, address, telephone numbers, and e-mail address, if different than the wireless provider, and its interest in the work.
- (3) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
- (4) A general description of the proposed work and the purposes and intent of the small wireless facilities. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.
- (5) A site plan, with sufficient detail to show the proposed location of items the applicant seeks to install in the ROW, including any manholes or poles, the size, type, and depth of any conduit or enclosure.
- (6) An attestation that the SWFs will be operational for use by a wireless services provider within one year after the permit issuance date unless the Township and the applicant agree to extend this period.
- (7) An attestation that to the best of the applicant's knowledge, the information contained in the application is true.
- (8) Whether each SWF is proposed to be installed on an existing pole or structure or a new pole or structure.
- (9) The name of the owner of the pole or structure on which the SWF is proposed to be installed and the address, phone number, email address of the owner's contact person.
- (10) If a SWF is proposed to be installed on a pole or structure owned by a party other than the applicant, the application shall be accompanied by a written confirmation of the owner's agreement to allow the applicant to locate each SWF on such owner's pole or structure.

- (11) Documentation in form of both narrative and drawings indicating the size of each proposed SWF, the height of the pole or structure on which each is proposed to be installed, and the cubic volume of each SWF.
- D. When Application Not Required. An application shall not be required for: (i) routine maintenance; (ii) the replacement of a small wireless facility with another small wireless facility that is substantially similar in size, weight, and height; or (iii) for the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between existing utility poles, in compliance with the National Electrical Safety Code. A permit may be required to perform work within the right-of-way for the activities under paragraph (D), for work that involves excavation, closure of a sidewalk or closure of a vehicular lane.
- E. Application Fees. All applications for permits for SWFs shall be accompanied by an Application Processing and Review Fee to be set by Resolution of the Board of Supervisors and may be amended from time to time. The applicant will be assessed an additional Application Processing and Review Fee at the end of the review process should the Township's actual costs of reviewing the application exceed the Application Processing and Review Fee. This Application Processing and Review Fee will be equal to 100% of the Township's costs (including administration, overhead, legal, consulting, etc.) for the review and processing of the Application and granting a Use Agreement. Upon approval of an Application and written acceptance of the Township's authorization by an Applicant, the Applications Processing and Review Fee shall be invoiced to the Applicant.
- F. Consolidated Applications. An applicant may submit a consolidated Application for up to 20 SWFs, subject to the following:
 - (1) A single applicant shall not exceed applications for 20 SWFs in a 30-day period;
 - (2) The denial of one or more SWFs in a consolidated application shall not delay processing of any other SWFs in the same consolidated application;
 - (3) A single permit may be issued for siting and collocating multiple SWFs spaced to provide wireless coverage in a contiguous area; and
 - (4) If multiple applicants submit applications cumulatively exceeding 20 SWFs applications within a 30-day period, the extensions to deadlines provided for in the Small Wireless Facilities Act shall apply.

7. Action on Permit Applications.

A. Review of Small Wireless Facility and Utility Pole Applications.

- (1) Within ten days of receiving an initial application, the Township will determine and notify the applicant whether the application is materially complete. In an application is materially incomplete, the Township will specifically identify the missing documents or information, and the specific rule or regulation creating the obligation to submit such documents or information. The review clock set forth in subsection (2) shall restart at zero on the date which the applicant submits all documents and information identified by the Township to make the application complete. If the applicant's supplemental submission fails to make the application complete, and the Township notifies the applicant within 20 days of the

supplemental submission and clearly and specifically identifies the missing documents or information, the applicable review clock set forth in subsection (2) shall be tolled until the applicant provides the missing documents and information. The review clock resumes on the date when the applicant submits all the documents and information. The review clock resumes on the date when the applicant submits all the documents and information identified by the Township to render the applicant complete.

- (2) All applications shall be processed on a non-discriminatory basis, and the Township shall approve or deny an application for: (i) collocation of SWFs on an existing structure within 60 days of receipt of the application, or (ii) within 90 days for applications to deploy a SWF using a new structure.
- (3) An applicant and the Township may enter into a written agreement to toll the time periods set forth in Subsection (2).
- (4) If the Township fails to issue a decision on an application for a SWF within the required time periods set forth in Section 27-710.7(A)(2), it shall constitute a deemed approval.
- (5) A Township may deny a proposed collocation of a SWF or installation or modification of a utilities pole only if the proposed application:
 - i. The SWF materially interferes with the safe operation of traffic control equipment, sight lines or clear zones for transportation or pedestrians or compliance with the Americans with Disabilities Act of 1990 (Public Law 101•336, 104 Stat. 327) or similar Federal or State standards regarding pedestrian access or movement.
 - ii. The SWF fails to comply with the applicable codes.
 - iii. The SWF fails to comply with the requirements specified under the Small Wireless Facilities Deployment Act.
 - iv. The applicant fails to submit a report by a qualified engineering expert which shows that the SWF will comply with applicable FCC regulations.
- (6) The Township must document the basis for a denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant on or before the day the Township denies an application. The applicant may cure the deficiencies identified by the Township and resubmit the application within 30 days of the denial without paying an additional application fee. The Township shall approve or deny the revised application within 3 days. Any subsequent review shall be limited to the deficiencies cited in the denial.
- (7) The applicant may cure the deficient identified by the Township and resubmit the application within 30 days of receiving the written basis for the denial without being required to pay an additional application fee. The Township shall approve or deny the revised application within 30 days of the application being resubmitted for review or the resubmitted application shall be limited to the deficiencies cited in the denial. If the resubmitted application addresses or changes other section of the application that were

not previously denied, the Township shall be given an additional 15 days to review the resubmitted application and may charge an additional fee for the review.

B. Permit Scope and Effect. Installation, modification, or collocations for which a permit is granted pursuant to this section shall be completed within one year after the permit issuance date unless the Township and the applicant agree to extend this period. Approval of an application authorizes the applicant to:

- (1) Collocate on an existing utility pole, modify, or replace a utility pole or install a new utility pole with SWFs attached as identified in the initial application.
- (2) Subject to the permit requirements and the applicant's right to terminate at any time, operate and maintain SWFs and any associated equipment on a utility pole covered by the permit for a period of five years, which shall be renewed for two additional five-year periods if the applicant is in compliance with the criteria set forth in the Small Wireless Facilities Deployment Act and applicable codes, and the applicant has obtained all necessary consent from the utilities pole owner.

C. Authority Granted; No Property Right or Other Interest Created. A permit from the Township authorizes an applicant to undertake only certain activities in accordance with this Chapter and does not create a property right or grant authority to the applicant to impinge upon the rights of other who may already have an interest in the ROW.

8. Design Criteria and Permit Review.

A. Upon receipt of a completed application for a SWF Permit and all required fees, the Township Zoning Officer or respective designee shall review the application to determine whether the proposed SWF and support structure or pole comply with the following design criteria:

- (1) The structure on which antenna facilities are mounted: (a) an existing utility pole, provided the installation does not extend more than 5 feet above the pole; and (b) a new or replacement pole are not taller than 50 feet. Any height in excess of these limits shall require an application to the Zoning Hearing Board for a variance;
- (2) Each antenna associated with the deployment (excluding the associated equipment) may be no more than three cubic feet in volume; and
- (3) All other equipment associated with the facility (excluding antenna) are cumulatively no more than 28 cubic feet in volume.

B. General Design Requirements

- (1) The Township may adopt by resolution Small Wireless Facility Design Guidelines with objective technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area.
- (2) The Small Wireless Facility Design Guidelines may include examples of SWF preferences including visual depictions (if readily available and identified by the Township).
- (3) The provisions in this Chapter shall not limit or prohibit the Township's discretion to promulgate and make publicly available other information, materials, or

requirements in addition to, and separate from, Small Wireless Facility Design Guidelines so long as the information, materials, or requirements do not conflict with federal or state law.

- (4) All SWFs and associated equipment located within the Public Right-of-Way shall be located such that it meets ADA requirements and does not hinder, obstruct or impede usual pedestrian and vehicular travel.
- (5) The Township shall have the authority to update or supplement the Small Wireless Facility Design Guidelines to address relevant changes in law, technology, or administrative processes.
- (6) Wireless Support Structure Design Standards.
 - i. General Guidance.
 1. SWF equipment must be indistinguishable from the support pole or structure to the greatest degree possible using matching colors, textures, and materials. The antennas and related equipment shall be in a color that will provide the most camouflage.
 2. All wires, antennas, and other small wireless facility equipment shall be enclosed and not visible.
 3. Screening and equipment enclosures shall blend with or enhance the surrounding context in terms of scale, form, texture, materials, and color. Equipment shall be concealed as much as possible by blending into the natural and/or physical environment.
 4. Casing to enclose all wires, antennas, and other small wireless facility equipment may be mounted on top of existing and new poles in a cylinder shape to look like an extension of the pole.
 5. Signage on all SWF will be no larger than required to be legible from street level. It may include contact information to be used by workers on or near the SWF and as otherwise required by federal or state law.
 6. As a condition for approval of new SWFs or new Wireless Support Structure in a Historic District, the Applicant shall comply, to the greatest extent possible, with the design and aesthetic standards of the Historic District, or historic preservation standards in place, to minimize the negative impact to the aesthetics in these districts or areas.

9. Removal of Equipment.

- A. Within 60 days of a suspension or revocation of a permit due to noncompliance with applicable codes, the applicant shall remove the small wireless facility and any associated equipment, including the utility pole and any support structures if the applicant's wireless facilities and associated equipment are the only facilities on the utility pole, after receiving adequate notice and an opportunity to cure any noncompliance.
- B. Within 90 days of the end of a permit term or an extension of the permit term, the applicant shall remove the small wireless facility and any associated equipment, including

the utility pole and any support structures if the applicant's wireless and associated equipment are the only facilities on the utility pole.

10. Restoration of the Right-of-Way.

Applicants are required to repair all damage directly caused by the activities of the applicant and return the right-of-way in as good of condition as it existed prior to any work being done. If the applicant fails to make the repairs required by the Township within 30 days after written notice, the Township may perform those repairs and charge the provider the reasonable, documented cost of the repairs plus a penalty not to exceed \$500. The Township may suspend the ability of an applicant to receive a new permit from the Township until the applicant has paid the amount assessed for the repair costs and the assessed penalty.

11. Indemnification.

Each person that owns or operates a Non-Tower WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Township, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connect with any act or omission of the person., its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operations, maintenance or removal of the Non-Tower WCF. Each person that owns or operates a Non-Tower WCF shall defend any actions or proceedings against the Township in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of a Non-Tower WCF. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgements, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.

12. Other Ordinances.

Nothing in this Ordinance shall be interpreted to relieve any individual from compliance with all other ordinances, resolutions, laws, and regulations of the Township.

13. Severability.

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

§ 27-1102 Definitions.

[Ord. No. 1049, 11/18/2019]

Unless a contrary intention clearly appears, the following words and phrases shall have a meaning given in this section. All words and terms not defined herein shall be used with a meaning of standard usage as defined in Merriam Webster's Collegiate Dictionary, Eleventh Edition. Definitions found in the Subdivision and Land Development Ordinance (Chapter 22) shall be applicable to this chapter.

CABLE FACILITY

Buildings, or other structure and equipment used by the owner or operator of a cable television system

to provide service. As used in this definition, the term “cable system” shall have the meaning given to it in section 602(6) of the Cable Communications Policy Act of 1984 (Public Law 98-549, 47 U.S.C. §522(7)).

CO-LOCATION COLLOCATION OR COLLOCATE

The placement or installation of new wireless telecommunications facilities on previously approved and constructed wireless support structures, including self-supporting or guyed monopoles and towers, electrical transmission towers, water towers, or any other structure not classified as a wireless support structure that can support the placement or installation of wireless telecommunications facilities if approved by the Township. The term includes the placement, replacement, or modification of accessory equipment within a previously approved communications facility building. To install, mount, maintain, modify, or replace wireless telecommunications facilities on an existing utility pole or other wireless support structure, and equipment within a previously approved communications facility building.

COMMUNICATIONS ANTENNA

Any structure or device used for the purpose of collecting or transmitting electromagnetic waves including, but not limited to, directional antennas such as panels, microwave dishes, satellite dishes and omnidirectional antennas such as whip antennas. Communications antennas shall not include tower-based wireless communications facilities as defined below. Telecommunications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless telecommunications services pursuant to Federal Communications Commission authorization, for the provisions of wireless service and any commingled services. Not included are antennas and supportive structures on residential dwellings for private noncommercial amateur purposes including, but not limited to, ham radios and citizen band radios that are regulated by the residential district sections of this chapter.

COMMUNICATIONS SERVICE PROVIDER

Any of the following: (1) A cable operator as defined in section 602(4) of the Cable Communications Policy Act of 1984 (Public Law 98-549, 47 U.S.C. §522(5)). (2) A provider of information services as defined in section 3(20) of the Communications Act of 1934 (48 Stat. 1064, 47 U.S.C. §153(24)). (3) A telecommunications carrier as defined in section 3(44) of the Communications Act of 1934 (47 U.S.C. §153(51)). (4) A wireless provider.

HISTORIC DISTRICT

A site that is within a historic district created pursuant to the act of June 13, 1961 (P.L.282, No. 167), entitled “An act authorizing counties, cities, Township, incorporated towns and Townships to create historic districts within their geographic boundaries; providing for the appointment of Boards of Historical Architectural Review; empowering governing bodies of political subdivisions to protect the distinctive historical character of these districts and to regulate the erection, reconstruction, alteration, restoration, demolition or razing of buildings within the historic districts.”

MUNICIPAL POLE

A utility pole owned, managed, or operated by or on behalf of the Township of Ferguson.

NON-TOWER-BASED WIRELESS COMMUNICATIONS FACILITY

All non-tower-based wireless communications facilities including, but not limited to, data collection

~~units, communications antenna and related equipment. Non-tower-based WCF shall not include support structures for communications antenna and related equipment. Not included are towers and supporting structures on residential dwellings for private noncommercial amateur purposes including, but not limited to, ham radios and citizen band radios that are regulated by the residential district sections of this chapter. 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.~~

PUBLIC UTILITY FACILITY

~~For the purposes of this chapter, electric substations, automatic telephone exchanges, microrelay stations and the like (but excluding public sewer and water facilities and radio and television transmitters and towers) and any other public utility corporation when exempted from the provisions of this chapter by state law. Buildings, other structures, and equipment owned or operated by public utility, as defined in 66 Pa. C.S., §102 (relating to definitions), to provide service.~~

RIGHT-OF-WAY

~~A corridor of land set aside for use, in whole or in part, by a street or other public purpose. The area on, below or above a public roadway, highway, street, sidewalk, alley, utility easement or similar property. The term does not include a federal interstate highway.~~

SMALL WIRELESS FACILITY OR SWF

The equipment and network components, including antennas, transmitters and receivers, used by a wireless provider that meet the following qualifications: (1) The 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 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 (2) Each antenna associated with the deployment (excluding the associated equipment) is no more than three cubic feet in volume; and (3) All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume. (4) The facilities do not require antenna structure registration under 47 CFR Part 17; (5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and (6) The facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b).

WIRELESS COMMUNICATION FACILITY

- (1) Equipment at a fixed location that enables wireless service between user equipment and a communications network, including any of the following: (i) Equipment associated with wireless services; (ii) Radio transceivers, antennas, coaxial or fiber optic cables, regular and backup power supplies or comparable equipment, regardless of technological configuration.
- (2) The term includes a small wireless facility.
- (3) The term does not include any of the following: (i) The structure or improvements on, under or within which the equipment is collocated, (ii) The coaxial or fiber optic cables that are not immediately adjacent to or directly associated with a particular antenna.