

AN ORDINANCE AMENDING AND SUPPLEMENTING THE BOROUGH ZONING CODE BY ADDING A NEW SECTION ENTITLED "WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS"; PROVIDING DEFINITIONS; PROVIDING FOR PERMITTED LOCATIONS; AND PROVIDING CONDITIONS FOR PERMITTED USES, AND SPECIAL USES; PROVIDING FOR PERMITS AND LEASE AGREEMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Borough has received or expects to receive requests to site wireless communications towers and antennas within the municipal boundaries, and

WHEREAS, the Borough finds that it is in the public interest to permit the siting of wireless communications towers and antennas within the municipal boundaries, and

WHEREAS, it is the intent of the Borough to permit to siting of wireless communications towers and antennas with the municipal boundaries, and

WHEREAS, it is the intent of the Borough to protect and promote the public health, safety and welfare by regulating the siting of wireless communications towers and antennas,

THE BOROUGH HEREBY ORDAINS:

Section 1: Purpose: The purpose of this ordinance is to establish general guidelines for the siting of wireless communications towers and antennas. The goals of this ordinance are to: (1) encourage the location of towers in non-residential areas, where possible; (2) minimize the total number of towers throughout the community; (3) strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers; (4) encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal; (5) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques; (6) enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently, (7) consider the public health and safety of communication towers; (8) avoid potential damage to adjacent properties from structural failure of the tower through engineering and careful siting of tower structures; and (9) permit and manage reasonable access to the public ways for telecommunications purposes on a competitively neutral basis. In furtherance of these goals, the Borough shall give due consideration to the Borough's zoning map, existing land uses, and environmentally sensitive areas in approving sites for the locations of towers and antennas.

Section 2; Definitions: As used in this ordinance, the following terms shall have the meanings set forth below:

- a) "Alternative tower structure" means man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.
- b) "Antenna" means any transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.
- c) "Backhaul network" means the lines that connect a provider's towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switches telephone network.
- d) "Council" means Council for the Borough.
- e) "FAA" means the Federal Aviation Administration.
- f) "FCC" means the Federal Communications Commission.
- g) "Height" means when referring to a towers or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.
- h) "Preexisting towers and preexisting antennas" means any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of this ordinance, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.
- i) "Tower" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.
- j) "Telecommunications Overlay District" or "TO" means all that property owned, leased, or otherwise controlled by the Borough including its rights of way, and including the rights of way of state highways located in the Borough with the permission of acquiescence of the State.

Section 3: Applicability:

- a) (a) New Towers and Antennas: All new towers and antennas in the Borough shall be subject to these regulations, except as provided in Sections 3(b) through (d) inclusive.
- b) Amateur Radio Station Operators/Receive Only Antennas: This ordinance shall not govern any tower, or the installation of any antenna, that complies with the pertinent height requirement of the Zoning Code, and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receiving only antennas.
- c) Pre-existing Towers or Antennas: Pre-existing towers and pre-existing antennas shall not be required to meet the requirements of this ordinance, other than the requirements of Sections 4(d) and 4(e).
- d) AM Array: For purposes of implementing this ordinance, an AM array, consisting of one or more tower units and supporting ground system which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM Array. Additional tower units may be added within the perimeter of the AM array by right.

Section 4: General Requirements:

- a) Inventory of Existing Sites: Each applicant for an antenna and/or tower shall provide to Council an inventory of its existing towers, antennae, or sites approved for towers or antennae, that are either within the jurisdiction of the Borough or within one mile of the border thereof, including specific information about the location, height, and design of each tower. The Council may share such information with other applicants applying for administrative approvals or special use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the Borough, provided, however, that the Council is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- b) Aesthetics: Towers and antennas shall meet the following requirements:
 - 1) Towers shall be either blue, reinforced concrete or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
 - 2) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures,

screening, and landscaping that will blend them into the natural setting and surrounding buildings.

- 3) If an antenna is installed on a structure or a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- c) **Lighting:** Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternative and design chosen must cause the least disturbance to the surrounding views.
 - d) **State or Federal Requirements:** All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.
 - e) **Building Codes: Safety Standards:** To ensure the structural integrity of towers, the owner of a tower shall ensure that it is designed, constructed and maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic industries Association, as amended from time to time. All towers shall be designed by a licensed professional Engineer registered in the State of Pennsylvania and all drawings submitted for approvals shall be signed and sealed by the same Engineer responsible for the design. All construction shall be supervised by qualified personnel and a certification shall be prepared and presented to the Borough by a licensed professional Engineer registered in the State of Pennsylvania that the design and construction conform to the highest standards of engineering and construction. If, at any time, the Borough concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days, shall constitute grounds for the removal of the tower or antenna at the owner's expense.

- f) Not Essential Services: Towers and antennas shall be regulated and permitted pursuant to this ordinance and shall not be regulated or permitted as public utilities, or private utilities.
- g) Franchises: Owners and/or operators of towers or antennas shall certify that all licenses or franchises required by law for the construction and/or operation of a wireless communication system in the Borough have been obtained and shall file a copy of all required licenses or franchises with the Council.
- h) Public Notice: For purposes of this ordinance, any special exception request or appeal of an administrative decision shall require public notice pursuant to the dictates of the Zoning Code.
- i) Signs: No signs shall be allowed on an antenna or tower, except as required by law.
- j) Support Equipment: The support equipment associated with antennas or towers shall comply with the requirements of Section 8.
- k) Multiple Antenna/Tower Plan: The Borough encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.
- l) Co-location: In order to reduce the number of towers in the Borough in the future, the proposed tower, if required by the Council and/or Zoning Hearing Board, shall be designed to accommodate future other communication users, including commercial wireless communication companies, local police, fire and ambulance companies.
- m) Service to the Borough: A provider of telecommunications service within the Borough shall make its telecommunications services available to the Borough at its most favorable rate for similarly situated users, unless otherwise provided for in a lease, license or franchise agreement.

Section 5. Administrative Review: The following provisions shall govern the administrative review of towers and antennas

- a) The Borough shall administratively review each request for the siting and/or erection of any tower or antenna.
- b) Each applicant for administrative review shall in the first instance apply to the Council, providing the information set forth in Sections 7(b)(1) and 7(b)(3) or this ordinance and a non-refundable charge as established by resolution of the Council

to reimburse the Borough for the costs associated with reviewing the application. This is in addition to any other applications or fees that may be required.

- c) The Council shall review the application to determine if the proposed use complies with Sections 4 and 7 (c) of this ordinance. The Council shall also consider the factors set forth at Section 7(b)(2) through 7(b)(7) inclusive.
- d) In connection with any such administrative review pursuant to Section 7, the Council may recommend to the Zoning Hearing Board reduction of the setback requirements in Section 7(b)(4) and the separation distances between towers in Section 7(b)(5).
- e) In connection with any such administrative approval, the Council may, in order to encourage the use of monopoles, administratively allow the reconstruction of an existing tower to monopole construction.

Section 6 Permitted Uses:

- a) Telecommunications Overlay District. A Telecommunications Overlay District is hereby created. This Telecommunications Overlay District applies to all Zoning Districts in the Borough. The Telecommunications Overlay District ("TO") shall consist of property owned, leased or otherwise controlled by the Borough, including its rights of way, and including the rights of way of state highways within the Borough with the permission or acquiescence of the State.
- b) Locating antennas or towers within a Telecommunications Overlay District is a use specifically permitted provided that:
 - 1) A license or lease authorizing such antenna or tower has been approved by the Borough, and (2) the Borough has administratively approved the application.
 - 2) The requested use must comply in every way with the Zoning Code, except that there shall be a minimum setback of one hundred (100) feet from any residential property line.
- c) All towers and antennae erected, installed or located as a permitted use shall be located so as to minimize the adverse visual impact of the tower and/or antenna.
 - 1) A license or leave authorizing such antenna or tower has been approved by the Borough, acting through its Council;
 - 2) the Council has administratively approved the application; and;
 - 3) the use complies in every other way with the Zoning Code.

- d) All towers and antennae erected, installed or located as permitted use shall be located so as to minimize the adverse visual impact of the tower and/or antenna.

Section 7. Special Exception:

- a) General. The following provisions shall govern the issuance of a special exception for towers or antennae:
 - 1) If the tower or antenna is not permitted pursuant to Section 6 of this ordinance, a special exception shall be required for the construction of a tower or the placement of an antenna in all zoning districts other than Residence districts. Towers and antennae are allowed in Residential districts pursuant to Section six only.
 - 2) Administrative approval pursuant to Section 5 of this ordinance shall be requested at the time an applicant files a request for a special exception.
 - 3) Applications for special exceptions under this Section shall be subject to the procedures and requirements of the Zoning Ordinance, including the usual costs and fees.
 - 4) In granting a special exception, the Zoning Hearing Board (AHB) may impose conditions to the extent the Zoning Hearing Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower or antenna on adjoining properties.
 - 5) Any information of an engineering nature that the applicant submits, whether civil, mechanical or electrical, shall be certified by a licensed professional engineer registered in the State of Pennsylvania.
 - 6) An applicant for a special exception shall submit, in duplicate, the information described in this Section with one (1) copy for the Council and the other copy for the Zoning Hearing Board.
- b) Towers:
 - 1) Information required. In addition to any information required for applications for a special exception, applicants for a special exception for a tower shall submit the following information:
 - a. A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), Master Plan classification of the site and all properties within the

applicable separation distances set forth in Section 7(b)(5), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking and other information deemed by the Council to be necessary to assess compliance with this ordinance.

- b. Legal description of the parent tract and leased parcel (if applicable).
 - c. The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.
 - d. The separation distance from other towers described in the inventory of existing sites submitted pursuant to Section 4(a) shall be shown on an updated site plan on map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
 - e. A landscape plan showing specific landscape materials.
 - f. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
 - g. A description of compliance with Sections 4(a), (b), (c), (d), (e), (g), (i) and (j), 7(b)(5) and all applicable federal, state or local laws.
 - h. A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.
 - i. Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the municipality.
 - j. A description of the feasible location(s) of future towers or antennas within the Borough based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.
- 2) Factors Considered in Granting a Special Exception for Towers. In addition to any standards for consideration of special exception applications pursuant to the Zoning Ordinance, the Zoning Hearing Board shall consider the following factors in determining whether to

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

- a. Height of the proposed tower
 - b. Proximity of the tower to residential structures and residential district boundaries;
 - c. Nature of uses on adjacent and nearby properties;
 - d. Surrounding topography;
 - e. Surrounding tree coverage and foliage;
 - f. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - g. Proposed ingress and egress, with particular reference to access via streets in non-residential districts; and
 - h. Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures, as discussed in Section 7(b)(3) of this ordinance.
 - i. Administrative review and recommendation by the Council pursuant to Section 5.
- 3) Availability of Suitable Existing Towers, Other Structures, or Alternative Technology. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Zoning Hearing Board that no existing tower, building, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Council related to the availability of suitable existing towers, buildings, other structures or alternative technology. Evidence to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:
- a. No existing towers, buildings or structures are located within the geographic area which meet applicant's engineering requirements.

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

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

- 6) Security fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device; provided however, that the Council or Zoning Hearing Board may waive such requirements, as it deems appropriate.
- 7) Landscaping. The following requirements shall govern the landscaping surrounding towers for which a special exception is required; provided, however, that the Council or Zoning Hearing Board may waive such requirements if the goals of this ordinance would be better served thereby.

(i) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound.

(ii) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.

(iii) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

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

Section 8: Equipment Storage:

- a) Antennas Mounted on Rooftops: The equipment cabinet or structure used in association with legally-placed antennas mounted on rooftops shall comply with the following:
- 1) The cabinet or structure shall not contain more than ten (10) square feet of gross floor area or be more than eight (8) feet in height. In addition, for buildings and structures which are less than sixty-five (65) feet in height, the related unmanned equipment structure, if

over ten (10) square feet of gross floor area or eight (8) feet in height, shall be located on the ground and shall not be located on the roof of the structure.,

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

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

Section 10: Nonconforming Uses:

- a) Not expansion of Nonconforming Use: Towers that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.
- b) Pre-existing Towers: Pre-existing towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such pre-existing towers. New construction other than routine maintenance on a pre-existing tower shall comply with the requirements of this ordinance.
- c) Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas: Notwithstanding Section 9, pre-existing nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain administrative approval or a special exception and without having to meet the separation requirements specified in Sections 7 (b) (4) and 7 (b) (5). The type, height, and location of the tower onside shall be of the same type and intensity as the original facility. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained with 180 days from the date the facility is first damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in Section 9.

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

This is a sample ordinance. We suggest that it be modified, as appropriate, to fit the needs of your borough. We also suggest that all proposed ordinances be reviewed by your solicitor. Although these are samples of ordinances which have been adopted by other municipalities, the Association cannot assume responsibility for ensuring their legality. We are pleased to provide this service free of charge to our members. If we can be of further assistance, please do not hesitate to contact us: **PENNSYLVANIA STATE ASSOCIATION OF BOROUGHES**, 2941 North Front Street, Harrisburg, PA 17110. 717-236-9526.