

## **110.17 SPECIFIC STANDARDS**

### **WW) NON-TOWER WIRELESS COMMUNICATIONS FACILITIES**

A. The following regulations shall apply to all non-tower wireless communications facilities that do not substantially change the physical dimensions of the wireless support structure to which they are attached:

1. Permitted in all zones subject to regulations. Non-tower WCFs are permitted in all zoning districts subject to the restrictions and conditions prescribed below and subject to the prior written approval of the Township.
2. Prohibited on certain structures. Non-tower WCFs shall not be located on single-family detached residences, multifamily dwellings, single-family attached residences, or any accessory residential structures.
3. Standard of care. Any non-tower WCF shall be designed, constructed, operated, maintained, inspected, 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 safety of any person or any property in the Township.
4. Related equipment. Ground-mounted related equipment greater than three cubic feet.
5. 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 (ANSI/EIA-222-E Code, as amended).
6. Public safety communications. No non-tower WCF shall interfere in any way with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
7. Aviation safety. Non-tower WCFs shall comply with all federal and state laws and regulations concerning aviation safety.
8. 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.

9. 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 is intended to be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:
  - a. All abandoned or unused WCFs and accessory facilities shall be removed within two months of the cessation of operations at the site unless a time extension is approved in writing by the Township.
  - b. If the WCF or accessory facility is not removed within two months of the cessation of operations at a site, or within any longer period approved in writing by the Township, the WCF and/or associated facilities and equipment may be removed by the Township and the cost of removal assessed against the owner of the WCF.
10. Timing of approval. Within 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 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. If additional information is requested by the Township to complete an application, the time between the request and the date the material is produced shall be excluded in calculating the Township's ninety-day review period.
11. 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.
12. Insurance. Each person that owns or operates a non-tower WCF shall provide the Township 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. The Township shall be named as an additional insured on the certificate of insurance.
13. Indemnification. Each person that owns or operates a non-tower WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Township, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or 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, at his, her, its own expense, any actions or proceedings against the Township in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of a non-tower WCF. The obligation to indemnify, hold harmless and defend shall

include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.

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

1. Permitted in all zones subject to regulations. Non-tower WCFs are permitted in all zones subject to the restrictions and conditions prescribed below and subject to the prior written approval of the Township.
2. Prohibited on certain structures. Non-tower WCFs shall not be located on single-family detached residences, multifamily dwellings, single-family attached residences, or any residential accessory structures.
3. Permit required. Any applicant proposing the construction of a new non-tower WCF, or the modification of an existing non-tower WCF, shall first obtain a commercial building permit from the Township office. New construction and modifications shall be prohibited without a permit. After receipt of the commercial building application, the Township Zoning Officer shall determine whether zoning relief or if a conditional use is necessary under the Township Code § 155-82.1.
4. 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 Township.
5. 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 (ANSI/EIA-222-E Code, as amended).
6. Public safety communications. No non-tower WCF shall interfere in any way with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
7. Historic buildings. No non-tower WCF may be located on or near a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or is eligible to be so listed, or is listed on the official historic structures list maintained by the Township.

8. Aviation safety. Non-tower WCFs shall comply with all federal and state laws and regulations concerning aviation safety.
9. Maintenance. The following maintenance requirements shall apply:
  - a. the non-tower WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
  - b. Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Township's residents.
  - c. All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.
10. 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.
11. 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 is intended to be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:
  - a. All abandoned or unused WCFs and accessory facilities shall be removed within one month of the cessation of operations at the site unless a time extension is approved by the Township in writing.
  - b. If the WCF or accessory facility is not removed within one month of the cessation of operations at a site, or within any longer period approved by the Township in writing, the WCF and/or associated facilities and equipment may be removed by the Township and the Township's cost plus 15% overhead, of removal assessed against the owner of the WCF.
12. Timing of approval. Within 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 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. If additional information is requested by the Township to complete an application, the time between the request and the date the material is produced shall be excluded in calculating the ninety-day review period.
13. 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 article. 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.

14. Bond. Prior to the issuance of a permit, the owner of a 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 the amount of \$35,000 to assure the faithful performance of the terms and conditions of this article. The bond shall provide that the Township may recover from the principal and surety any and all compensatory damages as well as expert fees, counsel fees and costs, incurred by the Township for violations of this article, after reasonable notice and opportunity to cure. The owner shall file a copy of the bond with the Township.
15. 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, as well as related inspection, monitoring and related costs.

C. The following additional regulations shall apply to non-tower wireless communications facilities located outside the rights-of-way that substantially change the wireless support structure to which they are attached:

1. Development regulations. Non-tower WCFs may be co-located on existing structures, such as existing buildings or tower-based WCFs subject to the following conditions:
  - a. Such WCF may not exceed the lesser of a total maximum height of 50 feet or the maximum height permitted in the underlying zoning district.
  - b. If the WCF applicant proposes to locate the related equipment in a separate building, the building shall comply with the accessory building and structure requirements of the Township Code § 155-89.1 and § 155-89.3 for the applicable zoning district.
  - c. An eight-foot 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 any existing principal use.
2. Design regulations.
  - a. 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.

- b. Non-tower WCFs which are mounted to a building or similar structure may not exceed a height of 10 feet above the roof or parapet, whichever is higher, unless the WCF applicant is granted conditional use approval after a hearing.
- c. The total height of any support structure and mounted WCF shall not, under any circumstance, exceed the maximum height of thirty-five feet.
- d. 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.
- e. Antennae, and their respective accompanying support structures, shall be no greater in diameter than is reasonably necessary for their proper functioning.
- f. Non-commercial usage exemption. Township citizens utilizing satellite dishes and antennae for the purpose of maintaining television, phone, and/or internet connections at their respective residences shall be exempt from the design regulations enumerated in this article.

3. Removal, replacement, modification.

- a. 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.
- b. Any material modification to a wireless telecommunication facility shall require a new permit application and approval.

4. 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 any adverse visual and/or land use impact.

5. Inspection. The Township reserves the right to inspect any WCF to ensure compliance with the provisions of this article 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.

D. The following additional regulations shall apply to all non-tower wireless communications facilities located in the rights-of-way:

- 1. Co-location. Non-tower-based WCFs in the ROW shall be co-located on existing structures, such as existing utility poles or light poles.
- 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 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. Applicant shall demonstrate to the satisfaction of the Township that components are the smallest, least obtrusive with parts consistent with best engineering practices.
  - b. Antennae and all supporting 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. Reimbursement 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 reviews, inspections, permitting, supervision 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 at its first public meeting each January and authorized by resolution of Township Board 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-based WCFs and accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, adversely affect the visual aesthetics of the surrounding community 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 18 inches of the face of the curb, edge of pavement or outside edge of sidewalk or within an easement extending onto a privately-owned lot;

- b. Ground-mounted equipment that cannot be located underground 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 equipment or accessory equipment shall be removed at the sole expense of the owner within 10 business days of notice of the existence of the graffiti. If the owner does not remove the graffiti after 10 days, the Township may do so and recover its expenses, plus 15% overhead, from the owner.
  - e. Any underground vaults related to non-tower WCFs shall be reviewed and approved by the Township.
6. Relocation or removal of facilities. Within 60 days following written notice from the Township, or such longer period as the Township determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a 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; or
  - 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 any adverse visual and/or land use impact.

#### E. Penalties.

1. Any person, whether as principal or agent, who violates this Ordinance or assists or abets its violation, shall upon conviction thereof, before any Magistrate, be sentenced to pay a fine of not less than Fifty (\$50.00) Dollars, nor more than Five Hundred (\$500.00) Dollars, together with the costs of prosecution and attorneys' fees and costs.
2. A separate and distinct violation shall be deemed to be committed each day on which a violation occurs or continues to occur after notice.

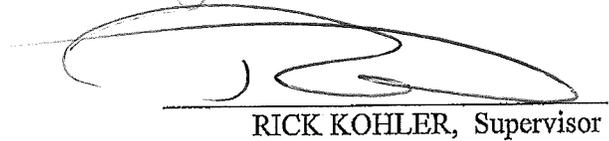
3. In the event a violation of this Ordinance occurs, in addition to such other remedies as may be available under existing law, the Township may institute an action in equity to prevent, restrain, correct, abate or enjoin such violation.

F. The Township, 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 Township under applicable Pike County Court of Common Pleas, state and local laws and regulations.

BOARD OF SUPERVISORS  
DELAWARE TOWNSHIP

  
\_\_\_\_\_  
JOHN HENDERSON, Chairman

  
\_\_\_\_\_  
JANE NEUFELD, Vice Chairman

  
\_\_\_\_\_  
RICK KOHLER, Supervisor

ATTEST:

  
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KRISTA PREDMORE, Township Administrator