

TOWNSHIP OF TULPEHOCKEN, BERKS COUNTY, PENNSYLVANIA

ORDINANCE NO. 2017 - 2

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF TULPEHOCKEN, BERKS COUNTY, PENNSYLVANIA, AMENDING THE TULPEHOCKEN TOWNSHIP ZONING ORDINANCE OF 2013, TO PROVIDE ZONING REGULATIONS FOR MEDICAL MARIJUANA GROWING/PROCESSING AND DISPENSARIES, AMEND AND ADD REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES AND AMEND SIGN REGULATIONS

WHEREAS, the Pennsylvania Municipalities Planning Code, act of July 31, 1968, as amended, 53 P.S. §§10101 *et seq.*, enables a municipality through its zoning ordinance to regulate the uses of property; and

WHEREAS, the Board of Supervisors of Tulpehocken Township enacted a Comprehensive Zoning Ordinance on April 8, 2013 by Ordinance 2013-4, and subsequently amended it by Ordinance 2014-1 to amend regulations for home occupations; and

WHEREAS, the Board of Supervisors of Tulpehocken Township desires to further amend the Zoning Ordinance of 2013 to protect the welfare of the public to provide locations and regulations for certain medical marijuana-related uses that have been established pursuant to the Pennsylvania Medical Marijuana Act, 35 P.S. § 10231.101 *et seq.*, to update regulations for cellular towers in accordance with emerging technology and to amend regulations regarding signage; and

NOW, THEREFORE BE IT ORDAINED by the Board of Supervisors of Tulpehocken Township, Berks County, Pennsylvania, pursuant to the authority conferred by the Municipalities Planning Code, that the following be and is hereby adopted:

SECTION 1. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, is hereby amended by amending Section 300 entitled "Definitions" to alphabetically add the following definitions:

310.1 **ANTENNA** – Any system of wires, rods, discs, panels, flat panels, dishes, whips, or other similar devices used for the transmission or reception of wireless signals. An antenna may include an omnidirectional antenna (rod), directional antenna (panel), parabolic antenna (disc) or any other wireless antenna. An antenna shall not include tower-based wireless communications facilities defined below.

311.1 **BASE STATION** - any structure or equipment at a fixed location that enables FCC-licensed or authorized communications between user equipment and a communications network. Includes structures other than towers that support or house an antenna, transceiver, or other associated equipment that constitutes part of a "base station" at the time the relevant application is filed with the State or municipal authorities, even if the structure was not built for the sole or primary purpose of providing such support, but does not include structures that do not

at that time support or house base station components. The term includes buildings, light poles, utility poles, water towers, etc., as well as DAS systems and small cells.

318.7 **CO-LOCATION** – The mounting of one or more WCFs, including antennae, on an existing tower-based WCF or utility or light pole.

318.8 **COMMUNICATIONS EQUIPMENT BUILDING** – The building or cabinet in which electronic receiving, relay or transmitting equipment for a wireless communications facility is housed and covering an area on the ground not greater than two hundred square feet (200 sq. ft.).

320.5 **DATA COLLECTION UNIT (DCU)** – Any ground-mounted structure that is designed and constructed primarily for the purpose of data collection, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes structures used to wirelessly read utility meters and for other remote monitoring purposes. For the purposes of this ordinance, the term includes facilities that are not solely under the jurisdiction of the Pennsylvania Public Utility Commission, except where permitted by law. The term includes the structure and any supporting structures thereto.

321.1 **DISPENSARY** – A person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit issued by the PA Department of Health to dispense medical marijuana pursuant to the Pennsylvania Medical Marijuana Act, 35 P.S. §10231.101 *et seq.*

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

324.4 **FCC**–Federal Communications Commission.

329.7 **GROWER/PROCESSOR** – A person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit from the PA Department of Health pursuant to the Pennsylvania Medical Marijuana Act, 35 P.S. §10231.101 *et seq.* to grow and process medical marijuana.

353.5 **MEDICAL MARIJUANA** – Marijuana for certified medical use as set forth in the Pennsylvania Medical Marijuana Act, 35 P.S. §10231.101 *et seq.*

357.5 **MONOPOLE** – A WCF or site which consists of a single pole wireless support structure, designed and erected on the ground or on top of a structure, to support antennae and connecting appurtenances.

359.7 **NON-COMMERCIAL ANTENNAS AND TOWERS** - A privately owned antenna or tower serving solely a residential dwelling on the same property upon which the antenna or tower is located, for the personal, amateur, non-commercial use of the owner of the property, for example, ham radio, citizens band radio, or direct broadcast satellite dishes.

361.5 **NON-TOWER WIRELESS COMMUNICATIONS FACILITY (non-tower WCF)** – All wireless communications facilities (WCFs) that are not tower-based, including, but

not limited to, data collection units, antennae and related equipment. Non-tower WCF shall include support structures for antennae and related equipment that is mounted to the ground or at ground-level. Other non-ground mounted examples can include, but not limited to, installation of a WCF on an existing utility pole, light pole, barn, church steeple, farm silo, water towers or other similar structures.

363.5 **PERSONS** – Individuals, corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, corporations and other entities established pursuant to statutes of the Commonwealth of Pennsylvania; provided, that “person” does not include or apply to the Township or to any department or agency of the Township.

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

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

383.5 **SUBSTANTIALLY CHANGE OR SUBSTANTIAL CHANGE** (where related to Wireless Communication Facilities) – A modification to the physical dimensions of a tower or base station as measured from the dimensions of the tower or base station inclusive of any modifications approved prior to the passage of the Spectrum Act (effective February 22, 2012), if it meets any of the following criteria:

- a. For tower-based WCFs outside of the public rights-of-way, it increases the height of the facility by more than ten percent (10%), or by the height of one additional antenna array with separation from the nearest existing antenna, not to exceed twenty feet (20’), whichever is greater;
- b. For tower-based WCFs inside the public rights-of-way, and for all base stations, it increases the height of the facility by more than ten percent (10%) or ten feet (10’), whichever is greater;
- c. For tower-based WCFs outside of the public rights-of-way, it protrudes from the edge of the existing tower by more than twenty feet (20’), or more than the width of the tower structure at the level of the appurtenance, whichever is greater;

- d. For tower-based WCFs inside the public rights-of-way, and for all base stations, it protrudes from the edge of the existing tower, or wireless support structure, by more than six feet (6’);
- e. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets;
- f. It entails any excavation or deployment outside the current permitted area of the existing tower-based WCF or base station;
- g. It would defeat the existing concealment elements of the tower or base station; or
- h. It does not comply with conditions associated with the prior approval of construction or modification of the tower-based WCF or base station, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding “substantial change” thresholds.

387.1 TOWER-BASED WIRELESS COMMUNICATIONS FACILITY (Tower-Based WCF) – Any structure that is used for the purpose of supporting one or more antennae, including, but not limited to, self-supporting lattice towers and monopoles. DAS hub facilities are considered to be tower-based WCFs.

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

394.3 WIRELESS COMMUNICATIONS FACILITY (WCF) – The antennae, nodes, control boxes, towers, poles, conduits, ducts, pedestals, electronics and other equipment used for the purpose of transmitting, receiving, distributing, providing, or accommodating wireless communications services. Not included are Non-Commercial Antennas and Towers (as defined).

394.5 WIRELESS COMMUNICATIONS FACILITY APPLICANT (WCF Applicant) – Any person that applies for a wireless communications facility building permit, zoning approval and/or permission to use the public ROW or other Township owned land or property.

394.7 WIRELESS SUPPORT STRUCTURE – A freestanding structure, such as a tower-based wireless communications facility or any other support structure that could support the placement or installation of a wireless communications facility if approved by the Township.

SECTION 2. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, is hereby amended by amending Section 500 entitled “VC-Village Center District”, Section 540 entitled “VC-Village Center District”, Section 541 entitled “Permitted Principal Uses” to add a new Subsection 541.18 to read in its entirety as follows:

541.18 Non-Tower Wireless Communication Facilities, subject to Section 1080 of the Tulpehocken Township Zoning Ordinance.

SECTION 3. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, is hereby amended by amending Section 600 entitled “RR-Rural Residential District”, Section 640 entitled “RR-Rural Residential District”, Section 641 entitled “Permitted Principal Uses” to add a new Subsection 641.12 to read in its entirety as follows:

641.12 Non-Tower Wireless Communication Facilities, subject to Section 1080 of the Tulpehocken Township Zoning Ordinance.

SECTION 4. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, is hereby amended by amending Section 700 entitled “IC-Industrial District”, Section 740 entitled “IC-Industrial Commercial District”, Section 741 entitled “Permitted Principal Uses” to add Subsections 741.32 through 741.34 to read in their entirety as follows:

741.32 Non-Tower Wireless Communication Facilities, subject to Section 1080 of the Tulpehocken Township Zoning Ordinance.

741.33 Medical Marijuana Grower/Processor, as defined by this Ordinance, subject to the provisions of Section 1095 of this Ordinance.

741.34 Medical Marijuana Dispensaries, as defined by this Ordinance, subject to the provisions of Section 1090 of this Ordinance.

SECTION 5. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, is hereby amended by amending Section 800 entitled “The Lawrence Kieffer and William Moore EAP-Effective Agricultural Preservation District””, Section 830 entitled “Use Regulations”, Section 831 entitled “Permitted Principal Uses” to add Subsection 831.10 to read in its entirety as follows:

831.10 Non-Tower Wireless Communication Facilities, subject to Section 1080 of the Tulpehocken Township Zoning Ordinance.

SECTION 6. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, is hereby amended by amending Section 800 entitled “The Lawrence Kieffer and William Moore EAP-Effective Agricultural Preservation District””, Section 830 entitled “Use Regulations”, Section 834 entitled “Special Exception Uses” to amend Subsection 834.12 to read in its entirety as follows:

834.12 Tower-Based Wireless Communication Facilities, subject to Section 1080 of this Ordinance.

SECTION 7. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, is hereby amended by amending Section 900 entitled “EP-Environmental Protection”, Section 970 entitled “Flood Plain Portion of the Environmental Protection Area”, Section 971 entitled “Permitted Principal Uses” to add Subsection 971.09 to read in its entirety as follows:

971.09 Non-Tower Wireless Communication Facilities, subject to Section 1080 of the Tulpehocken Township Zoning Ordinance.

SECTION 8. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 1000 entitled “Supplementary Regulations”, Section 1040 entitled “Signs; Parking and Truck Loading Space Requirements”, Section 1041 entitled “Signs”, Subsection 1041.02 entitled “Maximum Permitted Sizes” is hereby amended to read in its entirety as follows:

1041.02 Maximum Permitted Size

In all Districts, maximum permitted sizes of signs of each type shall be in accordance with the regulations contained in the following schedule:

BUSINESS SIGN

District	Professional or Announcement Sign on Residential Building	Identification of Business, Agriculture, or Industrial Building or Use	Real Estate “For Sale” or “For Rent” or Construction Sign	Temporary Sign to Promote Approved Subdivision and Land Developments	Off Premises Advertising Sign
EAP	2 sq. feet	32sq. ft.	6 sq. ft.	See Section 1042.16	See Section 1042.14
EP	2 sq. feet	32 sq. ft.	6 sq. ft.	Not Permitted	See Section 1042.14
RR	2 sq. ft.	32 sq. ft.	6 sq. ft.	See Section 1042.16	Not Permitted
IC	3 sq. ft.	(a) For each building wall or façade, a sign attached to the building wall with dimensions of 2 sq. ft. aggregate area for each one foot horizontal length, not to exceed 120 sq. ft. (b) For stand-alone sign – 64 sq. ft.	32 sq. ft.	See Section 1042.16	See Section 1042.14
VC	3 sq. ft.	(a) For each building wall or façade, a sign attached to the building wall with dimensions of 2 sq. ft. aggregate area for each one foot horizontal length, not to exceed 120 sq. ft. (b) For stand-alone sign – 32 sq. ft.	6 sq. ft.	See Section 1042.16	Not Permitted

SECTION 9. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended Section 1000 entitled “Supplementary Regulations”, Section 1040 entitled “Signs; Parking and Truck Loading Space Requirements”, Section 1042 entitled “Supplemental Sign Regulations”, Subsection 1042.14 is hereby amended to read in its entirety as follows:

1042.14 Billboards. Off Premises advertising signs shall be permitted, upon approval by the Zoning Hearing Board as a Special Exception, only in the EAP (Agricultural), the IC Industrial Commercial and the EP (Environmental Protection) Districts, and only along Route 419. Off Premises advertising signs shall be set back at least 10 ft. from any street right-of-way and have a maximum size of 288 square feet, with a width to height ratio of 2:1. No lights shall be permitted. The bottom of any advertising sign shall be at least 10 feet above the ground, providing that necessary supports may extend through such open space. Off Premises advertising signs are limited to no more than one per 0.5 mile including both sides of the road.

SECTION 10. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended Section 1000 entitled “Supplementary Regulations”, Section 1040 entitled “Signs; Parking and Truck Loading Space Requirements”, Section 1042 entitled “Supplemental Sign Regulations”, is hereby amended to add a Subsection 1042.16 which shall in its entirety as follows:

Temporary signs promoting an approved land development or subdivision are permitted as provided for in Section 1041.02, provided such sign shall not exceed thirty-two (32) square feet in area and shall be installed no sooner than upon recording of the approved subdivision and land development plan by the Township and shall be removed immediately upon execution of a deed transferring the last lot approved for development from the Developer to the buyer. If the development is to be developed in phases, only signs for the phase under active development may be exhibited.

SECTION 11 The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, is hereby amended by repealing Section 1080 provided for in Section 1000 entitled “Supplementary Regulations” in its entirety and replacing it with a new Section 1080 entitled “Wireless Communication Facilities” in Section 1000 entitled “Supplementary Regulations” that shall read in its entirety as follows:

Section 1080. Wireless Communications Facilities.

1080.1 Tower-Based Wireless Communications Facilities - General Requirements.

The following regulations shall apply to all tower-based wireless communications facilities:

A. Development Regulations.

- (1) Prohibited in residential, commercial, industrial and environmentally protected zones including but not limited to the VC – Village Commercial, RR – Rural Residential, IC – Industrial Commercial and EP –

Environmentally Protected. No tower-based WCF shall be located in a right-of-way or within five hundred feet (500') of a lot in residential use, regardless of zoning district. The distance from the base of a proposed tower-based WCF to the nearest point on any lot line, lease line and license line shall not be less than the full height of the tower structure. Tower-based WCFs are permitted only in the EAP – Environmental Agricultural Preservation Zoning Districts as specified.

- (2) No more than one tower based WCF shall be placed on any one lot or leased or licensed parcel.
- (3) Gap in Coverage. An applicant for a tower-based WCF must demonstrate that a significant gap in wireless coverage exists with respect to all wireless operators in the applicable area and that the type of WCF being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or non-existence of a gap in wireless coverage shall be a factor in the Township's decision on an application for approval of tower-based WCF's.
- (4) Sole Use on a Lot. A tower-based WCF is permitted as a sole use on a lot subject to the minimum lot area and yards complying with the requirements for the applicable zoning district. A land development plan shall be required prior to construction of any tower-based WCF and communications equipment building.
- (5) 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, institutional or municipal use, subject to the following conditions:
 - (a) The existing use on the property may be any permitted use in the applicable district, and need not be affiliated with the communications facility.
 - (b) Minimum Lot Area. The minimum lot shall comply with the requirements for the applicable district and shall be the area needed to accommodate the tower-based WCF and guy wires, the equipment building, security fence, and buffer planting.
 - (c) Minimum Setbacks. The tower-based WCF and accompanying equipment building shall comply with the requirements for the applicable zoning district, provided that no tower-based WCF shall be located within five hundred feet (500') of a lot in residential use.

- B. Co-location. An application for a new tower-based WCF shall not be approved unless the Township finds that the wireless communications equipment planned for the proposed tower-based WCF cannot be accommodated on an existing or approved structure or building. Any application for approval of a tower-based

WCF shall include a comprehensive inventory of all existing towers and other suitable structures within a two (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.

- C. Standard of Design and 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, the Uniform Construction Code (UCC), National Electric Safety Code, National Electric Code, as well as the accepted and responsible workmanlike industry practices of the National Association of Tower Erectors. Structure design certification from a Pennsylvania registered professional engineer is required and the tower capacity shall be indicated. Detailed construction and elevation drawings, indicating antenna locations and mounting design, shall be submitted by the applicant. 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.
- D. Design Regulations.
 - (1) The WCF shall employ the most current stealth technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. 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 approval as a special exception by the Zoning Hearing Board.
 - (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 antennae for future users.
 - (4) Any Tower-Based WCF over forty feet (40') in height shall be equipped with an anti-climbing device, as approved by the manufacturer.
- E. Wind. Any tower-based WCF structures shall be designed to withstand the effects of wind according to the standard design by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSFEINTIA-222-E Code, as amended).
- F. Height. Any tower-based WCF shall be designed at the minimum functional height and shall not exceed a maximum total height of one hundred seventy five feet (175'), which height shall include all subsequent additions or alterations. All

tower-based WCF applicants must submit documentation to the Township justifying the total height of the structure.

- G. Lighting. Tower-based WCF shall not be artificially lighted, except as required by law 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.
- H. Surrounding Environs.
 - (1) The WCF applicant shall ensure that the existing vegetation, trees and shrubs located within proximity to the WCF structure shall be preserved to the maximum extent possible.
 - (2) The WCF applicant shall submit a soil report to the Township complying with the standards of Appendix I: Geotechnical Investigations, ANSI/ETA 222-B, as amended, to document and verify the design specifications of the foundation of the tower-based WCF.
- I. Visual or Land Use Impact. The Township reserves the right to deny an application for the construction or placement of any tower-based WCF based upon visual and/or land use impact.
- J. Fence / Screen.
 - (1) A security fence having a minimum height of eight feet (8') shall completely surround any tower-based WCF or any building housing WCF equipment.
 - (2) An evergreen screen that consists of a hedge or a row of evergreen trees shall be located along the perimeter of the security fence.
 - (3) The WCF applicant shall submit a landscape plan for review and approval by the Township Planning Commission for all proposed screening.
- K. Identification. All tower-based WCF's 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.
- L. Historic Buildings or Districts. No tower-based WCF may be located on a lot which contains a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places or which is located in a Historic District.
- M. Appearance. Towers shall be galvanized and / or painted with rust-preventive paint of an appropriate color to harmonize with the surroundings.
- N. Accessory Equipment.

- (1) Ground-mounted equipment associated to, or connected with, a tower-based WCF shall be underground or enclosed in a structure. 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 utility buildings and accessory structures shall be architecturally designed to blend into the environment in which they are situated and shall meet the minimum setback requirements of the underlying zoning district.
 - (3) The communications equipment building shall comply with the required yards and height requirements of the applicable Zoning District for a principal structure. No building may be used as an office or as a broadcast studio. Employees are permitted to visit the site as often as necessary for maintenance and inspection of the building and facility. No building or WCF may be used for long term vehicle storage or for other outdoor storage.
- O. Additional Antennae. As a condition of approval for all tower-based WCFs, the WCF applicant shall provide the Township with a written commitment that it will allow other service providers to co-locate antennae on tower-based WCFs where technically and economically feasible. The owner of a tower-based WCF shall not install any additional antennae without obtaining the prior written approval of the Township.
- P. Public Safety Communications. No tower-based WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties.
- Q. Radio Frequency Emissions. No tower-based WCF may, by itself or in conjunction with other WCF's, 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.
- R. Noise. Tower-based WCF's shall be operated and maintained so as not to produce noise in excess of applicable noise standards under State law and the 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.
- S. Aviation Safety. Tower-based WCFs shall submit FAA Form 74060, or any successor form, to the FAA, and shall comply with all applicable Federal and State laws and regulations concerning aviation safety, and any applicable airport zoning regulations, if any.

- T. Access Road. An access road, of at least ten feet (10') in width, in an easement of at least twenty feet (20') in width, turnaround space and a minimum of one (1) off-street parking space shall be provided to ensure adequate emergency and service access to tower-based WCF. At a minimum, Bituminous paving shall be required for the first twenty feet (20') from the intersection with the road, thereafter gravel or like material shall be acceptable for the access road. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and minimize soil erosion. Where applicable, the WCF owner shall present documentation to the Township that the property owner has granted an easement for the proposed facility.
- U. Bond. Prior to the issuance of a permit, the owner of a tower-based WCF shall, at its own cost and expense, obtain from a surety licensed to do business in Pennsylvania and maintain a bond or other form of security acceptable to the Township Solicitor, in an amount of One Hundred Thousand Dollars (\$100,000.00) to assure the faithful performance of the terms and conditions of this Chapter. The bond shall provide that the Township may recover from the principal and surety any and all compensatory damages incurred by the Township for violations of this Chapter, after reasonable notice and opportunity to cure. The owner shall file the bond with the Township.
- V. License and Insurance. In addition, The applicant shall submit a copy of its current Federal Communications Commission (FCC) license; the name, address and emergency telephone number for the operator of the tower-based WCF or antennae; and a certificate of insurance evidencing general liability coverage in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence and property damage coverage in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence covering the tower-based WCF, antenna, and related facilities.
- W. Timing of Approval. Within thirty (30) calendar days of the date that an application for a tower-based WCF is filed with the Township, the Township shall notify the applicant in writing of any information that may be required to complete such application. All applications for tower-based WCFs shall be acted upon within one hundred fifty (150) days of the receipt of a fully completed application for the approval of such tower-based WCF and the Township shall advise the applicant in writing of its 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 one hundred fifty (150) day review period.
- X. Permit Fees. The Township may assess appropriate and reasonable permit fees directly related to the Township's actual costs in reviewing and processing the application for approval of a tower-based WCF, as well as related inspection, monitoring and related costs pursuant to a fee schedule adopted and as amended from time to time by the Township Board of Supervisors.

- Y. 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 Chapter. 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.
- Z. Nonconforming Uses. Nonconforming tower-based WCFs which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored at their former location, but must otherwise comply with the terms and conditions of this Chapter.
- AA. Maintenance. The following maintenance requirements shall apply:
- (1) Any tower-based WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
 - (2) Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Township's residents.
 - (3) All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.
- BB. Inspection. The Township reserves the right to inspect any tower-based WCF to ensure compliance with the provisions of this Chapter and any other provisions found within the Township Code or State or Federal law. The Township and/or its agents shall have the authority to enter the property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.
- CC. Removal. In the event that use of a tower-based WCF is planned to be discontinued, the owner shall provide written notice to the Township of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:
- (1) All unused or abandoned tower-based WCFs and accessory facilities shall be removed within twelve (12) 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 twelve (12) 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 WCFs, including antennas, shall be removed within twelve (12) months of the time of cessation of operations. The Township must approve all replacements of portions of a tower-based WCF previously removed.

- (4) Prior to the issuance of permit for construction of a tower-based WCF, the applicant shall provide the Township financial security in an amount determined by the Township Engineer for the cost to remove the proposed tower-based WCF should it be discontinued and abandoned and the owner fails to remove the tower in accord with the provisions of this Ordinance. Any costs incurred by the Township in removing the discontinued or abandoned tower-based WCF shall be paid from the financial security. If the financial security, fails to cover the cost incurred by the Township for removal of the discontinued or abandoned tower-based WCF, the owner of the WCF shall be responsible to the Township for the additional costs incurred by the Township.

1080.2 Non-Tower Wireless Communications Facilities

A. General Requirements for Non-Tower WCF.

The following regulations shall apply to all non-tower wireless communications facilities, regardless of location:

- (1) Permitted in All Zones Subject to Regulations. Non-tower WCFs are permitted in all zones subject to the restrictions and conditions prescribed below and subject to the prior written approval of the Township. Applicants proposing installations on existing buildings or structures shall submit evidence of agreements and / or easements necessary to provide access to the existing building or tower so that installation and maintenance of the equipment can be accomplished.
- (2) Standard of Design and Care.
 - a. Any non-tower WCF shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including, but not limited to, the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, Pennsylvania Construction Code Act and Regulations and National Electrical Code, and shall not affect pedestrian or vehicular traffic.
 - b. Non-tower WCFs shall employ stealth technology and be treated to match the supporting structure in order to minimize aesthetic impact. The application of the stealth technology chosen by the WCF applicant shall be subject to the approval of the Township.
 - c. Design certification from a Pennsylvania registered professional engineer is required to attest that the existing structure can adequately support the proposed equipment installation. Detailed construction and elevation drawings, indicating antenna locations and mounting design, shall be submitted by the applicant.

- d. Any WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Township.
- (3) Wind. Any non-tower WCF structures shall be designed to withstand the effects of wind according to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSFEINTIA-222-E Code, as amended).
- (4) Public Safety Communications. No non-tower WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties.
- (5) Aviation Safety. Non-tower-based WCFs shall comply with all applicable Federal and State laws and regulations concerning aviation safety, and any applicable airport zoning regulations, if any.
- (6) Radio Frequency Emissions. No non-tower WCF may, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- (7) Historic Buildings. Non-tower WCFs may not be located on a lot where a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places or which is located in a Historic District.
- (8) Removal. In the event that use of a non-tower WCF is discontinued, the owner shall provide written notice to the Township of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:
- (a) All abandoned or unused non-tower WCFs and accessory facilities shall be removed within three (3) months of the cessation of operations at the site unless a time extension is approved by the Township.
- (b) If the non-tower WCF or accessory facility is not removed within three (3) months of the cessation of operations at a site, or within any longer period approved by the Township, the non-tower 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) Prior to the issuance of permit for construction of a non-tower-based WCF, the applicant shall provide the Township financial security in an amount determined by the Township Engineer for the cost to remove the proposed non-tower-based WCF should it be discontinued and abandoned and the owner fails to remove the WCF in accord with the provisions of this Ordinance. Any costs incurred by the Township in removing the discontinued or abandoned WCF shall be paid from the financial security. If the financial security, fails to cover the cost incurred by the Township for removal of the discontinued or abandoned WCF, the owner of the WCF shall be responsible to the Township for the additional costs incurred by the Township.
- (9) Timing of Approval. Within thirty (30) calendar days of the date that an application for a non-tower WCF is filed with the Township, the Township shall notify the applicant in writing of any information that may be required to complete such application. Within ninety (90) calendar days of receipt of a complete application, the Township shall make its final decision on whether to approve the application and shall advise the applicant in writing of such decision. Except for applications for colocations that do not substantially change the height of the underlying support structure, the Township shall make its final decision on whether to approve the application within sixty (60) days of receipt of a complete 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 applicable ninety (90) or sixty (60) day review period.
- (10) Permit Fees. The Township may assess appropriate and reasonable permit fees directly related to the Township's actual costs in reviewing and processing the application for approval of a non-tower WCF.
- (11) The regulations set forth herein for non-tower wireless communications facilities shall not apply to non-commercial antennas and towers (as defined).

B. Substantial Change to Non-Tower WCF.

In addition to the provisions in Section 1080.2A the following regulations shall also apply to all non-tower wireless communication facilities that Substantially Change (see definitions) the physical dimensions of the WCF itself or the wireless support structure to which they are attached:

- (1) Retention of Experts. The Township may hire any consultant(s) and/or expert(s) necessary to assist the Township in reviewing and evaluating the application for approval of the WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this Chapter. 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.

- (2) **Bond.** Prior to the issuance of a permit, the owner of each individual non-tower WCF shall, at its own cost and expense, obtain from a surety licensed to do business in Pennsylvania and maintain a bond, or other form of security acceptable to the Township Solicitor, in an amount of Twenty Five Thousand Dollars (\$25,000.00) for each individual non-tower WCF, to assure the faithful performance of the terms and conditions of this Chapter. The bond shall provide that the Township may recover from the principal and surety any and all compensatory damages incurred by the Township for violations of this Chapter, after reasonable notice and opportunity to cure. The owner shall file a copy of the bond with the Township.
- (3) **License and Insurance.** In addition, the applicant shall submit a copy of its current Federal Communications Commission (FCC) license; the name, address and emergency telephone number for the operator of the communications tower or antennae; and a certificate of insurance evidencing general liability coverage in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence and property damage coverage in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence covering the communications tower or antenna.
- (4) If such non-tower WCF that constitutes a Substantial Change is located outside the rights-of-way, then the following additional requirements shall apply:
 - (a) **Development Regulations.** Non-tower WCFs shall be co-located on existing structures, such as existing buildings or tower-based WCFs subject to the following conditions:
 - i. The combined maximum height of the WCF and wireless support structure does not exceed one hundred twenty five feet (125').
 - ii. 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.
 - iii. A minimum eight foot (8') high security fence 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.**

- i. Non-tower WCFs shall employ stealth technology and be treated to match the supporting structure in order to minimize aesthetic impact. The application of the stealth technology chosen by the WCF applicant shall be subject to the approval of the Township.
 - ii. Non-tower WCFs, which are mounted to a building or similar structure, may not exceed a height of fifteen feet (15') above the roof or parapet, whichever is higher, unless the WCF applicant obtains a special exception from the Township's Zoning Hearing Board.
 - iii. All non-tower WCF applicants must submit documentation to the Township justifying the total height of the non-tower structure. Such documentation shall be analyzed in the context of such justification on an individual basis.
 - iv. Antennae, and their respective accompanying support structures, shall be no greater in diameter than any cross-sectional dimension than is reasonably necessary for their proper functioning.
 - v. Noncommercial Usage Exemption. The design regulations enumerated in this paragraph shall not apply to non-commercial antennas and towers (as defined).
- (c) Removal, Replacement, Modification.
- i. The removal and replacement of non-tower WCFs and/or accessory equipment for the purpose of upgrading or repairing the WCF is permitted, so long as such repair or upgrade does not increase the overall size of the WCF or the numbers of antennae.
 - ii. Any material modification to a wireless communication facility shall require a prior amendment to the original permit or authorization.
- (d) Visual or Land Use Impact. The Township reserves the right to deny an application for the construction or placement of any non-tower WCF based upon visual and/or land use impact.
- (e) Inspection. The Township reserves the right to inspect any WCF to ensure compliance with the provisions of this Chapter and any other provisions found within the Township Code or State or Federal law. The Township and/or its agents shall have the authority to enter the property upon which a WCF is located at any time upon reasonable notice to the operator, to ensure such compliance.

C. Non-Tower WCFs Inside Rights-of-Way.

In addition to the provisions in Section 1080.2A, and 1080.2B if applicable, the following regulations shall also apply to all non-tower wireless communication facilities located in the rights-of-way (ROW), regardless of whether they constitute a Substantial Change or not:

- (1) Co-location. Non-tower WCFs in the ROW shall be co-located on existing poles, such as existing utility poles or light poles. If co-location is not technologically feasible, the WCF Applicant shall locate its non-tower WCF on existing poles or freestanding structures that do not already act as Wireless Support Structures with the Township's approval.
- (2) Design Requirements.
 - (a) 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 (6') in height and that are compatible in scale and proportion to the structures upon which they are mounted. All equipment shall be the smallest and least visibly intrusive equipment feasible.
 - (b) Antennae and all support equipment shall be treated to match the supporting structure. WCFs and accompanying equipment shall be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.
- (3) Compensation for ROW Use. In addition to permit fees as described above, every non-tower WCF in the ROW is subject to the Township's right to fix annually a fair and reasonable compensation to be paid for use and occupancy of the ROW. Such compensation for ROW use shall be directly related to the Township's actual ROW management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other ROW management activities by the Township. The owner of each non-tower WCF shall pay an annual fee to the Township to compensate the Township for its costs incurred in connection with the activities described above. The annual ROW management fee for non-tower WCFs shall be determined by the Township and authorized by resolution of Township Board of Supervisors and shall be based on the Township's actual ROW management costs as applied to such non-tower WCF.
- (4) Time, Place and Manner. The Township shall determine the time, place and manner of construction, maintenance, repair and/or removal of all non-tower WCFs in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with

the police powers of the Township and the requirements of the Public Utility Code.

- (5) Equipment Location. Non-tower WCFs and accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the ROW as determined by the Township. In addition:
 - (a) In no case shall ground-mounted equipment, walls, or landscaping be located within eighteen inches (18") of the face of the curb or within an easement extending onto a privately-owned lot.
 - (b) 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 undergrounded, 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.
 - (c) Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Township.
 - (d) Any graffiti on any wireless support structure or on any accessory equipment shall be removed at the sole expense of the owner within ten (10) business days of notice of the existence of the graffiti.
 - (e) Any underground vaults related to non-tower WCFs shall be reviewed and approved by the Township.
 - (f) Non-tower WCFs shall not be located within an easement other than a utility easement.
 - (g) New ground mounted cabinets shall not be installed above ground directly in front of a residential structure.
- (6) Relocation or Removal of Facilities. Within sixty (60) days following written notice from the Township, or such longer period as the Township determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the Township, consistent with its police powers and applicable Public Utility Commission regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
 - (a) The construction, repair, maintenance or installation of any Township or other public improvement in the right-of-way.

- (b) The operations of the Township or other governmental entity in the right-of-way.
- (c) Vacation of a street or road or the release of a utility easement.
- (d) An emergency as determined by the Township.
- (7) Visual or Land Use Impact. The Township retains the right to deny an application for the construction or placement of a non-tower WCF based upon visual and/or land use impact.
- (8) The Township shall be named as an additional insured on all applicable insurance policies.

SECTION 12. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 1000 entitled "Supplementary Regulations" is hereby amended to add a new Section 1085 to be entitled "Co-Location of Wireless Communication Facilities" that shall read in its entirety as follows:

Section 1085. Co-Location of Wireless Communications Facilities.

To the extent the regulations provided for in Section 1080 are applicable to co-location of wireless communications facilities and the regulations are inconsistent with the Wireless Broadband Collocation Act, 53 P.S. §11702.1 et seq., or the Federal Communications Commission's October 2014 Report and Order the regulations set forth in the statute and Order shall control.

SECTION 13. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 1000 entitled "Supplementary Regulations" is hereby amended to add a new Section 1090 to be entitled "Medical Marijuana Dispensary" that shall read in its entirety as follows:

Section 1090. Medical Marijuana Dispensary.

1090.1 Provide a copy of the permit for medical marijuana dispensary issued by the Pennsylvania Department of Health.

1090.2 Provide a copy of the security information for the dispensary permit issued by the Pennsylvania Department of Health.

1090.3 The lot or property line of such business shall not be located within 1,000 feet of the lot or property line of a public, private or parochial school or day-care center, as provided for by 35 P.S. §10231.802. Only the Department of Health through the dispensary permitting process may adjust or waive this prohibition.

SECTION 14. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 1000 entitled "Supplementary Regulations"

is hereby amended to add a new Section 1095 to be entitled "Medical Marijuana Grower/Processor" that shall read in its entirety as follows:

Section 1095. Medical Marijuana Grower/Processor.

1095.1 Provide a copy of the permit for medical marijuana growing/processing issued by the Pennsylvania Department of Health.

1095.2 Provide a copy of the security information for the growing/processing permit issued by the Pennsylvania Department of Health.

1095.3 Not more than one such business or activity shall be permitted within any one building or lot.

1095.4 No buildings or driveways associated with a grower/processor shall be located on any other building or lot.

1095.5 No such business or activity may change to another type of such business or activity, except upon application to and approval by the Board of Supervisors of such change as a conditional use subject to the criteria set forth herein.

SECTION 15. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, Section 1300 entitled "Administration and Enforcement", Section 1390 entitled "Exemptions" is hereby amended to add the following sentence to the end of the existing text: "The exemption provided for in this Section shall not apply to Wireless Communications Facilities regulated under the 1996 Telecommunications Act."

SECTION 16. The Tulpehocken Township Zoning Ordinance of 2013, Ordinance Number 2013-4, enacted April 8, 2013, as amended, shall be and remain unchanged and in full force and effect except as amended, supplemented, and modified by this Ordinance. This Ordinance shall become a part of such Zoning Ordinance Code upon enactment.

SECTION 17. Repeal of Ordinances. Any ordinance or parts of any ordinance conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance's provision.

SECTION 18. Severability. If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance, is, for any reason declared to be illegal, unconstitutional or invalid, by any Court of competent jurisdiction, this decision shall not affect nor impair the validity of the Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word, or remaining portion of the within Ordinance. The Board of Supervisors of the Township of Tulpehocken, Berks County, Pennsylvania, hereby declares that it would have adopted the within Ordinance and each article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase and word thereof, irrespective of the limitations, restrictions, sentences, clauses, phrases, or words that may have been declared illegal, unconstitutional or invalid.

SECTION 19. Effective Date. This Ordinance shall become effective at the earliest date permitted by law.

ENACTED AND ORDAINED into an Ordinance this 12th day of July, A.D. 2017, by the Supervisors of Tulpehocken Township, Berks County, Pennsylvania in Lawful Session duly assembled.

BOARD OF SUPERVISORS OF TULPEHOCKEN
TOWNSHIP, BERKS COUNTY, PENNSYLVANIA

By:

Sandy A. Sech
Chairman

Richard A. Kramer
Member

Peter H. Leck
Member

ATTEST:

Christy Flaherty
Secretary



CERTIFICATE OF ENACTMENT

I hereby certify the foregoing to be an exact copy of an Ordinance adopted by the Supervisors of Tulpehocken Township, Berks County, Pennsylvania, at a regular meeting of the Board on July 12, 2017.

Christy Flaherty
Secretary

DATED: July 12, 2017

