

Cooke Township Ordinance 2018-1

Cooke Township Wireless Communications Facilities Ordinance

Section 1 General Provisions

A. Title.

This Ordinance shall be known, and may be cited, as the “Cooke Township Wireless Communications Facilities Ordinance.”

B. Purpose.

1. The purpose of this Ordinance is to establish uniform standards for the siting, design, permitting, maintenance, and use of wireless communications facilities in Cooke Township. While the Township recognizes the importance of wireless communications facilities in providing high quality communications service to its residents and businesses, the Township 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 this Ordinance, the Township intends to:

- a. Regulate the placement, construction and modification of Wireless Communication Facilities (WCFs) to protect the safety and welfare of the public;
- b. Provide for the managed development of wireless communications facilities in a manner that enhances the benefits of wireless communication and accommodates the needs of both Township residents and wireless carriers in accordance with federal and state laws and regulations;
- c. Establish procedures for the design, siting, construction, installation, maintenance and removal of both tower-based and non-tower based wireless communications facilities in the Township, including facilities both inside and outside the public rights-of-way;
- d. Address new wireless technologies, including but not limited to, distributed antenna systems, data collection units, cable Wi-Fi and other wireless communications facilities;
- e. Encourage the co-location of wireless communications facilities on existing structures rather than the construction of new tower-based structures;
- f. Protect Township residents from potential adverse impacts of wireless communications facilities and preserve, to the extent permitted under law, the visual character of established communities and the natural beauty of the landscape;

- g. Ensure that wireless communications facilities will be removed in the event that such structures are abandoned or become obsolete and are no longer necessary; and,
- h. Promulgate the Township's wireless facilities regulations to incorporate changes in federal and state laws and regulations.

Section 2
Definitions

A. *Antenna* - any system of wires, rods, discs, panels, flat panels, dishes, whips, or other similar devices used for the transmission or reception of wireless signals. An Antenna may include an omnidirectional antenna (rod), directional antenna (panel), parabolic antenna (disc) or any other wireless antenna. An Antenna shall not include Tower-Based Wireless Communications Facilities defined below. An Antenna shall not include private residence-mounted satellite dishes or television antennae or amateur radio equipment including, without limitation, ham or citizen band radio antennae.

B. *Co-location* - the mounting of one or more WCFs, including Antennae, on an existing Tower-Based WCF or utility or light pole.

C. *Commercially Reasonable* - means terms and pricing that are reasonably consistent with similar wireless facility leases and agreements within a fifty (50) mile radius of the Township.

D. *Distributed Antenna Systems (DAS)* - a network of spatially separated Antenna sites connected to a common source that provides wireless service within a geographic area or structure.

E. *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.

F. *FCC* - Federal Communications Commission.

G. *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.

H. *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 and related equipment.

I. *Persons* - individuals, corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, corporations and other entities established pursuant to statutes of the Commonwealth of Pennsylvania; provided that Person does not include or apply to the Township or to any department or agency of the Township.

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

K. *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.

L. *Tower* - A self-supporting lattice tower, guy tower, monopole, or any other pole, that is constructed primarily to support an antenna for receiving and/or transmitting a wireless signal.

M. *Tower-Based Wireless Communications Facility (Tower-based WCF)* - A Tower and its supporting antennae, including, but not limited to, self-supporting lattice towers, guy towers and monopoles. DAS hub facilities are considered to be Tower-Based WCFs.

N. *Township* - Cooke Township, Cumberland County, Pennsylvania

O. *Wireless* - transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, personal communication service (PCS), microwave, satellite, or radio signals.

P. *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.

Q. *Wireless Communications Facility Applicant (WCF Applicant)* - any person that applies for a wireless communication facility building permit, land development approval and/or permission to use the public ROW or other Township owned land or property.

Section 3
General Requirements for All Tower-Based Wireless Communications Facilities

A. The following regulations shall apply to all Tower-Based Wireless Communications Facilities:

1. 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, and National Electrical Code, as well as the accepted and responsible workmanlike industry practices of the National Association of Tower Erectors. Any Tower-Based WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Township.

2. Wind.

Any Tower-Based 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/TIA 222-E Code, as amended).

3. Height.

Any Tower-Based WCF shall be designed at the minimum functional height. All Tower-Based WCF applicants must submit documentation to the Township justifying the total height of the structure. **In no case shall a Tower-Based WCF exceed a maximum height of two hundred (200) feet.**

4. Maintenance.

The following maintenance requirements shall apply:

- a. Any Tower-Based WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
- b. Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Township's residents.
- c. All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.
- d. The Township reserves the authority to require the repainting of all Tower-Based Facilities where the painting of such facilities is not regularly maintained.

5. Radio Frequency Emissions and Interference.

- a.** 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.
- b.** No Non-Tower WCF shall interfere with public safety communications nor with the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.

6. Historic Buildings or Areas.

No Tower-Based WCF may be located on a building or structure that is listed on an historic register or is located in an historic area.

7. 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.

8. Color.

Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings unless otherwise required under paragraph 9, Aviation Safety. Applicant shall provide to the Township evidence from the Federal Aviation Administration (FAA) or other relevant regulatory entity that specific non-harmonizing paint color(s) are required.

9. Aviation Safety.

Tower-Based WCFs shall comply with all federal and state laws and regulations concerning aviation safety including timely notice to the FAA for the addition of the structure to FAA Sectional Aeronautical Charts, if applicable.

10. Lighting.

A Tower-Based WCF and associated equipment and buildings shall not be artificially lighted, except as required by law. Applicant shall provide to the Township evidence from the FAA or other relevant regulatory entity that artificial lighting is required. If such lighting is required, the applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. Lighting shall comply with Cooke Township Ordinance 2001-1 “Outdoor Lighting” and as amended.

11. Noise.

Tower-Based WCFs shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and Cooke Township Ordinance 2001-2 “Sound” and as amended, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.

12. Inspection.

No later than December of each odd-numbered year, the owner of the Tower- Based WCF shall have said WCF structure inspected by an expert who is regularly involved in the maintenance, inspection and/or erection of Tower-Based WCFs and has demonstrated his/her expertise to the satisfaction of the Township. At a minimum, this inspection shall be conducted in accordance with the Tower Inspection Class checklist provided in the Electronics Industries Association (EIA) Standard 222, Structural Standards for Steel Antenna Towers and Antenna Support Structures. A copy of said inspection report and certification of continued use shall be provided to the Township by March 1 following the inspection. Any repairs advised by report shall be effected by the owner within sixty (60) calendar days after the report is filed with the Township.

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 Tower- Based WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this Ordinance. 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. Timing of Approval.

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, including an application fee in the amount of Five Hundred Dollars (\$500). If the Township receives an application for a Tower-Based WCF and such application is not fully completed, then the Township shall promptly notify the applicant that the application is not complete and the time for the approval of such application shall not commence until a fully completed application is received by the Township.

15. Non-Conforming Uses.

Non-conforming Tower-Based WCFs which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored at their former location, but must otherwise comply with the terms and conditions of this Ordinance.

16. Removal.

In the event that use of a Tower-Based WCF is planned to be discontinued, the owner shall provide written notice to the Township of its intent to discontinue use and the date when the

use shall be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:

- a. All unused or abandoned Tower-Based WCFs and accessory facilities shall be removed within six (6) months of the cessation of operations at the site unless a time extension is approved by the Township.
- b. If the WCF and/or accessory facility is not removed within six (6) months of the cessation of operations at a site, or within any longer period approved by the Township, the WCF and accessory facilities and equipment may be removed by the Township and the cost of removal assessed against the owner of the WCF.
- c. Any unused portions of Tower-Based WCFs, including Antennas, shall be removed within six (6) months of the time of cessation of operations. The Township must approve all replacements of portions of a Tower-Based WCF previously removed.

Section 4
Tower-Based Facilities Outside the Rights-of-Way

A. The following regulations shall apply to Tower-Based Wireless Communications Facilities located outside the Rights-of-Way:

1. Development Regulations.

- a. **Prohibited in Residential Areas.** No WCF shall be located within two hundred (200) feet of any part of a residential or occupied structure except with the written consent of all owners of such a structure.
- b. **Gap in Coverage.** An applicant for a Tower-Based WCF must demonstrate that a significant gap in wireless coverage exists with respect to all wireless operators in the applicable area and that the type of WCF being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or nonexistence of a gap in wireless coverage shall be a factor in the Township's decision on an application for approval of Tower-Based WCFs.
- c. **Good Faith Effort.** Any applicant proposing construction of a new Tower-Based WCF shall demonstrate in writing that a good faith effort has been made to obtain permission to place such a Tower-Based WCF on lands or rights-of-way in or adjoining Cooke Township that are owned or under control of Federal, State, or Township governments which would meet their needs.
- d. **Sole Use on a Lot.** A Tower-Based WCF is permitted as a sole use on a lot subject to the minimum lot area and yards complying with the requirements of the Township Subdivision and Land Development Ordinance (SALDO).

- e. 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 industrial, commercial, institutional or municipal use, subject to the following conditions:
 - i.** The existing use on the property may be any permitted use in the applicable Ordinances, and need not be affiliated with the communications facility.
 - ii.** Minimum Area. The overall property shall comply with the minimum lot area and other requirements for the Township SALDO. The minimum area for the Tower-Based WCF shall be the area needed to accommodate the Tower-Based WCF and guy wires, the equipment building, security fence, and buffer planting.
 - iii.** Minimum Setbacks. The Tower-Based WCF shall be set back from all property lines, and from building structures occupied by people, the greater of a distance equal to **one hundred ten percent (110%) of the height of the structure** or to the yard setback applicable to the location in which the structure is to be located.

2. Application Procedures.

- a.** Any applicant proposing construction of a new Tower-Based WCF outside the public Rights-of-Way shall submit plans to the Township for review by the Township staff and Planning Committee and for approval by the Board of Supervisors in accordance with the requirements of the Township SALDO and other applicable Ordinances.
- b.** The applicant shall prove that it is licensed by the FCC to operate a Tower-Based WCF and that the proposed Tower-Based WCF complies with all applicable standards established by the FCC governing human exposure to electromagnetic radiation.
- c. Notice.** Upon receipt of an application for a Tower-Based WCF, the Township shall mail notice thereof to the owner or owners of every property within a one-quarter (1/4) mile radius of the site of the proposed facility.

3. Co-Location.

An application for a new Tower-Based WCF shall not be approved unless the Township finds that the wireless communications equipment planned for the proposed Tower-Based WCF cannot be accommodated on an existing or approved structure or building. Any applicant proposing construction of a new Tower-Based WCF outside the Rights-of-Way shall demonstrate to the satisfaction of the Board of Supervisors, by written submission, that a good faith effort has been made to obtain permission to mount the Tower-Based WCF Antenna on an existing building or structure. A good faith effort shall require that all owners of potentially suitable structures within a one-quarter (1/4) mile radius of the proposed Tower-Based WCF site be contacted and that the applicant certifies in writing to the Board of Supervisors that one (1) or more of the following reasons for not selecting such structure apply:

- a. The proposed WCF and related equipment would exceed the structural capacity of the existing structure, and reinforcement cannot be accomplished at reasonable cost;
 - b. The proposed WCF and related equipment would cause radio frequency interference with other existing equipment for that existing structure and the interference cannot be prevented at reasonable cost;
 - c. Such existing structure does not have adequate location, space, access or height to accommodate the proposed equipment or to allow it to perform its intended function;
- and/or,
- d. a commercially reasonable agreement cannot be reached with the owner(s) of such a structure.

4. Design Regulations.

- a. Any height extensions to an existing Tower-Based WCF shall require prior approval of the Township. The Township reserves the right to deny such requests based upon aesthetic and land use impact, or any other lawful considerations related to the character of the Township.
- b. The WCF shall employ the most current Stealth Technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. The application of the Stealth Technology chosen by the WCF applicant shall be subject to the approval of the Township.
- c. Any proposed Tower-Based WCF shall be designed structurally, electrically, and in all respects to accommodate both the WCF applicant's Antennas and comparable Antennae for future users.

5. Surrounding Environs.

- a. 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.
- b. The WCF applicant shall submit a soil report to the Township complying with the standards of Appendix I: Geotechnical Investigations, ANSI/EIA 222-E, as amended, to document and verify the design specifications of the foundation of the Tower-Based WCF, and anchors for guy wires, if used.

c. Fence/Screen.

- i.** A security fence having a minimum height of ten (10) feet shall completely surround any Tower-Based WCF, guy wires, or any building housing WCF equipment.
- ii.** A vegetative screen that consists of a row of evergreen trees planted ten (10) feet on center maximum shall be located along the perimeter of the security fence.

6. Accessory Equipment.

- a.** Ground-mounted equipment associated to, or connected with, a Tower-Based WCF shall be underground or screened from public view using Stealth Technologies, as described above.
- b.** All utility buildings and accessory structures shall be architecturally designed to blend into the environment in which they are situated and shall meet the minimum setback requirements of the Township SALDO.

7. Additional Antennae.

As a condition of approval for all Tower-Based WCFs, the WCF applicant shall provide the Township with a written commitment that it will allow other service providers to co-locate Antennae on Tower-Based WCFs where technically and commercially reasonable. The owner of a Tower-Based WCF shall not install any additional Antennae without obtaining the prior written approval of the Township.

8. Access Road.

- a.** An access road, turnaround space and parking shall be provided to ensure adequate emergency and service access to Tower-Based WCFs. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and minimize soil erosion.
- b.** Where applicable, the WCF owner shall present documentation to the Township that the property owner has granted an easement for the proposed facility. The easement shall be a minimum of twenty (20) feet in width and the access shall be paved to a width of at least ten (10) feet throughout its entire length.

9. Bond.

- a.** Prior to the issuance of a permit, the owner of a Tower-Based WCF outside the ROW shall, at its own cost and expense, obtain from a surety licensed to do business in Pennsylvania and maintain a bond or other form of security acceptable to the Township Solicitor, in an amount of \$75,000 to assure the faithful performance of the terms and conditions of this Ordinance.

- b. The bond shall provide that the Township may recover from the principal and surety any and all compensatory damages incurred by the Township for violations of this Ordinance, after reasonable notice and opportunity to cure. The owner shall file the bond with the Township and maintain the bond for the life of the respective facility.

10. Visual or Land Use Impact.

The Township reserves the right to deny an application for the construction or placement of any Tower-Based WCF based upon visual and/or land use impact, including but not limited to the goal of preserving and protecting the scenic viewshed of the Appalachian National Scenic Trail.

11. Inspection by Township.

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

Section 5 **Tower-Based Facilities in the Rights-of-Way**

- A. The following regulations shall apply to Tower-Based Wireless Communications Facilities located in the Rights-of-Way:

1. Prohibited in Residential Areas.

No Tower-Based WCF shall be located within two hundred (200) feet of the boundary of a lot in residential use.

2. Gap in Coverage.

An applicant for a Tower-Based WCF must demonstrate that a significant gap in wireless coverage exists with respect to all wireless operators in the applicable area and that the type of WCF being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or non-existence of a gap in wireless coverage shall be a factor in the Township's decision on an application for approval of Tower-Based WCFs in the ROW.

3. Notice.

Upon receipt of an application for a Tower-Based WCF, the Township shall mail notice thereof to the owner or owners of every property within a one-quarter (1/4) mile radius of the site of the proposed facility.

4. Co-location.

An application for a new Tower-Based WCF in the ROW shall not be approved unless the Township finds that the proposed wireless communications equipment cannot be accommodated on an existing structure, such as a utility pole. Any application for approval of a Tower-Based WCF shall include a comprehensive inventory of all existing towers and other suitable structures within a one-mile radius from the point of the proposed tower, unless the applicant can show to the satisfaction of the Township that a different distance is more reasonable, and shall demonstrate conclusively why an existing tower or other suitable structure cannot be utilized.

5. Time, Place and Manner.

The Township shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Tower-Based 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.

6. Equipment Location.

Tower-Based WCFs and accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the ROW as determined by the Township. In addition:

- a.** In no case shall ground-mounted equipment, walls, or landscaping be located within eighteen (18) inches of the face of the curb, or, in an area in which there are no curbs, within three (3) feet of the edge of the cartway;
- b.** Ground-mounted equipment that cannot be undergrounded 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 the tower or on any accessory equipment shall be removed at the sole expense of the owner within ten (10) business days of notice of the existence of the graffiti.
- e.** Any underground vaults related to Tower-Based WCFs shall be reviewed and approved by the Township.

7. Design Regulations.

- a. The WCF shall employ the most current Stealth Technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. The application of the Stealth Technology chosen by the WCF applicant shall be subject to the approval of the Township.
- b. Any height extensions to an existing Tower-Based WCF shall require prior approval of the Township. The Township reserves the right to deny such requests based upon aesthetic and land use impact, including but not limited to the goal of preserving and protecting the scenic viewshed of the Appalachian National Scenic Trail, or any other lawful considerations related to the character of the Township.
- c. Any proposed Tower-Based WCF shall be designed structurally, electrically, and in all respects to accommodate both the WCF applicant's Antennas and comparable Antennae for future users.
- d. **Visual or Land Use Impact.** The Township reserves the right to deny the construction or placement of any Tower-Based WCF in the ROW based upon visual and/or land use impact, including but not limited to the goal of preserving and protecting the scenic viewshed of the Appalachian National Scenic Trail.
- e. **Additional Antennae.** As a condition of approval for all Tower-Based WCFs in the ROW, the WCF applicant shall provide the Township with a written commitment that it will allow other service providers to co-locate Antennae on Tower-Based WCFs where technically and commercially reasonable. The owner of a Tower-Based WCF shall not install any additional Antennae without obtaining the prior written approval of the Township.

8. Relocation or Removal of Facilities.

Within sixty (60) days following written notice from the Township, or such longer period as the Township determines is reasonably necessary or such shorter period in the case of an Emergency, an owner of Tower-Based WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the Township, consistent with its police powers and applicable Public Utility Commission regulations, shall determine 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.

9. Compensation for ROW Use.

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

- b. Bond.** Prior to the issuance of a permit, the owner of a Tower-Based WCF in the ROW shall, at its own cost and expense, obtain from a surety licensed to do business in Pennsylvania and maintain a bond, or other form of security acceptable to the Township Solicitor, in an amount of \$50,000 to assure the faithful performance of the terms and conditions of this Ordinance. The bond shall provide that the Township may recover from the principal and surety any and all compensatory damages incurred by the Township for violations of this Ordinance, after reasonable notice and opportunity to cure. The owner shall file a copy of the bond with the Township and maintain the bond for the life of the respective facility.

Section 6

General Requirements for All Non-Tower Wireless Communications Facilities

A. The following regulations shall apply to all Non-Tower Wireless Communications Facilities:

1. Permitted in All Areas Subject to Regulations.

Non-Tower WCFs are permitted in all areas subject to the restrictions and conditions prescribed below and subject to the prior written approval of the Township.

2. Standard of Care.

Any Non-Tower WCF shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including but not limited to the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code. Any Non-Tower WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Township.

3. Wind.

Any Non-Tower WCF structures shall be designed to withstand the effects of wind according to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSFEINTIA-222-E Code, as amended).

4. Historic Buildings.

Non-Tower WCFs may not be located on a building or structure that is listed on an historic register or is located in an historic area.

5. Aviation Safety.

Non-Tower WCFs shall comply with all federal and state laws and regulations concerning aviation safety including timely notice to the FAA for the addition of the structure to FAA Sectional Aeronautical Charts, if applicable.

6. 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.

7. Radio Frequency Emissions and Interference.

- a. 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.
- b. No Non-Tower WCF shall interfere with public safety communications nor with the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.

8. Removal.

In the event that use of a Non-Tower WCF is discontinued, the owner shall provide written notice to the Township of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:

- a. All abandoned or unused WCFs and accessory facilities shall be removed within three (3) months of the cessation of operations at the site unless a time extension is approved by the Township.
- b. If the WCF or accessory facility is not removed within three (3) months of the cessation of operations at a site, or within any longer period approved by the Township, the 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.

9. Timing of Approval.

All applications for Non-Tower WCFs shall be acted upon by the Township within ninety (90) days of the receipt of a fully completed application for the approval of such WCF, including an application fee in the amount of Two Hundred Fifty Dollars (\$250). If the Township receives an application for a Non-Tower WCF and such application is not fully completed, then the Township shall promptly notify the applicant that the application is not complete and the time for the approval of such application shall not commence until a fully completed application is received by the Township.

10. 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 Ordinance. 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.

11. 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 an amount of \$25,000 to assure the faithful performance of the terms and conditions of this Ordinance. The bond shall provide that the Township may recover from the principal and surety any and all compensatory damages incurred by the Township for violations of this Ordinance, after reasonable notice and opportunity to cure. The owner shall file a copy of the bond with the Township and maintain the bond for the life of the respective facility.

Section 7
Non-Tower Wireless Facilities Outside the Rights-of-Way

A. The following regulations shall apply to Non-Tower Wireless Communications Facilities located outside the Rights-of-Way:

1. Development Regulations.

Non-Tower WCFs shall be co-located on existing structures, such as existing buildings or Tower-Based WCFs subject to the following conditions:

- a. Such WCF does not exceed the maximum height permitted in any and all relevant Township Ordinances such as the Building Ordinance and SALDO.
- b. If the WCF applicant proposes to locate the communications equipment in a separate building, the building shall comply with the applicable requirements of the Township Building Ordinance and SALDO.

2. Security Fence.

A security fence having a minimum height of ten (10) 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.

3. Procedures.

- a. Any applicant proposing a Non-Tower WCF to be mounted on a building or any other structure shall submit detailed construction and elevation drawings indicating how the Non-Tower WCF will be mounted on the structure for review by the Cooke Township Planning Committee and for submission to the Cooke Township Building Code Official.
- b. The applicant shall prove that it is licensed by the FCC to operate a Non-Tower WCF and that the proposed Non-Tower WCF complies with all applicable standards established by the FCC governing human exposure to electromagnetic radiation.

4. 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 fifteen (15) feet above the roof or parapet, whichever is higher, unless the applicant obtains a special exception from the Board of Supervisors.

- c. 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.
- d. Antennae, and their respective accompanying support structures, shall be no greater in diameter than any cross-sectional dimension than is reasonably necessary for their proper functioning.

5. 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 prior amendment to the original permit or authorization.

6. Visual or Land Use Impact.

The Township reserves the right to deny an application for the construction or placement of any Non-Tower WCF based upon visual and/or land use impact, including but not limited to the goal of preserving and protecting the scenic viewshed of the Appalachian National Scenic Trail.

7. Inspection by Township.

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

Section 8
Non-Tower Wireless Facilities in the Rights-of-Way

- A. The following regulations shall apply to Non-Tower Wireless Communications Facilities located in the Rights-of-Way:

1. Co-location.

Non-Tower WCFs in the ROW shall be co-located on existing poles, 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 (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.
- b.** Antennae and all support equipment shall be treated to match the supporting structure. WCFs and accompanying equipment shall be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.

3. Compensation for ROW Use.

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

4. Time, Place and Manner.

The Township shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Non-Tower WCFs in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the Township and the requirements of the Public Utility Code.

5. Equipment Location.

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

- a.** In no case shall ground-mounted equipment, walls, or landscaping be located within eighteen (18) inches of the face of the curb or, in an area in which there are no curbs, within three (3) feet of the edge of the cartway;
- b.** Ground-mounted equipment that cannot be undergrounded 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 the tower or on any accessory equipment shall be removed at the sole expense of the owner within ten (10) business days of notice of the existence of the graffiti.
- e. Any underground vaults related to Non-Tower WCFs shall be reviewed and approved by the Township.

6. Relocation or Removal of Facilities.

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

- a. The construction, repair, maintenance or installation of any Township or other public improvement in the Right-of-Way;
- b. The operations of the Township or other governmental entity in the Right-of-Way;
- c. Vacation of a street or road or the release of a utility easement; 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 visual and/or land use impact, including but not limited to the goal of preserving and protecting the scenic viewshed of the Appalachian National Scenic Trail.

Section 9 **Violations Applicable to All Wireless Facilities**

A. Penalties.

Any Person violating any provision of this Ordinance shall be subject, upon finding by a magisterial judge, to a penalty not exceeding Five Hundred Dollars (\$500), for each and every offense, together with attorneys' fees and costs. A separate and distinct violation shall be deemed to be committed each day on which a violation occurs or continues to occur. In addition to an action to enforce any penalty imposed by this Ordinance and any other remedy at law or in equity, the Township may apply to a Federal Court for an injunction or other appropriate relief

at law or in equity to enforce compliance with or restrain violation of any provision of this Ordinance.

B. Determination of Violation.

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

Section 10
Severability

The provisions of this Ordinance are severable, and if any provision of this Ordinance or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance.

Section 11
Penalties

Any person who shall violate or permit the violation of this Ordinance shall, upon being found liable therefor in a civil proceeding commenced by this Township, pay a civil penalty of not less than Two Hundred Dollars (\$200) and not more than One Thousand Dollars (\$1000) plus all court costs, including reasonable attorney fees, incurred by this Township. Each day that a violation shall continue past the period stated in Section 9 of this Ordinance shall be deemed and shall be taken to be a separate offense and shall be subject to an additional civil penalty.

Section 12
Inconsistent Ordinances Repealed

All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

DULY ENACTED AND ORDAINED by the Board of Supervisors of Cooke Township,
Cumberland County, Pennsylvania, this _____ day of _____, 2018.

TOWNSHIP OF COOKE
CUMBERLAND COUNTY, PENNSYLVANIA

PATRICIA A. SANGIALOSI, CHAIRMAN

EDWARD H. STRAYER, VICE CHAIRMAN

DIANE M. BATT, SUPERVISOR

ATTEST:

JANET FRANTZ, SECRETARY

*Cooke Township Wireless Communications Facilities Ordinance
Table of Contents*

	<u>Page</u>
Section 1 - General Provisions.....	1
Section 2 - Definitions.....	2
Section 3 - General Requirements for All Tower-Based WCFs.....	4
Section 4 - Tower-Based Facilities Outside Rights-of-Way.....	7
Section 5 - Tower-Based Facilities in Rights-of-Way.....	11
Section 6 - General Requirements for All Non-Tower WCFs.....	14
Section 7 - Non-Tower Facilities Outside Rights-of-Way.....	17
Section 8 - Non-Tower Facilities in Rights-of-Way.....	18
Section 9 - Violations Applicable to All Wireless Facilities.....	20
Section 10 - Severability.....	21
Section 11 - Penalties.....	21
Section 12 - Inconsistent Ordinances Repealed.....	21
Signature Block.....	22