

**BOROUGH OF AMBLER
MONTGOMERY COUNTY, PENNSYLVANIA**

ORDINANCE NO. 1083

AN ORDINANCE OF THE BOROUGH OF AMBLER, MONTGOMERY COUNTY, PENNSYLVANIA; PROVIDING FOR THE AMENDMENT OF THE ZONING ORDINANCE OF AMBLER BOROUGH, AS CODIFIED AT CHAPTER 27 OF THE AMBLER BOROUGH CODE, PROVIDING FOR PURPOSES AND FINDINGS OF FACT RELATED TO THE ADOPTION OF THE AMENDMENT, PROVIDING FOR DEFINITIONS; ESTABLISHING CERTAIN GENERAL AND SPECIFIC STANDARDS RELATING TO THE LOCATION, PLACEMENT, CONSTRUCTION AND MAINTENANCE OF TOWER-BASED WIRELESS COMMUNICATIONS FACILITIES AND NON-TOWER WIRELESS COMMUNICATION FACILITIES; PROVIDING FURTHER FOR THE REGULATION OF SUCH FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY AND OUTSIDE THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE ENFORCEMENT OF SAID REGULATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW THEREFORE, be it, and it is hereby **ORDAINED** by the Council of the Borough of Ambler, Montgomery County, Commonwealth of Pennsylvania, and it is hereby **ENACTED** and **ORDAINED** by authority of same as follows:

SECTION I. Purposes and Finding of Fact

A. Purposes and Findings of Fact.

- 1) The purpose of this section is to establish uniform standards for the siting, design, permitting, maintenance, and use of Wireless Communications Facilities in Ambler Borough (referred to herein as the "Borough"). While the Borough recognizes the importance of Wireless Communications Facilities in providing high quality communications service to its residents and businesses, the Borough also recognizes that it has an obligation to protect public safety and to minimize the adverse visual effects of such facilities through the standards set forth in the following provisions.
- 2) By enacting these provisions, the Borough intends to:
 - a. Accommodate the need for Wireless Communications Facilities while regulating their location and number so as to ensure the provision for necessary services;
 - b. Provide for the managed feet

- c. development of Wireless Communications Facilities in a manner that enhances the benefits of wireless communication and accommodates the needs of both Borough residents and wireless carriers in accordance with federal and state laws and regulations;
- d. Establish procedures for the design, siting, construction, installation, maintenance and removal of both Tower-Based and Non-Tower based Wireless Communications Facilities in the Borough, including facilities both inside and outside the public rights-of-way;
- e. Address new wireless technologies, including but not limited to, distributed antenna systems, data collection units, cable Wi-Fi and other Wireless Communications Facilities;
- f. Minimize the adverse visual effects and the number of such facilities through proper design, siting, screening, material, color and finish and by requiring that competing providers of wireless communications services co-locate their commercial communications antennas and related facilities on existing towers;
- g. Promote the health, safety and welfare of the Borough's residents.

SECTION II. Repealer of Certain Definitions

- A. The definition of “Communications Device” is hereby repealed and removed as a definition from Section 27-2702 of the Ambler Borough Zoning Ordinance.

SECTION III. Amendment to Section 27-2702, Definition of Terms

Section 27-2702 of the Zoning Ordinance is hereby amended to include the following definitions to the “Definitions” section:

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 as defined below.
2. *Co-location*—the mounting of one or more WCFs, including antennae, on an existing Tower-Based WCF, or on any structure that already supports at least one Non-Tower WCF.
3. *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.

4. *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.
5. *FCC*—Federal Communications Commission.
6. *Height of a Tower-Based WCF* - the vertical distance measured from the ground level, including any base pad, to the highest point on a Tower-Based WCF, including antennae mounted on the tower and any other appurtenances. Where a specific height limitation is provided for in this ordinance for any tower or non-tower facility erected pursuant to this ordinance, the height limitation set forth herein shall control over any height limitation set forth in the Borough ordinances regarding the height limitations for buildings and structures in general, including the height limitations set forth in each particular zoning district.
7. *Monopole*—a WCF or site which consists of a single pole structure, designed and erected on the ground or on top of a structure, to support communications antennae and connecting appurtenances.
8. *Non-Tower Wireless Communications Facility (Non-Tower WCF)*—all Non-Tower Wireless Communications Facilities, including but not limited to, antennae and Related Equipment. Non-Tower WCF shall not include support structures for antennae or any Related Equipment that is mounted to the ground or at ground-level.
9. *Related Equipment*—any piece of equipment related to, incidental to, or necessary for, the operation of a Tower-Based WCF or Non-Tower WCF. By way of illustration, not limitation, Related Equipment includes generators and base stations.
10. *Stealth Technology*—camouflaging methods applied to wireless communications towers, 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, and light poles.
11. *Substantially Change or Substantial Change* - (1) Any increase in the height of a Wireless Support Structure by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater, except that the mounting of the proposed wireless communications facility may exceed the size limits set forth herein if necessary to avoid interference with existing antennae; or (2) any further increase in the height of a Wireless Support Structure which has already been extended by more than 10% of its originally approved height or by the height of one additional antenna array.

12. *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, guy towers and monopoles, utility poles and light poles. DAS hub facilities are considered to be Tower-Based WCF.
13. *WBCA - Pennsylvania Wireless Broadband Collocation Act* (53 P.S. §11702.1 *et. seq.*)
14. *Wireless*—transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.
15. *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.
16. *Wireless Communications Facility Applicant (WCF Applicant)*—any person that applies for a wireless communication facility building permit, zoning approval and/or permission to use the public right-of-way (ROW) or other Borough owned land or property.
17. *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 Borough.

SECTION IV. REPEALER AND ADOPTION OF NEW WIRELESS COMMUNICATIONS FACILITIES PROVISIONS

The terms, conditions and provisions of Section 27-2703(D) (Communications Device) of the Ambler Borough Zoning Ordinance are and hereby REPEALED and replaced in their entireties with a new Section 27-2703 (D), entitled and provided for as follows:

§ 27-2703(D) Wireless Communications Facilities

(1) General and Specific Requirements for Non-Tower Wireless Communications Facilities

- a) The following regulations shall apply to all Non-Tower WCF:
 - i) Permitted in all zones subject to regulations. Non-Tower WCF are permitted in all zones subject to the restrictions and conditions prescribed below and subject to applicable permitting by the Borough.

- ii) Non-conforming Wireless Support Structures. Non-Tower WCF shall be permitted to co-locate upon non-conforming Tower-Based WCF and other non-conforming structures. Co-location of WCF upon existing Tower-Based WCF is encouraged even if the Tower-Based WCF is non-conforming as to use within a zoning district.
- iii) Standard of care. 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, and National Electrical Code. 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 Borough.
- iv) Wind and ice. All Non-Tower WCF structures shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended).
- v) Aviation safety. Non-Tower WCF shall comply with all federal and state laws and regulations concerning aviation safety.
- vi) Public safety communications. Non-Tower WCF shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- vii) Radio frequency emissions. A Non-Tower WCF shall not, 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.
- viii) Removal. In the event that use of a Non-Tower WCF is discontinued, the owner shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCF, or portions of WCF, shall be removed as follows:
 - (1) All abandoned or unused WCFs and accessory facilities shall be removed within two (2) months of the cessation of operations at the site unless a time extension is approved by the Borough.
 - (2) If the WCF or accessory facility is not removed within two (2) months of the cessation of operations at a site, or within any longer period approved by the Borough, the WCF and/or associated facilities and equipment may

be removed by the Borough and the cost of removal assessed against the owner of the WCF.

- ix) Insurance. Each Person that owns or operates a Non-Tower WCF shall provide the Borough with a certificate of insurance evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering the Non-Tower WCF.
- x) Indemnification. Each person that owns or operates a Non-Tower WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the Non-Tower WCF. Each person that owns or operates a Non-Tower WCF shall defend any actions or proceedings against the Borough in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of a Non-Tower WCF. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.
- xi) Maintenance. To the extent permitted by law, the following maintenance requirements shall apply:
 - (1) The Non-Tower WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
 - (2) Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Borough's residents.
 - (3) All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.
- b) The following regulations shall apply to all collocated Non-Tower WCF that do not Substantially Change the Physical Dimensions of the Wireless Support Structure to which they are attached, and/or fall under the Pennsylvania Wireless Broadband Collocation Act:
 - i) Building permit required. WCF Applicants proposing the modification of an existing Tower-Based WCF shall obtain a building permit from the Borough. In order to be considered for such permit, the WCF Applicant must submit a permit application to the Borough in accordance with applicable permit policies and procedures.

- ii) Timing of approval for applications that fall under the WBCA. Within thirty (30) calendar days of the date that an application for a Non-Tower WCF is filed with the Borough, the Borough shall notify the WCF Applicant in writing of any information that may be required to complete such application. Within sixty (60) calendar days of receipt of a complete application, the Borough shall make its final decision on whether to approve the application and shall advise the WCF Applicant in writing of such decision. If additional information was requested by the Borough to complete an application, the time required by the WCF Applicant to provide the information shall not be counted toward the Borough's sixty (60) day review period. The timing requirements in this section shall only apply to proposed facilities that fall under the Pennsylvania Wireless Broadband Collocation Act.
 - iii) Related Equipment. Ground-mounted Related Equipment greater than three (3) cubic feet shall not be located within fifty (50) feet of a lot in residential use or zoned residential.
 - iv) Permit fees. The Borough may assess appropriate and reasonable permit fees directly related to the Borough's actual costs in reviewing and processing the application for approval of a Non-Tower WCF or \$1,000, whichever is less.
- c) The following regulations shall apply to all Non-Tower WCF that do Substantially Change the Wireless Support Structure to which they are attached, or that otherwise do not fall under the Pennsylvania Wireless Broadband Collocation Act:
- i) Prohibited on Certain Structures. No Non-Tower WCF shall be located on single-family detached residences, single-family attached residences, or any residential accessory structure.
 - ii) Conditional Use Authorization Required. Any WCF Applicant proposing the construction of a new Non-Tower WCF, or the modification of an existing Non-Tower WCF, shall first obtain a conditional use authorization from the Borough. New constructions, modifications, and replacements that do fall under the WBCA shall be not be subject to the conditional use process. The conditional use application shall demonstrate that the proposed facility complies with all applicable provisions in the Ambler Borough Zoning Ordinance.
 - iii) Historic Buildings. No Non-Tower WCF may be located upon any property, or on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or is listed on the official historic structures and/or historic districts list maintained by the Borough, or has been designated by the Borough to be of historical significance.
 - iv) Retention of Experts. The Borough may hire any consultant(s) and/or expert(s) necessary to assist the Borough in reviewing and evaluating the application for approval of the WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of these WCF provisions. The WCF

Applicant and/or owner of the WCF shall reimburse the Borough for all costs of the Borough's consultant(s) in providing expert evaluation and consultation in connection with these activities.

- v) Permit Fees. The Borough may assess appropriate and reasonable permit fees directly related to the Borough's actual costs in reviewing and processing the application for approval of a Non-Tower WCF, as well as related inspection, monitoring and related costs.
- vi) Development Regulations. Non-Tower WCF shall be located or co-located on existing Wireless Support Structures, such as existing buildings or Tower-Based WCF, subject to the following conditions:
 - (1) The total height of any Wireless Support Structure and mounted WCF shall not exceed twenty (20) feet above the maximum height permitted in the underlying zoning district.
 - (2) In accordance with industry standards, all Non-Tower WCF Applicants must submit documentation to the Borough justifying the total height of the Non-Tower WCF. Such documentation shall be analyzed in the context of such justification on an individual basis.
 - (3) If the WCF Applicant proposes to locate the Related Equipment in a separate building, the building shall comply with the minimum requirements for the applicable zoning district.
 - (4) A security fence of not less than six (6) feet and not more than eight (8) feet shall surround any separate communications equipment building. Vehicular access to the communications equipment building shall not interfere with the parking or vehicular circulations on the site for the principal use.
- vii) Design Regulations.
 - (1) Non-Tower WCF shall employ Stealth Technology and be treated to match the Wireless Support Structure in order to minimize aesthetic impact. The application of the Stealth Technology chosen by the WCF Applicant shall be subject to the approval of the Borough.
 - (2) Non-commercial usage exemption. Borough residents utilizing satellite dishes, citizen and/or band radios, and antennae for the purpose of maintaining television, phone, and/or internet connections at their respective residences shall be exempt from the regulations enumerated in this Section.
- viii) Removal, Replacement and Modification.

- (1) The removal and replacement of Non-Tower 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 substantially change the overall size of the WCF or the number of antennae.
 - (2) Any material modification to a WCF shall require notice to be provided to the Borough, and possible supplemental permit approval to the original permit or authorization.
 - ix) Inspection. The Borough reserves the right to inspect any WCF to ensure compliance with the provisions of the Zoning Ordinance and any other provisions found within the Borough Code or state or federal law. The Borough and/or its agents shall have the authority to enter the property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.
- (2) Regulations Applicable to all Non-Tower WCF located in the Public Rights-of-Way. In addition to the applicable Non-Tower WCF provisions listed in Section 27-2703(D)(1), the following regulations shall apply to Non-Tower WCF located in the public rights-of-way:
- a) Location. Non-Tower WCF in the ROW shall be located or 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 Borough's approval.
 - b) Design Requirements:
 - i) 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 (6) 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.
 - ii) Antenna and Related Equipment shall be treated to match the supporting structure and may be required to be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.
 - c) Time, Place and Manner. The Borough shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Non-Tower 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 Borough and the requirements of the Public Utility Code.

- d) Equipment Location. Non-Tower WCFs and Related 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 Borough. In addition:
 - i) In no case shall ground-mounted Related Equipment, walls, or landscaping be located within eighteen (18) inches of the face of the curb or within an easement extending onto a privately-owned lot;
 - ii) Ground-mounted Related Equipment that cannot be placed underground shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Borough.
 - iii) Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Borough.
 - iv) Any graffiti on any Wireless Support Structures or any Related Equipment shall be removed at the sole expense of the owner.
 - v) Any proposed underground vault related to Non-Tower WCF shall be reviewed and approved by the Borough.
- e) Relocation or Removal of Facilities. Within sixty (60) days following written notice from the Borough, or such longer period as the Borough determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the Borough, consistent with its police powers and applicable Public Utility Commission regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
 - i) The construction, repair, maintenance or installation of any Borough or other public improvement in the right-of-way;
 - ii) The operations of the Borough or other governmental entity in the Right-of-Way;
 - iii) Vacation of a street or road or the release of a utility easement; or
 - iv) An emergency as determined by the Borough.

(3) General and Specific 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 Borough.
- b) Notice. Upon submission of an application for a Tower-Based WCF and the scheduling of the public hearing upon the application, the WCF Applicant shall mail notice to all owners of every property within five hundred (500) feet of the proposed facility. The WCF Applicant shall provide proof of the notification to the Borough.
- c) Conditional Use Authorization Required. Tower-Based WCF are permitted in certain zoning districts by conditional use and at a height necessary to satisfy their function in the WCF Applicant's wireless communications system. No WCF Applicant shall have the right under these regulations to erect a tower to the maximum height specified in this section unless it proves the necessity for such height. The WCF Applicant shall demonstrate that the antenna/tower/pole for the Tower-Based WCF is the minimum height necessary for the service area.
 - i) Prior to Council's approval of a conditional use authorizing the construction and installation of Tower-Based WCF, it shall be incumbent upon the WCF Applicant for such conditional use approval to prove to the reasonable satisfaction of Council that the WCF Applicant cannot adequately extend or infill its communications system by the use of equipment such as redoes, repeaters, antenna(s) and other similar equipment installed on existing structures, such as utility poles or their appurtenances and other available tall structures. The WCF Applicant shall further demonstrate that the proposed Tower-Based WCF must be located where it is proposed in order to serve the WCF Applicant's service area and that no other viable alternative location exists.
 - ii) The conditional use application shall be accompanied by a propagation study evidencing the need for the proposed tower or other communication facilities and equipment, a description of the type and manufacturer of the proposed transmission/radio equipment, the frequency range (megahertz band) assigned to the WCF Applicant, the power in watts at which the WCF Applicant transmits, and any relevant related tests conducted by the WCF Applicant in determining the need for the proposed site and installation.

- iii) The conditional use application shall also be accompanied by documentation demonstrating that the proposed Tower-Based WCF complies with all state and federal laws and regulations concerning aviation safety.
 - iv) Where the Tower-Based WCF is located on a property with another principal use, the WCF Applicant shall present documentation to the Council that the owner of the property has granted an easement for the proposed WCF and that vehicular access will be provided to the facility.
 - v) The conditional use application shall also be accompanied by documentation demonstrating that the proposed Tower-Based WCF complies with all applicable provisions the Lower Allen Borough Zoning Ordinance.
- d) Engineer Inspection. Prior to the Borough's issuance of a permit authorizing construction and erection of a Tower-Based WCF, a structural engineer registered in Pennsylvania shall issue to the Borough a written certification of the proposed WCF's ability to meet the structural standards offered by either the Electronic Industries Association or the Telecommunication Industry Association and certify the proper construction of the foundation and the erection of the structure. This certification shall be provided during the conditional hearings or at a minimum be made as a condition attached to any approval given such that the certification be provided prior to issuance of any building permits.
- e) Visual Appearance and Land Use Compatibility. Tower-Based WCF shall employ Stealth Technology which may include the tower portion to be painted silver or another color approved by the Council, or shall have a galvanized finish. All Tower-Based WCF and Related Equipment shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of a like facade to blend with the existing surroundings and neighboring buildings to the greatest extent possible. The Council shall consider whether its decision upon the subject application will promote the harmonious and orderly development of the zoning district involved; encourage compatibility with the character and type of development existing in the area; benefit neighboring properties by preventing a negative impact on the aesthetic character of the community; preserve woodlands and trees existing at the site to the greatest possible extent; and encourage sound engineering and land development design and construction principles, practices and techniques.
- f) Co-location and siting. An application for a new Tower-Based WCF shall demonstrate that the proposed Tower-Based WCF cannot be accommodated on an existing or approved structure or building, or sited on land owned and maintained by Ambler Borough. The Council may deny an application to construct a new Tower-Based WCF if the WCF Applicant has not made a good faith effort to mount the commercial communications antenna(s) on an existing structure. The

WCF Applicant shall demonstrate that it contacted the owners of tall structures, buildings, and towers within a one quarter (¼) of a mile radius of the site proposed, sought permission to install an antenna on those structures, buildings, and towers and was denied for one of the following reasons:

- i) The proposed antenna and Related Equipment would exceed the structural capacity of the existing building, structure or tower, and its reinforcement cannot be accomplished at a reasonable cost.
 - ii) The proposed antenna and Related Equipment would cause radio frequency interference with other existing equipment for that existing building, structure, or tower and the interference cannot be prevented at a reasonable cost.
 - iii) Such existing buildings, structures, or towers do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.
 - iv) A commercially reasonable agreement could not be reached with the owner of such building, structure, or tower.
- g) Permit Required for Modifications. To the extent permissible under applicable state and federal law, any WCF Applicant proposing the modification of an existing Tower-Based WCF, which increases the overall height of such WCF, shall first obtain a permit from the Borough. To the extent permissible under law, non-routine modifications shall be prohibited without a permit.
- h) Gap in Coverage. A WCF Applicant for a Tower-Based WCF must demonstrate that a significant gap in wireless coverage or capacity exists in the applicable area and that the type of WCF being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or non-existence of a gap in wireless coverage or capacity shall be a factor in the Borough's decision on an application for approval of Tower-Based WCF.
- i) Additional Antennae. As a condition of approval for all Tower-Based WCF, the WCF Applicant shall provide the Borough with a written commitment that it will allow other service providers to co-locate antennae on Tower-Based WCF where technically and economically feasible. To the extent permissible under state and federal law, the owner of a Tower-Based WCF shall not install any additional antennae without obtaining the prior written approval of the Borough.
- j) Wind and ice. Any Tower-Based WCF structures shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended).

- k) Height. Any Tower-Based WCF shall be designed at the minimum functional height. The maximum total height of a Tower-Based WCF, which is not located in the public ROW, shall not exceed two hundred (200) feet, as measured vertically from the ground level to the highest point on the structure, including antennae and subsequent alterations.
- l) Related Equipment. Either one single-story wireless communications equipment building not exceeding 500 square feet in area or up to five metal boxes placed on a concrete pad not exceeding 10 feet by 20 feet in area housing the receiving and transmitting equipment may be located on the site for each unrelated company sharing commercial communications antenna(e) space on the Tower-Based Wireless Communications Facility greater than forty (40) feet.
- m) 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.
- n) Maintenance. The following maintenance requirements shall apply:
 - i) Any Tower-Based WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
 - ii) Such maintenance shall be performed to ensure the upkeep of the WCF in order to promote the safety and security of the Borough's residents, and utilize the best available technology for preventing failures and accidents.
- o) Radio Frequency Emissions. A Tower-Based WCF shall not, 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.
- p) Historic Buildings or Districts. A Tower-Based WCF shall not be located upon a property, and/or on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or eligible to be so listed, or is included in the official historic structures and/or historic districts list maintained by the Borough.
- q) Signs. All Tower-Based WCFs shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency. The only other signage permitted on the WCF shall be those required by the FCC, or any other federal or state agency.

- r) Lighting. No Tower-Based WCF shall be artificially lighted, except as required by law. If lighting is required, the WCF Applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. The WCF Applicant shall promptly report any outage or malfunction of FAA-mandated lighting to the appropriate governmental authorities and to the Borough Secretary.
- s) 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 the Borough Code, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.
- t) Aviation Safety. Tower-Based WCF shall comply with all federal and state laws and regulations concerning aviation safety.
- u) Retention of Experts. The Borough may hire any consultant and/or expert necessary to assist the Borough in reviewing and evaluating the application for approval of the Tower-Based WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of these provisions. The WCF Applicant and/or owner of the WCF shall reimburse the Borough for all costs of the Borough's consultant(s) in providing expert evaluation and consultation in connection with these activities.
- v) Timing of Approval. Within thirty (30) calendar days of the date that an application for a Tower-Based WCF is filed with the Borough, the Borough shall notify the WCF 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 Borough shall advise the WCF Applicant in writing of its decision. If additional information was requested by the Borough to complete an application, the time required by the WCF Applicant to provide the information shall not be counted toward the one hundred fifty (150) day review period.
- w) Non-Conforming Uses. Non-conforming 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. The co-location of Antennae is permitted on non-conforming structures.
- x) Removal. In the event that use of a Tower-Based WCF is planned to be discontinued, the owner shall provide written notice to the Borough of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCF or portions of WCF shall be removed as follows:

- i) All unused or abandoned Tower-Based WCFs and accessory facilities shall be removed within ninety (90) days of the cessation of operations at the site unless a time extension is approved by the Borough.
 - ii) If the WCF and/or accessory facility is not removed within ninety (90) days of the cessation of operations at a site, or within any longer period approved by the Borough, the WCF and accessory facilities and equipment may be removed by the Borough and the cost of removal assessed against the owner of the WCF.
 - iii) Any unused portions of Tower-Based WCF, including antennae, shall be removed within ninety (90) days of the time of cessation of operations. The Borough must approve all replacements of portions of a Tower-Based WCF previously removed.
- y) Permit Fees. The Borough may assess appropriate and reasonable permit fees directly related to the Borough's actual costs in reviewing and processing the application for approval of a Tower-Based WCF, as well as related inspection, monitoring, and related costs.
- z) FCC License. Each person that owns or operates a Tower-Based WCF over forty (40) feet in height shall submit a copy of its current FCC license, including the name, address, and emergency telephone number for the operator of the facility.
- aa) Insurance. Each person that owns or operates a Tower-Based WCF greater than forty (40) feet in height shall provide the Borough with a certificate of insurance evidencing general liability coverage in the minimum amount of \$5,000,000 per occurrence and property damage coverage in the minimum amount of \$5,000,000 per occurrence covering the Tower-Based WCF. Each Person that owns or operates a Tower-Based WCF forty (40) feet or less in height shall provide the Borough with a certificate of insurance evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering each Tower-Based WCF.
- bb) Indemnification. Each person that owns or operates a Tower-Based WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the Tower-Based WCF. Each person that owns or operates a Tower-Based WCF shall defend any actions or proceedings against the Borough in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of Tower-Based WCF. The obligation to indemnify, hold harmless and defend shall include, but not be limited

to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.

cc) Engineer signature. All plans and drawings for a Tower-Based WCF shall contain a seal and signature of a professional structural engineer, licensed in the Commonwealth of Pennsylvania.

dd) Financial security. Prior to receipt of a zoning permit for the construction or placement of a Tower-Based WCF, the WCF Applicant shall provide to the Borough financial security sufficient to guarantee the removal of the Tower-Based WCF. Said financial security shall remain in place until the Tower-Based WCF is removed.

(4) Tower-Based Wireless Communications Facilities Outside the Public Rights-of-Way. The following regulations shall apply to Tower-Based Wireless Communications Facilities located outside the Public Rights-of-Way:

a) Development Regulations.

i) Tower-Based WCF shall not be located in, or within fifty (50) feet of an area in which utilities are primarily located underground.

ii) Tower-Based WCF are permitted outside the public Rights-of-Way in the following zoning districts by conditional use, subject to the above prohibition:

1) OC Office Campus District.

2) C Commercial District.

3) I Industrial District.

4) RSC Retail and Service Commercial District.

iii) Sole use on a lot. A Tower-Based WCF shall be permitted as a sole use on a lot, provided that the underlying lot is a minimum of 6,000 square feet. The minimum distance between the base of a Tower-Based WCF and any adjoining property line or street right-of-way line shall equal 100% of the proposed WCF structure's height.

iv) 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 use, except residential, subject to the following conditions:

- 1) The existing use on the property may be any permitted use in the applicable district, and need not be affiliated with the WCF.
- 2) 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 if the proposed WCF is greater than forty (40) feet in height.
- 3) Minimum setbacks. The minimum distance between the base of a Tower-Based WCF and any adjoining property line or street right-of-way line shall equal 50% of the proposed WCF structure height or the minimum setback of the underlying zoning district, whichever is greater. Where the site on which a Tower-Based WCF is proposed to be located is contiguous to an educational use, child day-care facility or residential use, the minimum distance between the base of a Tower-Based WCF and any such adjoining uses shall equal 110% of the proposed height of the Tower-Based WCF unless it is demonstrated to the reasonable satisfaction of Council that in the event of failure the WCF is designed to collapse upon itself within a setback area less than the required minimum setback without endangering such adjoining uses and their occupants.

b) Design Regulations.

- i) The WCF shall employ the most current Stealth Technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. Application of the Stealth Technology chosen by the WCF Applicant shall be subject to the approval of the Borough.
- ii) To the extent permissible by law, any height extensions to an existing Tower-Based WCF shall require prior approval of the Borough.
- iii) Any proposed Tower-Based WCF shall be designed structurally, electrically, and in all respects to accommodate both the WCF Applicant's antennae and comparable antennae for future users.
- iv) Any Tower-Based WCF over forty (40) feet in height shall be equipped with an anti-climbing device, as approved by the manufacturer.

c) Surrounding Environs.

- i) 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.

- ii) The WCF Applicant shall submit a soil report to the Borough complying with the standards of Appendix I: Geotechnical Investigations, ANSI/EIA/TIA-222, as amended, to document and verify the design specifications of the foundation of the Tower-Based WCF, and anchors for guy wires, if used.
- d) Fence/Screen.
 - i) A security fence having a minimum height of six (6) feet and a maximum height of eight (8) feet shall completely surround any Tower-Based WCF greater than forty (40) feet in height, as well as guy wires, or any building housing WCF equipment.
 - ii) Landscaping shall be required to screen as much of a newly constructed Tower-Based WCF as possible. The Council may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if, in the discretion of Council, they achieve the same degree of screening. Existing vegetation shall be preserved to the maximum extent possible.
- e) Accessory Equipment.
 - i) Ground-mounted Related Equipment associated, or connected, with a Tower-Based WCF shall be placed underground or screened from public view using Stealth Technologies, as described above.
 - ii) All Related Equipment, utility buildings and accessory structures shall be architecturally designed to blend into the environment in which they are situated and shall meet the minimum setback requirements of the underlying zoning district.
- f) 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 grades shall closely follow natural contours to assure minimal visual disturbance and minimize soil erosion. Where applicable, the WCF owner shall present documentation to the Borough that the property owner has granted an easement for the proposed facility.
- g) Parking. For each Tower-Based WCF greater than forty (40) feet in height, there shall be two off-street parking spaces.
- h) Inspection. The Borough reserves the right to inspect any Tower-Based WCF to ensure compliance with the Zoning Ordinance and any other provisions found within the Borough Code or state or federal law. The Borough and/or its agents

shall have the authority to enter the property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

(5) Tower-Based Wireless Communications Facilities in the Public Rights-of-Way. The following regulations shall apply to Tower-Based Wireless Communications Facilities located in the Public Rights-of-Way.

- a) Location and development standards.
 - i) Tower-Based WCF forty (40) feet or shorter in height are prohibited in areas in which utilities are located underground.
 - ii) Tower-Based WCF forty (40) feet or shorter in height shall not be located in the front façade area of any structure.
 - iii) Tower-Based WCF forty (40) feet or shorter in height shall be permitted along certain collector roads and arterial roads throughout the Borough, regardless of the underlying zoning district, provided that they are not situated within fifty (50) feet of an area in which utilities are underground. A map of such permitted roads is kept on file at the Borough Zoning Office.
- b) Time, Place and Manner. The Borough 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 Borough and the requirements of the Public Utility Code.
- c) Equipment Location. Tower-Based WCF and Related 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 Borough. In addition:
 - i) In no case shall ground-mounted Related Equipment, walls, or landscaping be located within 18 inches of the face of the curb.
 - ii) Ground-mounted Related Equipment that cannot be placed underground shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Borough.
 - iii) Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Borough.
 - iv) Any graffiti on the tower or on any Related Equipment shall be removed at the sole expense of the owner

- v) Any underground vaults related to Tower-Based WCFs shall be reviewed and approved by the Borough.
- d) Design regulations.
 - i) 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 Borough.
 - ii) Tower-Based WCF in the public ROW shall not exceed forty (40) feet in height.
 - iii) To the extent permissible under state and federal law, any height extensions to an existing Tower-Based WCF shall require prior approval of the Borough, and shall not increase the overall height of the Tower-Based WCF to more than forty (40) feet.
 - iv) Any proposed Tower-Based WCF shall be designed structurally, electrically, and in all respects to accommodate both the WCF Applicant's antennae and comparable antennae for future users.
- e) Relocation or Removal of Facilities. Within sixty (60) days following written notice from the Borough, or such longer period as the Borough determines is reasonably necessary or such shorter period in the case of an Emergency, an owner of 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 Borough, consistent with its police powers and applicable Public Utility Commission regulations, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
 - i) The construction, repair, maintenance or installation of any Borough or other public improvement in the Right-of-Way;
 - ii) The operations of the Borough or other governmental entity in the right-of-way;
 - iii) Vacation of a street or road or the release of a utility easement; or
 - iv) An emergency as determined by the Borough.
- f) Reimbursement for ROW Use. In addition to permit fees as described in this section, every Tower-Based WCF in the ROW is subject to the Borough's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the ROW. Such

compensation for ROW use shall be directly related to the Borough's actual ROW management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other ROW management activities by the Borough. The owner of each Tower-Based WCF shall pay an annual fee to the Borough to compensate the Borough for the Borough's costs incurred in connection with the activities described above.

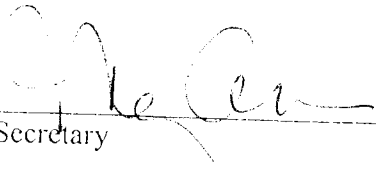
SECTION V. Miscellaneous

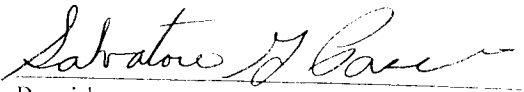
- A. Police powers. The Borough, by granting any permit or taking any other action pursuant to this chapter, does not waive, reduce, lessen or impair the lawful police powers vested in the Borough under applicable federal, state and local laws and regulations.
- B. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this Chapter invalid.
- C. Effective Date. This Ordinance shall become effective five (5) days after enactment by the Council of Ambler Borough

ENACTED AND ORDAINED this 21st day of April, 2015.

ATTEST:

AMBLER BOROUGH COUNCIL:


Secretary


President