

**LOWER MAKEFIELD TOWNSHIP,
BUCKS COUNTY,
COMMONWEALTH OF PENNSYLVANIA**

ORDINANCE NO. _____

AN ORDINANCE OF LOWER MAKEFIELD TOWNSHIP, BUCKS COUNTY, COMMONWEALTH OF PENNSYLVANIA; PROVIDING FOR THE AMENDMENT OF THE CODE OF THE TOWNSHIP OF LOWER MAKEFIELD, SPECIFICALLY THE REPEAL OF PART II, CHAPTER 168 “SMALL WIRELESS FACILITIES” AND THE ADOPTION OF PART II, CHAPTER 195 “LOWER MAKEFIELD TOWNSHIP WIRELESS COMMUNICATIONS FACILITIES ORDINANCE”; PROVIDING FOR PURPOSES AND FINDINGS OF FACT RELATED TO THE ADOPTION OF THE AMENDMENT; PROVIDING FOR DEFINITIONS; ESTABLISHING CERTAIN GENERAL AND SPECIFIC STANDARDS RELATING TO THE LOCATION, PLACEMENT, CONSTRUCTION AND MAINTENANCE OF TOWER-BASED WIRELESS COMMUNICATIONS FACILITIES, NON-TOWER WIRELESS COMMUNICATION FACILITIES, AND SMALL WIRELESS COMMUNICATION FACILITIES; PROVIDING FURTHER FOR THE REGULATION OF SUCH FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY AND OUTSIDE THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE ESTABLISHMENT OF CERTAIN APPLICATION AND ANNUAL RENEWAL FEES; PROVIDING FOR THE ENFORCEMENT OF SAID REGULATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW THEREFORE, be it, and it is hereby ORDAINED by the Board of Supervisors of Lower Makefield Township, Bucks County, Commonwealth of Pennsylvania, it is hereby ENACTED and ORDAINED by authority of the same as follows:

I. REPEAL PART II, CHAPTER 168 “SMALL WIRELESS FACILITIES”

Part II, Chapter 168 “Small Wireless Facilities” of the Code of the Township of Lower Makefield is hereby repealed.

II. AMEND PART II, CHAPTER 200, ARTICLE I, § 200-7 “DEFINITIONS”

Part II, Chapter 200, Article I, § 200-7 “Definitions” is hereby amended by adding the underlined text as follows:

COMMERCIAL COMMUNICATIONS FACILITIES

Any structure, building, or other facility designed and operated for the commercial transmission or reception of wireless communications of video, voice, data and similar transmissions, including but not limited to radio towers, omnidirectional or whip antennas, directional or panel antennas and satellite or microwave dish antennas that may be mounted on an existing building, an existing communications tower, or any structure, excluding transmission and receiving devices licensed by the Federal Communications Commission

(FCC) exclusively for private use by citizens. Commercial Communications Facilities shall not include Wireless Communications Facilities, defined herein, or any Antenna or Support Structure for the purpose of transmitting or receiving commercial mobile wireless service.

III. ADOPT PART II, CHAPTER 195, “WIRELESS COMMUNICATIONS FACILITIES ORDINANCE”

Part II of the Code of the Township of Lower Makefield (the “Code”) is hereby amended with the adoption of Chapter 195 “Wireless Communications Facilities Ordinance” as follows:

Chapter 195 – WIRELESS COMMUNICATIONS FACILITIES

§ 195.I Short Title.

This ordinance shall be known as the “Lower Makefield Township Wireless Communications Facilities Ordinance.”

§ 195.II Purposes and Findings of Fact.

1. The purpose of this ordinance is to establish uniform standards for the siting, design, permitting, maintenance, and use of wireless communications facilities in Lower Makefield Township (the “Township” or “Municipality.”) While the Municipality recognizes the importance of wireless communications facilities in providing high quality communications service to its residents and businesses, the Municipality 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 Municipality intends to:
 - a. Regulate the placement, construction and modification of Wireless Communication Facilities 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 the public and wireless telecommunications operators in accordance with federal and state laws and regulations;
 - c. Establish procedures for the design, siting, construction, installation, maintenance and removal of Tower-Based, Non-Tower Based, and Small Wireless Communications Facilities in the Municipality, 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, and other wireless communications facilities;
- e. Encourage the co-location of Wireless Communications Facilities on existing Wireless Support Structures rather than the construction of new Wireless Support Structures;
- f. Protect the public 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 Wireless Communications Facilities are abandoned or become obsolete and are no longer necessary; and
- h. Update the Township's Wireless Communications Facilities ordinance to incorporate changes in federal and state laws and regulations.

§ 195.III Definitions.

- 1. "Chapter" or "Section" is a term of reference and refers to this entire chapter or section.
- 2. Certain words and phrases used herein shall have the meanings given to them in this section, whether or not the terms are capitalized. Unless otherwise expressly stated, terms not defined in this chapter shall be construed consistent with the general definitions section of the Zoning Ordinance of the Municipality, and, if not defined therein, with their common and ordinary meaning. Except where specifically defined herein, any numbers, abbreviations, terms and words used herein shall have the meanings of common usage as set forth in the latest edition of Webster's New Collegiate Dictionary; terms of law shall have the meanings as set forth in the latest edition of Black's Law Dictionary.
- 3. Unless the context clearly indicates to the contrary, words used in the present tense include the future tense; words used in the singular number include the plural; words used in the plural number include the singular; the word "herein" means "in this chapter", "in this section", or "in this code"; and the words "this chapter" or "this section" shall mean "this chapter or section and the tables, maps, fees schedules included herein, or by reference, as enacted or subsequently amended."

4. The word “shall” is always mandatory and not permissive, except “shall” is directory when applied to public officials. The word “may” is permissive. The word “person” as used in this chapter shall be defined to include, but not be limited to, an individual, a partnership, a joint venture, a corporation, an unincorporated association, a firm or any other form of entity, contractors, subcontractors or journeymen. The words “includes” and “including” shall not limit the defined term to the specific examples, but are intended to extend the terms meaning to other instances of like kind and character. The terms “used” or “occupied” as applied to any land or building shall be construed to include the words “intended, arranged or designed to be used or occupied.”
5. The “Township” or “Municipality” is the Township of Lower Makefield, Bucks County, Commonwealth of Pennsylvania, including the “Board of Supervisors,” “Zoning Hearing Board,” and “Planning Commission” of the Township.
6. As used in this Chapter, the following terms shall have the following meanings unless the context shall otherwise require:

ACCESSORY EQUIPMENT or WIRELESS ACCESSORY EQUIPMENT

Any equipment serving or being used in conjunction with a wireless communications facility or wireless support structure. The term “Accessory Equipment” includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

ADJACENT STRUCTURES

For Small Wireless Communications Facilities, any similarly-situated infrastructure within a 250 (two hundred and fifty) foot radius that is of the same design, construction, or use as the proposed structure. Adjacent Structures may include, but are not limited to, utility poles and street light poles. The height of an Adjacent Structure is the vertical distance measured from the ground level to the highest point on a structure, not including antennae mounted on the tower and any other appurtenances.

ANTENNA or ANTENNAE or ANTENNAS

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 herein. 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.

APPLICATION or WIRELESS APPLICATION

A formal request submitted to the Municipality to site, construct, operate, remove or modify a wireless support structure, equipment compound, or a wireless telecommunications facility.

COLLOCATION

The mounting of one or more Wireless Communication Facilities, including antennae, on a pre-existing structure, or modifying a structure for the purpose of mounting or installing a Wireless Communication Facility on that structure.

COMMERCIALLY REASONABLE

The terms and pricing that are reasonably consistent with similar wireless communication facility leases and agreements within a twenty-five (25) mile radius of the Municipality.

DISTRIBUTED ANTENNA SYSTEM (DAS)

A network of spatially separated Antenna sites connected to a common source that provides wireless service within a geographic area or structure.

DECORATIVE POLE

A Municipal-owned Pole that is specially designed and placed for aesthetic purpose and on which no appurtenances or attachments, other than a small wireless communications facility, lighting, or municipal attachments have been placed or are permitted to be placed.

ELIGIBLE FACILITIES REQUEST

An application for modification of an existing wireless communications facility or base station that involves—(A) collocation of new transmission equipment; (B) removal of transmission equipment; or (C) replacement of transmission equipment.

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 Public Rights-of-Way to be unusable and result in loss of the services provide. The Municipal Government or Municipal Manager may declare an Emergency.

FCC

The Federal Communications Commission.

FRONT FAÇADE AREA

The area of the public right-of-way directly in front of a structure, identified by drawing a perpendicular line from each corner of the structure to the public rights-of-way.

HEIGHT OF A TOWER-BASED WIRELESS COMMUNICATIONS FACILITY

The vertical distance measured from the ground level, including any base pad, to the highest point on a Tower-Based Wireless Communications Facility, including antennae mounted on the tower and any other appurtenances.

HEIGHT OF A WIRELESS SUPPORT STRUCTURE

The vertical distance measured from the ground level, including any base pad, to the highest point on a communications tower, including communications antennas mounted on the tower and any other appurtenances.

MUNICIPAL or MUNICIPALITY

Lower Makefield Township, Bucks County, Commonwealth of Pennsylvania.

MODIFICATION or MODIFY

The improvement, upgrade or expansion of existing wireless communications facilities or base stations on an existing wireless support structure or the improvement, upgrade, or expansion of the wireless communications facilities located within an existing equipment compound, if the improvement, upgrade, expansion or replacement does not substantially change the physical dimensions of the wireless support structure.

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.

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 Municipality or to any department or agency of the Municipality.

POLE or POLES

Any freestanding structure located within the public rights-of-way, including but not limited to, utility poles, street lights, traffic lights and signage that may support, hold, or house Wireless Communications Facilities, Wireless Accessory Equipment, or Related Equipment.

PRIOR APPROVED DESIGN

A design for a Small Wireless Communications Facility that has been reviewed and deemed to be in accordance with the design requirements herein and approved for construction by the Municipality.

PROFESSIONAL ENGINEER (P.E.)

An active, registered Professional Engineer (P.E.), licensed as such by the Commonwealth of Pennsylvania, who is regularly involved in the development, construction, operation, maintenance, inspection, and removal of wireless communications facilities.

PUBLIC RIGHTS-OF-WAY (ROW)

The surface of and space above and below any real property in the Municipality in which the Municipality has a regulatory interest, or interest as a trustee for the public, as such interests now or hereafter exist, including, but not limited to: the total extent of land reserved or dedicated as a Street Way/Alley/Lane for Public or Private purpose; all Streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other Public place, area or property under the control of the Municipality; 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 Municipality. The phrase “in the Right(s)-of-Way” means in, on, over, along, above and/or under the Right(s)-of-Way.

RELATED EQUIPMENT

Any piece of equipment related to, incidental to, or necessary for, the operation of a wireless communications facility. By way of illustration, not limitation, Related Equipment includes generators and base stations.

SHOT CLOCK TIMEFRAMES

The reasonable periods of time for the Municipality to act on duly filed wireless siting applications. The Shot Clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was duly filed. (*See*, 47 C.F.R. § 1.6003).

SMALL WIRELESS COMMUNICATIONS FACILITY (SMALL WCF)

Consistent with 47 CFR § 1.1312(e)(2), are facilities that meet each of the following conditions:

- (1) The facilities—
 - (i) are mounted on structures 50 feet or less in height including their antennas as defined in 47 CFR § 1.1320(d), or
 - (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

- (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 CFR § 1.1320(d)), is no more than three cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;;
- (4) The facilities do not require antenna structure registration under 47 CFR Part 17;
- (5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and
- (6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b).

SMALL WIRELESS FACILITIES DEPLOYMENT ACT (SWFDA)

Pennsylvania Small Wireless Facilities Deployment Act (2021 Pa. ALS 50, 2021 Pa. Laws 50, 2021 Pa. HB 1621)

STEALTH TECHNOLOGY

Camouflaging methods applied to wireless communications facilities and accessory equipment 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.

STRUCTURE

Any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land.

SUBSTANTIAL CHANGE or SUBSTANTIALLY CHANGE

A modification to an existing wireless communications facility substantially changes the physical dimensions of a tower or wireless support structure if it meets any of the following criteria:

- (1) For wireless communications facilities outside the public rights-of-way, it increases the height of the facility by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna, not to exceed 20 feet, whichever is greater; for wireless

communications facilities in the rights-of-way, it increases the height of the facility by more than 10% or 10 feet, whichever is greater;

- (2) For communications towers outside the public rights-of-way, it protrudes from the edge of the tower by more than 20 feet, or more than the width of the tower structures at the level of the appurtenance, whichever is greater; for those wireless communications facilities in the public rights-of-way, it protrudes from the edge of the structure by more than six feet;
- (3) It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
- (4) It entails any excavation or deployment outside the current site of the communications tower; or
- (5) It does not comply with conditions associated with prior approval of construction or modification of the wireless communications facility unless the noncompliance is due to an increase in height, increase in width, or addition of cabinets.

TOWER

A self-supporting lattice tower, guyed tower, monopole, or any other pole, that is constructed primarily to support an antenna for receiving and/or transmitting Wireless service.

TOWER-BASED WIRELESS COMMUNICATIONS FACILITY (TOWER-BASED WCF)

A Tower and its supporting antennae, including, but not limited to, self-supporting lattice towers, guyed towers and monopoles. Distributed antennae system hub facilities are considered to be Tower-Based WCFs.

UNDERGROUND DISTRICT

A zoning district, or sub-area thereof, including, but not limited to, planned developments, in which utility installations are required to be installed underground on a non-discriminatory basis.

WIRELESS

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

WIRELESS BROADBAND COLLOCATION ACT (WBCA)

Pennsylvania Wireless Broadband Collocation Act (53 P.S. § 11702.1 et seq.).

WIRELESS ANTENNA

An apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of wireless service and any commingled information services.

WIRELESS COMMUNICATIONS FACILITY (WCF)

The antennas, 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.

WIRELESS COMMUNICATIONS FACILITY APPLICANT (WCF APPLICANT)

Any person that applies for a wireless communication facility building permit, zoning approval and/or permission to use the Public Rights-of-Way or other Municipal-owned land or property.

WIRELESS SUPPORT STRUCTURE or SUPPORT STRUCTURE

For the purposes of wireless communications, any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land, upon or to which wireless communications facilities may be attached, if approved by the Municipality.

§ 195.IV Requirements Applicable to all Tower-Based Wireless Communications Facilities.

The following requirements shall apply to all Tower-Based Wireless Communications Facilities:

1. Procedures.
 - a. Any applicant proposing construction of a new Tower-Based WCF shall submit detailed plans to the Zoning Officer or his or designee for review and determination by the Board of Supervisors, as a conditional use permit in accordance with Chapter 200, Article XXII, § 200-90, et seq., and subject to the restrictions and conditions prescribed herein, as well as the prior written approval of the Municipality.
 - 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.

2. Development Requirements. Tower-Based Wireless Communications Facilities shall be developed in accordance with the following requirements:

a. Permitted Subject to Conditions. Any Tower-Based WCF that is either not mounted on any existing Support Structure or is more than twenty-five (25) feet higher than the Support Structure on which it is mounted is permitted in certain zoning districts as a conditional use permit, subject to the restrictions and conditions prescribed herein and subject to the prior written approval of the Municipality. The Municipality may grant a conditional use permit in accordance with the procedures and requirements of this ordinance and the Code of the Township of Lower Makefield.

(i.) Siting. Tower-Based WCF shall be permitted only in the following districts, or sub-portions thereof, by conditional use permit, in accordance with the requirements and prohibitions of this ordinance, the Code of the Township of Lower Makefield, and any other applicable ordinance or law:

(A.) All Tower-Based WCF shall be permitted only in the following districts, or sub-portions thereof, subject to the following siting priority schedule, by conditional use permit, in accordance with the requirements and prohibitions of this ordinance, Code of the Township of Lower Makefield, and any other applicable ordinance or law:

- (1.) District 1;
 - I. Area 1;
 - II. Area 2;
- (2.) District 2; and
- (3.) District 3.

- (ii.) Coverage or Capacity. An applicant for a Tower-Based WCF must demonstrate that a gap in wireless coverage or capacity exists and that the type of WCF and siting being proposed is the least intrusive means by which to fill the gap in wireless coverage or capacity. The existence or non-existence of a gap in wireless coverage or capacity shall be a factor in the Municipality's decision on an application for approval of Tower-Based WCFs.

- (iii.) Collocation. An applicant for a Tower-Based WCF must demonstrate there is not suitable space on existing wireless service facilities or other wireless service facility sites or on another sufficiently tall structure where the intended wireless service facility can be accommodated and function as required by its construction permit or license without unreasonable modification.

- (iv.) Site Plan. An applicant for a Tower-Based WCF must submit a full site plan to the Township Zoning Officer or their designee which shall include, but shall not be limited to, the following documentation and materials:
 - (A.) Written authorization from the property owner of the proposed Tower-Based WCF site that such facility may be sited on the property; written authorization from the property owner consenting to the making of the application to the Township for special exception use; written acknowledgment from the property owner of being bound by this Chapter, the conditions of any site plan approval authorized by the Township, and all other requirements of the Code of the Township of Lower Makefield.

(B.) A site plan that is drawn to scale and shows the following features: property boundaries; any tower guy wire anchors and other apparatus; existing and proposed Support Structures; scaled elevation view; access road(s) location and surface material; parking area; fences; power source(s); location and content of (any or warning) signs; exterior lighting specifications; landscaping plan; land elevation contours; existing land uses surrounding the site; proposed transmission building and/or other accessory uses with details; elevations; and proposed use(s).

(C.) A written report that includes, but is not limited to, the following documentation and materials: information describing the Tower height and design; a cross-section of the Tower; engineering specifications detailing construction of the Tower, base and guy wire anchorage; information describing the proposed painting and lighting schemes; information describing the Tower's capacity, including, but not limited to, the number and type of antennas that it can accommodate; radio frequency coverage including, but not limited to, scatter plot analysis and the input parameters for the scatter plot analysis. All Tower structure information shall be certified by a registered Professional Engineer (P.E.) licensed by the Commonwealth of Pennsylvania; and all wireless telecommunications data shall be certified by an appropriate wireless telecommunications professional.

(D.) A written report, titled "Cost of Wireless Facilities Removal"

certified by a registered Professional Engineer (P.E.) licensed by the Commonwealth of Pennsylvania, detailing the total cost of removing and disposing of the Tower, Antenna, and all related facilities.

- (E.) All other uses ancillary to the Tower-Based WCF and associated equipment (including, but not limited to, a business office, maintenance depot, or vehicle storage) are prohibited from the Tower-Based WCF site unless otherwise permitted in the zoning district in which the Tower-Based WCF site is located.
- (F.) Where the Tower-Based WCF is located on a property with another principal use, the applicant shall prove that the owner of the property has granted an easement for the proposed facility and that vehicular access is provided to the facility.
- (G.) An inventory of its existing Wireless Communications Facilities, including, but not limited to, all Tower-Based, Non-Tower, and Small WCF, that are either sited within the Municipality or within one-quarter (1/4) mile of the border thereof. Such inventory shall include specific information about the location, height, design, and use of each Wireless Communications Facility. The Municipality may share such information with other applicants applying for site plan approvals or special exception use permits under this chapter, or other organizations seeking to locate Wireless Communication Facilities within the Municipality; provided, however, that the Municipality is not, by sharing such information, in any way

representing or warranting that such sites are available or suitable.

- (H.) An evaluation of the need for additional buffer yard treatments.
- (I.) Material terms of the ground lease or property lease, including, but not limited to, the length of time of the lease.
- (J.) A financial accounting of all costs and fees, both expended and expected, for providing wireless services to customers through the desired wireless communications facility.
- (K.) All documents, spreadsheets, files, maps, data, communications, information or other materials of any type regarding, pertaining, or connected to any claim, assertion, or proffer of evidence by the applicant that the desired wireless communications facility will densify a wireless network, introduce new services, or otherwise improve service capabilities.
- (L.) All documents, spreadsheets, files, maps, data, communications, information or other materials of any type regarding, pertaining, or connected to any claim, assertion, or proffer of evidence by the applicant that the Municipality is prohibiting or having the effect of prohibiting the provision of personal wireless services.
- (M.) Other information deemed to be necessary by the Municipality to assess compliance with this section, or any other requirement under the Code of the Township of Lower

Makefield, local law, ordinance, or regulation, state law or regulation, or federal law or regulation.

- b. Underground District. Tower-Based WCF shall not be located in, or within three hundred (300) feet of, an area or sub-area in which utilities are required to be located underground, including, but not limited to, planned developments.
- c. Prohibited in Open Space and Conserved Lands. Tower-Based WCFs shall not be located within an Open Space or Conserved Land. Tower-Based WCFs shall not be located within a Conservation District.
- d. Prohibited in Environmentally-Sensitive Areas. No Tower-Based WCF shall be located in, or within one-thousand (1000) feet of, the habitat of a threatened or endangered animal species.
- e. Sole Use on a Lot. A Tower-Based WCF may be permitted as a sole use on a lot subject to the minimum lot area and yards complying with the requirements for the applicable zoning district.
- f. 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 residential, industrial, commercial, institutional or municipal use, subject to the following conditions:
 - (i.) Existing Use. The existing use on the property may be any permitted use in the applicable district, and need not be affiliated with the Wireless Communications Facility.
 - (ii.) Minimum Lot Area. The minimum lot shall comply with the requirements for the applicable district and shall be the

area needed to accommodate the Tower-Based WCF and guy wires, the equipment building, security fence, and buffer planting.

- g. Minimum Setbacks for Towers. If a new Tower is constructed (as opposed to mounting the Antenna on an existing Tower or Wireless Support Structure), the minimum distance between the Tower and any property line or Public Right-of-Way line shall be equal to the height of the Tower, or the distance of the corresponding minimum yard setback (front, side and rear) for the zoning district in which the lot is located and any other additional requirements for that zoning district, whichever is greater. Guy wires and accessory facilities must also satisfy the minimum zoning district setback requirements.
 - h. Minimum Setbacks and Buffers for Accessory Structures. All Tower-Based WCF installations shall comply with the accessory structure setback, buffer, lot, and yard requirements in the Code of the Township of Lower Makefield, and any applicable local ordinance or law, and shall be mounted in the rear yard or on the roof unless reception is inhibited or visibility increased.
 - i. Separation. A Tower-Based WCF with a height greater than ninety (90) feet shall not be located within one-quarter (1/4) of a mile from any existing Tower-Based WCF with a height greater than ninety (90) feet.
3. Timing of Determination. All applications for Tower-Based WCFs shall be acted upon within one hundred-fifty (150) days following the receipt of both, (1) a fully complete application for the approval of such Tower-Based WCF and (2) a fully paid, non-refundable application fee in an amount specified by the Fee Schedule for Wireless Communications Facilities (WCF). If the Municipality receives an application for a Tower-Based WCF and such application is not fully completed, then the Municipality shall notify the applicant in writing within thirty (30) days that the application is not complete and the time for the approval of such

application shall not commence until a fully complete application is received by the Municipality. Unpaid applications are incomplete and not duly filed with the Township.

4. Notice. No later than thirty (30) days following the submission of a fully complete application for a Tower-Based WCF and the scheduling of the public hearing (if required), the Applicant shall mail notice to all owners of every property within a five hundred (500) foot radius of the proposed wireless communications facility. The Applicant shall provide proof of mailing of the notification to the Municipality within fifteen (15) days of completion of notification. If a public hearing is required, notice of any hearing before the Township Board of Supervisors shall be published in a newspaper circulating within the Municipality at least ten (10) days prior to the date of said hearing; any mailing of notices that may be required by the Township Board shall be completed at least ten (10) days before such hearing and the proof of mailing shall be provided to the Municipality at least (5) five days before such hearing. The preparation and cost of publication and mailing of any notice required for such hearing shall be at the cost and expense of the applicant. Proof of mailing to all required property owners shall be demonstrated by providing the Municipality with a certificate or proof of mailing (United States Postal Service Form 3817 or 3877).

5. Collocation.

- a. An application for a new Tower-Based WCF shall not be approved unless the Municipality finds that the wireless communications equipment planned for the proposed Tower-Based WCF cannot be accommodated on an existing or approved Structure or Wireless Support Structure.
- b. Any applicant proposing construction of a new Tower-Based WCF outside the Public Rights-of-Way shall demonstrate to the satisfaction of the Municipality, by written submission, that a good faith effort has been made to obtain permission to mount the Tower-Based WCF Antenna on an existing Structure or Wireless Support Structure. The Township may deny any application to construct a new Tower if the applicant has not made a good faith effort to collocate the antenna on an existing Tower, Structure, or other Wireless Support Structure. A good faith effort shall require that all

owners of potentially suitable Towers, Structures, or Wireless Support 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 Zoning Officer or their designee that one (1) or more of the following reasons for not selecting such structure apply:

- (i.) The proposed WCF and related equipment would exceed the structural capacity of the existing structure and its reinforcement cannot be accomplished at reasonable cost;
- (ii.) 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;
- (iii.) 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
- (iv.) A commercially reasonable agreement cannot be reached with the owner(s) of such structure.

6. Standard of Care. Any Tower-Based WCF shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including but not limited to, the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, National Electrical Code, as well as the accepted and responsible workmanlike industry practices of the Communications Infrastructure Contractors Association (formerly, 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, health, or safety of any person or damage any property in the Municipality.

7. Wind and Ice. All Tower-Based WCF structures shall be designed to withstand the effects of wind and ice according to the standards promulgated by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended). All Tower-Based WCF structures shall also be designed and constructed to withstand the wind and ice loads for the place of installation in accordance with the Pennsylvania Uniform Construction Code.
8. Height. Any Tower-Based WCF shall be designed and constructed at the minimum functional height. All Tower-Based WCF applicants must submit documentation to the Municipality justifying the total height of the structure. In no case shall a Tower-Based WCF exceed a maximum height of one-hundred eighty (180) feet.
9. Public Safety Communications. No Tower-Based WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
10. 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 public.
 - c. All maintenance activities shall utilize best practices for maintaining operational continuity and preventing failures and accidents.
 - d. The Municipality reserves the authority to require the timely cleaning, repainting, or repair of a Tower-Based WCF, including, but not limited to, the Tower, Accessory Equipment, and any other area where the exterior surface or appearance of such facility is not regularly or properly maintained, cleaned, repainted, or repaired.

- e. In the event of defacement, vandalism, or any other form of harm or damage, the Municipality reserves the authority to require the immediate cleaning, repainting, or repair of a Tower-Based WCF, including, but not limited to, the Tower, Accessory Equipment, and any other area where the exterior surface or appearance of such facility is defaced, vandalized, harmed, or otherwise damaged.
 - f. Tower-Based WCF operators bear sole financial responsibility for all maintenance or emergency repair costs.
11. Radio Frequency Emissions. No Tower-Based 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. The owner or operator of such Tower-Based WCF shall submit proof of compliance with any applicable radio frequency emissions standards to the Zoning Officer, or his or her designee, on an annual basis, or within thirty (30) days following a written request by the Township. A Tower-Based WCF generating radio frequency emissions in excess of the standards and regulations of the FCC shall be considered an Emergency. The Municipality reserves the authority to revoke the permit of any Tower-Based WCF that (1) fails to timely submit annual proof of compliance; (2) fails to timely respond to Township’s written request for compliance; or (3) is generating radio frequency emissions in excess of the standards and regulations of the FCC.
12. Historic Buildings and Districts. No Tower-Based WCF may be located in or within one thousand (1000) feet of any historic or preservation district, property, building or Structure that is listed on either the National or Pennsylvania Registers of Historic Places, or eligible to be so listed, or is included in the official historic structures list maintained by the Municipality, or so designated as a Landmark.
13. Signs. All Tower-Based WCFs shall post a sign, reasonable in size, in a readily visible location identifying the name and phone number of a party to contact in the event of an Emergency. No other signage or display is permitted.

14. Lighting. Tower-Based WCF shall not be artificially lighted, except as required by ordinance, regulation, or law. Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings. If lighting is required, the applicant shall provide to the Township a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations.
15. Emergency Power Supplies. Any Tower-Based WCF shall be constructed with both primary and secondary sources of electric power. The secondary source of electric power shall be an electric generator, located on-site and equipped with sufficient power reserves to supply continuous electric power to operate the Tower-Based WCF and its antennae for a period of ten (10) days. The secondary source of electric power shall not be used, except in Emergency situations involving the loss of the primary power source. The WCF operator may activate the electric generator on weekdays, between 9:00 AM and 5:00 PM, excluding federal holidays, to test the secondary power source or to perform routine maintenance on the electric generator, provided that the WCF operator deliver written notice to the Zoning Officer, or his or her designee, at least five (5) business days prior to such electric generator testing or electric generator maintenance.
16. Noise. Tower-Based WCFs shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law, the Code of the Township of Lower Makefield, and any other local law, ordinance, or regulation, except as provided with respect to the use of an electrical generator in this chapter, where such noise standards may be exceeded on a temporary basis only.
17. Aviation Safety. Tower-Based WCFs shall comply with all federal and state laws and regulations concerning aviation safety.
18. Inspection Report Requirements. No later than the first day of December of each odd-numbered year, or within thirty (30) days following a written request by the Municipality, the owner of the Tower-Based WCF shall have said Tower-Based WCF structure inspected by a Pennsylvania-licensed and registered Professional Engineer (P.E.) who is regularly involved in the maintenance, inspection, and/or erection of Tower-Based WCFs. 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 Zoning Officer, or his or her designee, following the inspection. Any repairs advised by the report shall be effected by the owner no later than sixty (60) calendar days after the report is filed with the Municipality. No later than thirty (30) calendar days upon completion of aforesaid repairs, the Tower-Based WCF structure shall again be inspected in accordance with the parameters and requirements described herein. In the event an inspection reveals an Emergency, the Tower-Based WCF operator shall immediately notify the Township Manager, or his or her designee, of the Emergency and shall immediately act to repair or resolve the Emergency.

19. Retention of Consultants and 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. Upon written demand, the applicant and/or owner of the WCF shall timely reimburse the Township for all reasonable costs of the Township's consultant(s) and/or expert(s) in providing expert evaluation and consultation in connection with these activities.
- a. For reasonable costs incurred in reviewing and evaluating the application for approval, the costs shall be due upon application and the Township shall not issue a permit until the applicant and/or owner of the WCF has timely reimbursed the Township.
 - b. For reasonable costs incurred in reviewing and evaluating any potential violations of the terms and conditions of this Ordinance, the costs shall be due upon written demand to the WCF operator and failure to timely reimburse the Township shall be considered as substantial evidence of a material violation of the conditions of the permit, for which the Township may revoke the permit pursuant to this ordinance.
20. 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. An operator of a damaged or destroyed non-

conforming Tower-Based WCF must obtain a building permit in conformance with the Township Code prior to repairing or restoring the non-conforming Tower-Based WCF. The Township shall not finalize a building permit where the non-conforming Tower-Based WCF does not otherwise comply with the terms and conditions of this ordinance.

21. Removal. In the event that use of a Tower-Based WCF is planned to be discontinued, the owner shall provide written notice to the Zoning Officer, or his or her designee, at least ninety (90) days in advance of the discontinuance date, of its intent to discontinue use and the date when the use shall be discontinued.
- a. All unused or abandoned Tower-Based WCFs and accessory facilities shall be removed, and the location restored, within six (6) months of the cessation of operations at the site unless a time extension is approved by the Municipality.
 - b. Upon removal of the facility, the Tower-Based WCF owner and/or operator shall repair and restore the site, including, but not limited to, the premises and the surrounding environs, to alleviate the aesthetic impact. The Municipality reserves the right to specify minimum standards of repair and restoration of a location based upon aesthetic and land use impact, or any other lawful considerations related to the character, operation, or functionality of the Municipality.
 - c. If the Tower-Based WCF, accessory facilities, and Wireless Support Structure is not removed, or the location completely restored, within six (6) months of the cessation of operations at a site, or within any longer period approved by the Municipality, the WCF accessory facilities, and Wireless Support Structure may be removed by the Municipality, and the location restored, and the cost of removal and/or restoration assessed against the owner of the WCF. Any cost to the Municipality for such removal and/or restoration, which is not paid under the owner's bond, shall constitute a lien on the tax lot on which the Tower-Based WCF is situated and shall be collected in the same manner as a Municipal tax on real property.

- d. Any unused portions of Tower-Based WCFs, including, but not limited to, Antennas, equipment, and Wireless Support Structure shall be removed within six (6) months of the time of cessation of operations and such location(s) restored. The Municipality must approve all replacements of portions of a Tower-Based WCF previously removed.
22. Public Rights-of-Way. No Tower-Based wireless communications facility shall be located, in whole or in part, within the Public Rights-of-Way.
23. Eligible Facilities Request.
- a. Applicants proposing a modification to an existing Tower-Based WCF that does not Substantially Change the dimensions of the underlying Wireless Support Structure shall be required only to obtain a building permit from the Municipality.
 - b. In order to be considered for such permit, the Tower-Based WCF Applicant must submit a building permit application to the Municipality in accordance with the Code of the Township of Lower Makefield and any other applicable local ordinance, law, or regulation.
 - c. In order to be considered for such permit, the Tower-Based WCF Applicant must also submit a certified engineering report from a registered and active Professional Engineer (P.E.), licensed by the Commonwealth of Pennsylvania, who is regularly involved in the maintenance, inspection, and/or modification of Tower-Based WCFs.
 - d. The timing of determination for Tower-Based WCF Operators proposing a modification to an existing Tower-Based WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure shall be as follows:
 - (i) Within thirty (30) calendar days of the date that an application for a modification to an existing Tower-Based WCF that does not Substantially Change the dimensions of the underlying

Structure or Wireless Support Structure is filed with the Township, the Municipality shall notify the applicant in writing if the application is incomplete and shall advise of any information that may be required to complete such application.

(ii.) An application for a modification to an existing Tower-Based WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure shall be deemed complete when all documents, information and fees required by the Municipality's regulations, laws and forms pertaining to the location, modification or operation of Wireless Communications Facilities are submitted by the Applicant to the Municipality. In case of incompleteness of the application, the Municipality 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 complete application is received by the Municipality.

(iii.) Within sixty (60) days of receipt of a complete application a modification to an existing Tower-Based WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure, the Township shall make a final decision on whether to approve or deny the application and shall notify the Tower-Based WCF Applicant in writing of such decision.

e. Within thirty (30) days of completion of any modification to an existing Tower-Based WCF that does not Substantially Change the dimensions of the underlying Wireless Support Structure, the Applicant shall have said modifications inspected by a Pennsylvania-licensed and registered and active Professional Engineer (P.E.) who is regularly involved in the maintenance, inspection, and/or modification of Tower-Based WCFs. A copy of said inspection report and certification of continued use shall be provided to the Zoning Officer, or his or her

designee, following the inspection. Any repairs advised by the report shall be completed by the owner no later than sixty (60) calendar days after the report is filed with the Municipality. No later than thirty (30) calendar days upon completion of aforesaid repairs, the Tower-Based WCF shall again be inspected in accordance with the parameters and requirements described herein.

24. Design Regulations:

- a. Any height extensions to an existing Tower-Based WCF shall require prior approval of the Municipality. The Municipality 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 Municipality.
- b. The Tower-Based WCF shall employ the most current and effective 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 Municipality.
- c. Any proposed Tower-Based WCF shall be designed and constructed in all respects, including, but not limited to, structurally and electronically, to accommodate both the Tower-Based WCF applicant's Antennae and comparable Antennae for future users.
- d. All utilities that are extended to the site of the Tower-Based WCF shall be placed underground.

25. Surrounding Environs:

- a. The Tower-Based WCF operator shall ensure that the existing vegetation, trees and shrubs located within proximity to the Tower-Based WCF structure shall be preserved to the maximum extent possible.
- b. The Tower-Based WCF applicant shall include in its site plan submission pursuant to this chapter a soil report to the Municipality complying with the

standards of Appendix I: Geotechnical Investigations, ANSI/EIA/TIA-222, as amended, to document and verify the design specifications of the foundation of the Tower-Based WCF, and anchors for guy wires, if used.

26. Fence/ Screen:

- a. A security fence having a height of ten (10) feet and a locking gate security mechanism shall completely surround any Tower-Based WCF, guy wires, or any building housing WCF equipment. The materials selected for the security fence shall be determined by the Municipality, and shall not include any barbed wire or chain link material.
- b. An evergreen screen shall be required to surround the site and the selection of evergreen trees shall be determined by the Municipality or conform to the approved tree genus and species enumerated in the Code of the Township of Lower Makefield, or any other local ordinance, law, or regulation. The screen can be either a hedge (planted three feet on center maximum) or a row of evergreen trees (planted ten (10) feet on center maximum). The evergreen screen shall be a minimum height of six (6) feet at planting and shall grow to a minimum of fifteen (15) feet at maturity.
- c. Existing mature tree growth, vegetation, and natural land forms on and around the site shall be preserved to the maximum extent possible. In some cases, such as Tower-Based WCF sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

27. Accessory Equipment:

- a. Wireless Accessory Equipment associated to, or connected with, a Tower-Based WCF shall be underground or else ground-mounted and screened from public view using Stealth Technologies, as described above.
- b. All utility buildings and accessory structures shall be architecturally designed and constructed to blend into

the environment in which they are situated and shall meet the minimum setback requirements of the underlying zoning district. The architectural design and construction of such utility buildings and accessory structures shall be subject to the approval of the Municipality.

28. Additional Antennae. As a condition of approval for all Tower-Based WCFs, the Applicant shall provide the Municipality with a written commitment that it will allow other service providers to collocate 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 Municipality.
29. Access Road. An access road, turnaround space and parking shall be provided to ensure adequate emergency and service access to the Tower-Based WCF. 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. The access road and parking shall comply with the construction and storm water regulations of the Township. Where applicable, the WCF owner shall present documentation to the Municipality 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 improved to a width of at least ten (10) feet with a dust-free, all-weather surface throughout its entire length.
30. Equipment Location. The location of any Tower-based WCF or Accessory Equipment shall not cause any physical or visual obstruction to pedestrian or vehicular traffic, safety hazards to pedestrians and/or motorists, or otherwise inconvenience public use of the public rights-of-way, as determined by the Municipality. In addition:
 - a. Accessory equipment, walls, screens, or landscaping shall not be located within 18 inches of the face of the curb.
 - b. Accessory equipment, including, but not limited to electrical meter cabinets, 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 Municipality.

31. Bond. Prior to the issuance of a conditional use permit, a Tower-Based WCF applicant 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. The bond shall provide that the Municipality may recover from the principal and surety any and all compensatory damages incurred by the Municipality for violations of this Ordinance, including, but not limited to, legal fees and expenses in enforcing the ordinance, after reasonable notice and opportunity to cure. The owner shall file the bond with the Municipality and maintain the bond for the life of the respective facility. The owner of the Tower-Based WCF shall maintain a bond in the following amounts:
- a. An amount of \$75,000 (seventy-five thousand) dollars to assure the faithful performance of the terms and conditions of this Ordinance.
 - b. An amount determined by the Township Board based on engineering estimates, to cover the cost of removing and disposing of the Antenna, Tower, and related facilities. The Township Board may consider, but shall not be required to rely upon, applicant's written report, titled "Cost of Wireless Facilities Removal" certified by a registered Professional Engineer (P.E.) licensed by the Commonwealth of Pennsylvania.
 - c. From time to time, but no more frequently than once during any five (5) year period, the Township Board, at its sole discretion, may adjust the amount of the bond and require the submission of a new or modified bond based on engineering estimates of the cost of the removal and disposal of the Tower, Antenna, and associated facilities. The Wireless Communications Facility operator may submit a written report, titled "Adjusted Cost of Tower-Based Wireless Facilities Removal" certified by a registered Professional Engineer (P.E.) licensed by the Commonwealth of Pennsylvania and containing engineering estimates of the cost of the removal and disposal of the Tower, Antenna, and associated facilities to the Township Board. The Township Board may consider, but shall

not be required to rely upon, operator's written report in determining the adjusted bond amounts.

32. Visual or Land Use Impact. The Municipality 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, based upon regulatory factors including, but not limited to, Municipal ordinances, protection of natural resources, preservation of scenic vistas, and protections set forth in the Municipality's Comprehensive Plan and any related planning documents.
33. Graffiti. Any graffiti on the Tower-Based WCF, including, but not limited to, the Wireless Support Structure or on any accessory equipment, shall be removed at the sole expense of the owner within ten (10) days of notification by the Municipality.
34. Inspection by Municipality. The Municipality reserves the right to inspect any Tower-Based WCF to ensure compliance with the provisions of this Ordinance and any other provisions of the Code of the Township of Lower Makefield or state or federal law or regulation. The Municipality and/or its agents shall have the authority to enter the property upon which a Tower-Based WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance. In the event of an Emergency, the Township reserves the authority to enter the property upon which a Tower-Based WCF is located at any time and without prior notice.

§ 195.V Requirements Applicable to all Non-Tower Wireless Facilities.

The following requirements shall apply to all Non-Tower Wireless Communications Facilities:

1. 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 to the Zoning Officer, or his or her designee, for review and determination by the Board of Supervisors, as a conditional use permit in accordance with Chapter 200, Article XXII, § 200-90, et seq., and subject to the restrictions and conditions prescribed herein, as well as the prior written approval of the Municipality.

- 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.

2. Development Requirements. Non-Tower Wireless Communications Facilities shall be collocated on existing structures, such as existing buildings or wireless support structures, subject to the following conditions:

- a. Permitted Subject to Conditions. Subject to the restrictions and conditions prescribed herein, Non-Tower WCFs are permitted in certain zoning districts by conditional use permit upon review and approval by the Board of Supervisors, in accordance with the procedures and requirements of this ordinance and the Code of the Township of Lower Makefield.

- (i.) Siting. Non-Tower WCF permitted only in the following zoning districts, and sub-portions thereof, by conditional use permit, subject to the requirements and prohibitions of this ordinance:

- (A.) All Non-Tower WCF are permitted in Lower Makefield Township only in the following zoning districts, or sub-portions thereof, by conditional use permit, in the following priority siting order, in accordance with the requirements and prohibitions of this ordinance, Code of the Township of Lower Makefield, and any other applicable law or ordinance:

- (1.) District 1;
 - I. Area 1;
 - II. Area 2;
and

III. Area 3.

(2.) District 2; and

(3.) District 3

(ii.) Height. Any Non-Tower WCF shall not exceed the maximum height permitted in the applicable zoning district.

(iii.) Equipment Building. If the Non-Tower WCF applicant proposes to locate the communications equipment in a separate building, the building shall comply with the minimum requirements for the applicable zoning district.

(iv.) Fencing. A security fence having a height of ten (10) feet and a locking gate security mechanism, 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.

(v.) Residential Attachment Prohibited. Non-Tower WCFs shall not be located on single-family detached residences, single-family attached residences, or any accessory residential structure.

3. Site Plan. An applicant for a Non-Tower WCF must submit a full site plan to the Zoning Officer, or his or her designee, which shall include:

a. Written authorization from the Wireless Support Structure owner of the proposed Non-Tower WCF site that such facility may be sited on the Wireless Support Structure. Written authorization from the Wireless Support Structure owner consenting to the making of the application to the Municipality for special exception use. Written acknowledgment

from the Wireless Support Structure owner of being bound by this chapter, the conditions of any site plan approval authorized by the Municipality, and all other requirements of the Code of the Township of Lower Makefield.

- b. A site plan that is drawn to scale and shows the following features: property boundaries; existing and proposed structures; existing and proposed use(s); existing and proposed antennae; existing or proposed electrical power source; and scaled elevation view.
- c. A written report including, but not limited to: information describing the Antenna height and design; a cross-section of the Wireless Support Structure; engineering specifications detailing attachment of the Antenna to the Wireless Support Structure; information describing the proposed painting and lighting schemes; radio frequency coverage including, but not limited to, scatter plot analysis and the input parameters for the scatter plot analysis; all Wireless Support Structure information to be certified by a registered Professional Engineer (P.E.) licensed by the Commonwealth of Pennsylvania; and wireless telecommunications data to be certified by an appropriate wireless telecommunications professional.
- d. Certification by a registered Professional Engineer (P.E.) licensed by the Commonwealth of Pennsylvania that the proposed Non-Tower WCF installation will not exceed the structural capacity of the Wireless Support Structure considering wind, ice, and any other loads and stresses associated with the Non-Tower WCF.
- e. A written report, titled “Cost of Non-Tower Wireless Facilities Removal” certified by a registered Professional Engineer (P.E.) licensed by the Commonwealth of Pennsylvania, detailing the total cost of removing and disposing of antenna and related facilities.
- f. An inventory of its existing wireless communications facilities, including, but not limited to, all Tower-Based, Non-Tower, and Small WCF,

that are either sited within the Township or within one-quarter (1/4) mile of the border thereof. Such inventory shall include specific information about the location, height, design, and use of each wireless communications facility. The Municipality may share such information with other applicants applying for site plan approvals or special exception use under this Chapter or other organizations seeking to locate antennas within the Municipality; provided, however, that the Municipality is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

- g. Material terms of the support structure lease or property lease, including, but not limited to, the length of time of the lease.
- h. A financial accounting of all costs and fees, both expended and expected, for providing wireless services to customers through the desired wireless communications facility.
- i. All documents, spreadsheets, files, maps, data, communications, information or other materials of any type regarding, pertaining, or connected to any claim, assertion, or proffer of evidence by the applicant that the desired wireless communications facility will densify a wireless network, introduce new services, or otherwise improve service capabilities.
- j. All documents, spreadsheets, files, maps, data, communications, information or other materials of any type regarding, pertaining, or connected to any claim, assertion, or proffer of evidence by the applicant that the Municipality is prohibiting or having the effect of prohibiting the provision of personal wireless services.
- k. Other information deemed to be necessary by the Municipality to assess compliance with this section, or any other requirement under the Code of the Township of Lower Makefield, state law, or federal law or regulation.

4. Eligible Facilities Request.

- a. Applicants proposing a modification to an existing Non-Tower WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure shall be required only to obtain a building permit from the Municipality.
- b. In order to be considered for such permit, the Non-Tower WCF Applicant must submit a building permit application to the Municipality in accordance with the Code of the Township of Lower Makefield.
- c. In order to be considered for such permit, the Non-Tower WCF Applicant must also submit a certified engineering report from a registered and active Professional Engineer (P.E.), licensed by the Commonwealth of Pennsylvania, who is regularly involved in the maintenance, inspection, and/or modification of Non-Tower WCFs.
- d. The timing of determination for Non-Tower WCF Operators proposing a modification to an existing Non-Tower WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure shall be as follows:
 - (i.) Within thirty (30) calendar days of the date that an application for a modification to an existing Non-Tower WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure is filed with the Township, the Municipality shall notify the applicant in writing if the application is incomplete and shall advise of any information that may be required to complete such application.
 - (ii.) An application for a modification to an existing Non-Tower WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure shall be deemed complete when all documents, information and fees required by the Municipality's regulations, ordinances, laws and forms pertaining to the location,

modification or operation of Wireless Communications Facilities are submitted by the Applicant to the Municipality. In case of incompleteness of the application, the Municipality 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 complete application is received by the Municipality.

(iii.) Within sixty (60) days of receipt of a complete application a modification to an existing Non-Tower WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure, the Township shall make a final decision on whether to approve or deny the application and shall notify the Non-Tower WCF Applicant in writing of such decision.

e. Within thirty (30) days of completion of any modification to an existing Non-Tower WCF that does not Substantially Change the dimensions of the underlying Wireless Support Structure, the Applicant shall have said modifications inspected by a Pennsylvania-licensed and registered and active Professional Engineer (P.E.) who is regularly involved in the maintenance, inspection, and/or modification of Non-Tower WCFs. A copy of said inspection report and certification of continued use shall be provided to the Township Zoning Officer following the inspection. Any repairs advised by the report shall be completed by the owner no later than sixty (60) calendar days after the report is filed with the Municipality. No later than thirty (30) calendar days upon completion of aforesaid repairs, the Non-Tower WCF shall again be inspected in accordance with the parameters and requirements described herein.

5. Visual or Land Use Impact. The Municipality 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, based upon regulatory factors including, but not limited to, Municipal ordinances, protection of natural resources, preservation of scenic

vistas, and protections set forth in the Municipality's Comprehensive Plan and any related planning documents.

6. Historic Buildings and Districts. A Non-Tower WCF may not be located on, or within one thousand (1000) feet of, any historic or preservation district, property, or on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or eligible to be so listed, or is included in the official historic structures list maintained by the Municipality, or so designated as a Landmark.
7. Prohibited in Open Space and Conserved Lands. Non-Tower WCFs shall not be located within an Open Space or Conserved Land.
8. Timing of Determination. All applications for Non-Tower WCFs shall be acted upon by the Municipality within ninety (90) days following the receipt of both, (1) a fully complete application for the approval of such WCF and (2) a fully paid, non-refundable application fee in an amount specified by the Fee Schedule for Wireless Communications Facilities (WCF). If the Municipality receives an application for a Non-Tower WCF and such application is not fully completed, then the Municipality shall notify the applicant in writing within thirty (30) days that the application is not complete and the time for the approval of such application shall not commence until a fully complete application is received by the Municipality. Unpaid applications are incomplete and not duly filed with the Township.
9. Retention of Consultants and 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 Non-Tower WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this Ordinance. Upon written demand, the applicant and/or owner of the WCF shall timely reimburse the Township for all reasonable costs of the Township's consultant(s) and/or expert(s) in providing expert evaluation and consultation in connection with these activities.
 - a. For reasonable costs incurred in reviewing and evaluating the application for approval, the costs shall be due upon application and the Township shall not issue a permit until the applicant and/or owner of the WCF has timely reimbursed the Township.
 - b. For reasonable costs incurred in reviewing and evaluating any potential violations of the terms and

conditions of this Ordinance, the costs shall be due upon written demand to the WCF operator and failure to timely reimburse the Township shall be considered as substantial evidence of a material violation of the conditions of the permit, for which the Township may revoke the permit pursuant to this Ordinance.

10. Bond. Prior to the issuance of a conditional use 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. The bond shall provide that the Municipality may recover from the principal and surety any and all compensatory damages incurred by the Municipality for violations of this Ordinance, after reasonable notice and opportunity to cure. The owner shall file the bond with the Municipality and maintain the bond for the life of the respective facility. The owner of the Non-Tower WCF shall maintain a bond in the following amounts:
 - a. An amount of \$75,000 (seventy-five thousand) dollars to assure the faithful performance of the terms and conditions of this Ordinance.
 - b. An amount determined by the Township Board based on engineering estimates, to cover the cost of removing and disposing of the Antenna and related facilities. The Township Board may consider, but shall not be required to rely upon, applicant's written report, titled "Cost of Non-Tower Wireless Facilities Removal" certified by a registered Professional Engineer (P.E.) licensed by the Commonwealth of Pennsylvania.
 - c. From time to time, but no more frequently than once during any five year period, the Township Board, at its sole discretion, may adjust the amount of the bond and require the submission of a new or modified bond based on engineering estimates of the cost of the removal and disposal of the Antenna and associated facilities. The Wireless Communications Facility operator may submit a written report, titled "Adjusted Cost of Non-Tower Wireless Facilities Removal" certified by a registered Professional Engineer (P.E.) licensed by the Commonwealth of Pennsylvania and containing engineering estimates

of the cost of the removal and disposal of the Antenna and associated facilities to the Township Board. The Township Board may consider, but shall not be required to rely upon, operator's written report in determining the adjusted bond amounts.

11. Design Regulations.

- a. Non-Tower WCFs shall employ Stealth Technology and be treated to match the supporting Structure or Wireless Support Structure in order to minimize aesthetic impact. The application of the Stealth Technology chosen by the WCF applicant shall be subject to the approval of the Municipality.
- 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 Non-Tower WCF applicant obtains a variance.
- c. All Non-Tower WCF applicants must submit documentation to the Municipality justifying the total height of the Non-Tower support Structure or Wireless Support 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.

12. 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 or safety of any person or damage any property in the Municipality.

13. Wind and Ice. All Non-Tower WCF structures shall be designed and constructed to withstand the effects of wind and ice 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, as amended). All Non-Tower WCF structures shall also be designed and constructed to withstand the wind and ice loads for the place of installation in accordance with the Pennsylvania Uniform Construction Code.

14. Public Safety Communications. No Non-Tower WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
15. 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. The owner or operator of such Non-Tower WCF shall submit proof of compliance with any applicable radio frequency emissions standards to the Township Zoning Officer on an annual basis, or within thirty (30) days following a written request by the Township. A Non-Tower WCF generating radio frequency emissions in excess of the standards and regulations of the FCC shall be considered an Emergency. The Municipality reserves the authority to revoke the permit of any Non-Tower WCF that (1) fails to timely submit annual proof of compliance; (2) fails to timely respond to Township’s written request for compliance; or (3) is generating radio frequency emissions in excess of the standards and regulations of the FCC.
16. Aviation Safety. Non-Tower WCFs shall comply with all federal and state laws and regulations concerning aviation safety.
17. Inspection Report Requirements. No later than the first day of December of each odd-numbered year, or within thirty (30) days following a written request by the Municipality, the owner of the Non-Tower WCF shall have said Non-Tower WCF inspected by a Pennsylvania-licensed and registered Professional Engineer (P.E.) who is regularly involved in the maintenance, inspection, and/or modification of Non-Tower WCFs. A copy of said inspection report and certification of continued use shall be provided to the Zoning Officer, or his or her designee, following the inspection. Any repairs advised by the report shall be effected by the owner no later than sixty (60) calendar days after the report is filed with the

Municipality. No later than thirty (30) calendar days upon completion of aforesaid repairs, the Non-Tower WCF shall again be inspected in accordance with the parameters and requirements described herein. In the event an inspection reveals an Emergency, the Non-Tower WCF operator shall immediately notify the Township Manager of the Emergency and shall immediately act to repair or resolve the Emergency.

18. 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 Municipality's residents.
- c. All maintenance activities shall utilize best practices for maintaining operational continuity and preventing failures and accidents.
- d. The Municipality reserves the authority to require the cleaning, repainting, or repair, of a Non-Tower WCF, including, but not limited to, the Antennae, Accessory Equipment, and any other area where the exterior surface or appearance of such facility is not regularly or properly maintained, cleaned, repainted, or repaired.
- e. In the event of defacement, vandalism, or any other form of harm or damage, the Municipality reserves the authority to require the immediate cleaning, repainting, or repair of a Non-Tower WCF, including, but not limited to, the Antennae, Wireless Support Structure, Accessory Equipment, and any other area where the exterior surface or appearance of such facility is defaced, vandalized, harmed, or otherwise damaged.
- f. Non-Tower WCF operators bear sole financial responsibility for all maintenance or emergency repair costs.

19. Upgrade, Replacement, Modification.

- a. The removal and replacement of Non-Tower WCFs and/or accessory equipment for the purpose of upgrading, replacing, modifying, or repairing the Non-Tower WCF is permitted, so long as such upgrade, replacement, modification, or repair does not increase the overall size of the Non-Tower WCF or the number of Antennae.
 - b. Any material modification to a Non-Tower WCF shall require a prior amendment to the original permit or authorization.
20. Removal. In the event that use of a Non-Tower WCF is discontinued, the owner shall provide written notice to the Municipality of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:
- a. All abandoned or unused Non-Tower WCFs and accessory facilities shall be removed, and the location restored, within three (3) months of the cessation of operations at the site unless a time extension is approved by the Municipality.
 - b. Upon removal of the facility, the Non-Tower WCF owner and/or operator shall repair and restore the site, including, but not limited to, the premises and the surrounding environs, to alleviate the aesthetic impact. The Municipality reserves the right to specify minimum standards of repair and restoration of a location based upon aesthetic and land use impact, or any other lawful considerations related to the character, operation, or functionality of the Municipality
 - c. If the Non-Tower WCF, accessory facilities, and Wireless Support Structure is not removed, or the location completely restored within three (3) months of the cessation of operations at a site, or within any longer period approved by the Municipality, the WCF and/or related facilities and equipment may be removed by the Municipality, and the location restored, and the cost of removal and/or restoration assessed against the owner of the WCF. Any cost to the Municipality for such removal and/or restoration which is not paid under

the owner's bond shall constitute a lien on the tax lot on which the Non-Tower WCF is situated and shall be collected in the same manner as a Municipal tax on real property.

- d. Any unused portions of Non-Tower WCFs, including, but not limited to, Antennas, equipment, and Wireless Support Structure shall be removed within three (3) months of the time of cessation of operations and such location(s) restored. The Municipality must approve all replacements of portions of a Non-Tower WCF previously removed.

- 21. Graffiti. Any graffiti on the Non-Tower WCF, including, but not limited to, the Antennae, the Wireless Support Structure, or on any communications equipment or accessory equipment, shall be removed at the sole expense of the owner within ten (10) days of notification by the Municipality.

- 22. Public Rights-of-Way. No Non-Tower WCF shall be located, in whole or in part, within the Public Rights-of-Way.

- 23. Signs. All Non-Tower 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. No other signage or display is permitted.

- 24. Lighting. Non-Tower WCF shall not be artificially lighted, except as required by ordinance or law. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations.

- 25. Emergency Power Supplies. Where practicable, Non-Tower WCF shall be constructed with both primary and secondary sources of electric power. If included, the secondary source of electric power shall be an electric generator, located on-site and equipped with sufficient power reserves to supply continuous electric power to operate the Non-Tower WCF and its antennae for a period of ten (10) days. The secondary source of electric power shall not be used, except in emergency situations involving the loss of the primary power source. The WCF operator may activate the electric generator to test the secondary power source or to perform routine maintenance on the electric generator, provided that the WCF operator deliver written notice to the Zoning Officer, or his or her

designee, at least five (5) business days prior to such electric generator testing or electric generator maintenance.

26. Noise. Non-Tower WCFs shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law, the Code of the Township of Lower Makefield, and any other local law, ordinance, or regulation, except as provided with respect to the use of an electrical generator in this chapter, where such noise standards may be exceeded on a temporary basis only.
27. Inspection by Municipality. The Municipality reserves the right to inspect any Non-Tower WCF to ensure compliance with the provisions of this Chapter and any other provisions found within the Code of the Township of Lower Makefield or state or federal law or regulation. The Municipality and/or its agents shall have the authority to enter the property upon which a Non-Tower WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

§ 195.VI Requirements Applicable to all Small Wireless Communications Facilities.

The following requirements shall apply to Small Wireless Communications Facilities:

1. Development Requirements.
 - a. Small WCF are permitted only by approval from the Zoning Officer, or his or her designee, subject to the requirements of this section and generally applicable permitting as required by local laws, ordinances, and regulations, the Code of the Township of Lower Makefield, this chapter, and the Pennsylvania Small Wireless Facilities Deployment Act.
 - b. Small WCF located within areas that require utilities to be located underground shall be collocated on existing or replacement Wireless Support Structures. No new Wireless Support Structure may be installed for the purpose of supporting a Small WCF within planned developments, zoning districts, or sub-portions thereof, that require utilities to be located underground.
 - c. Small WCF in the public ROW requiring the installation of a new Wireless Support Structure shall

not be located directly in front of any building entrance or exit.

- d. All Small WCF shall comply with the applicable requirements of the Americans with Disabilities Act and all applicable streets and sidewalks requirements in the Code of the Township of Lower Makefield, and any other local law, ordinance, or regulation.
- e. Small WCFs shall not be located or attached on single-family detached residences, single-family attached residences, or any accessory residential structure.
- f. Small WCFs shall not be located in any Municipal Park, or in any land owned by the Township or authorized by the Township to be designated as a Municipal Park or open space, whether or not developed.

2. Procedures.

- a. Any applicant proposing a Small WCF shall submit an application to the Zoning Officer, or his or her designee, for site plan review and administrative determination.
- b. The applicant shall prove that it is licensed by the FCC to operate a Small WCF and that the proposed Small WCF complies with all applicable standards established by the FCC governing human exposure to electromagnetic radiation.
- c. The applicant shall provide a written report, titled “Cost of Small Wireless Facilities Removal and Disposal” certified by a registered and active Professional Engineer (P.E.) licensed by the Commonwealth of Pennsylvania, detailing the total cost of removing and disposing of the Small WCF and all related facilities, and restoring the public rights-of-way in as reasonably good condition as before the existence of the facility.

3. Site Plan.

- a. An applicant for a Small WCF must submit a full site plan to the Zoning Officer, or his or her designee, which shall include, but shall not be limited to, the following documentation and materials:
- (i.) A site plan that is drawn to scale and shows the following features: property and rights-of-way boundaries; existing and proposed structures; existing and proposed use(s); existing and proposed antennae; existing or proposed electrical power source; and scaled elevation view.
 - (ii.) A written report including, but not limited to: information describing the Antenna height and design; a cross-section of the Wireless Support Structure; engineering specifications detailing attachment of the Antenna to the Wireless Support Structure; information describing the proposed painting and lighting schemes; radio frequency coverage including, but not limited to, scatter plot analysis and the input parameters for the scatter plot analysis; all Wireless Support Structure information to be certified by a registered Professional Engineer (P.E.) licensed by the Commonwealth of Pennsylvania; and wireless telecommunications data to be certified by an appropriate wireless telecommunications professional.
 - (iii.) Certification by a registered Professional Engineer (P.E.) licensed by the Commonwealth of Pennsylvania that the proposed Small WCF installation will not exceed the structural capacity of the Wireless Support Structure considering wind, ice, and any other loads and stresses associated with the Non-Tower WCF.
 - (iv.) A written report, titled “Cost of Small Wireless Facilities Removal” certified by a registered Professional Engineer (P.E.) licensed by the Commonwealth of Pennsylvania, detailing the total cost of removing and disposing of antenna and related facilities.

- (v.) An inventory of its existing wireless communications facilities, including, but not limited to, all Tower-Based, Non-Tower, and Small WCF, that are either sited within the Township or within one-quarter (1/4) mile of the border thereof. Such inventory shall include specific information about the location, height, design, and use of each wireless communications facility. The Municipality may share such information with other applicants applying for site plan approvals or special exception use under this Chapter or other organizations seeking to locate antennas within the Municipality; provided, however, that the Municipality is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- (vi.) Material terms of the pole attachment agreement or lease, including, but not limited to, the length of time of the lease.
- (vii.) A financial accounting of all costs and fees, both expended and expected, for providing wireless services to customers through the desired wireless communications facility.
- (viii.) All documents, spreadsheets, files, maps, data, communications, information or other materials of any type regarding, pertaining, or connected to any claim, assertion, or proffer of evidence by the applicant that the desired wireless communications facility will densify a wireless network, introduce new services, or otherwise improve service capabilities.
- (ix.) All documents, spreadsheets, files, maps, data, communications, information or other materials of any type regarding, pertaining, or connected to any claim, assertion, or proffer of evidence by the applicant that the Municipality is prohibiting or having the effect of prohibiting the provision of personal wireless services.

- (x.) Other information deemed to be necessary by the Township to assess compliance with this section, or any other requirement under the Code of the Township of Lower Makefield, state law, or federal law or regulation.

4. Timing of Determination. All applications for Small WCFs shall be acted upon by the Municipality within a specific number of days following the receipt of both, (1) a fully complete application for the approval of such Small WCF and (2) a fully paid, non-refundable application fee in an amount specified by the Fee Schedule for Wireless Communications Facilities (WCF). Unpaid applications are incomplete and not duly filed with the Township. The timing of determination for Small WCF applicants shall be as follows:

- a. Within ten (10) calendar days of the date that an application for a Small WCF is filed with the Township Zoning Officer or their designee, the Municipality shall notify the WCF Applicant in writing if an application is incomplete and shall advise the WCF Applicant of any information that may be required to complete such application.
- b. Within sixty (60) days of receipt of a complete application for Collocation of a Small WCF on a preexisting Wireless Support Structure, the Township's Manager or their designee shall make a final decision on whether to approve or deny the application and shall notify the WCF Applicant in writing of such decision.
- c. Within ninety (90) days of receipt of a complete application for a Small WCF requiring the installation of a new Wireless Support Structure, the Township Zoning Officer or their designee shall make a final decision on whether to approve the application and shall notify the WCF Applicant in writing of such decision.

5. Basis of Denial of Application. The Township retains the authority to deny an Application to construct, place, modify, or operate a Small WCF in the Public Rights-of-Way if any of the following apply:

- a. The Small WCF materially interferes with the safe operation of traffic control equipment, sight lines or

clear zones for transportation or pedestrians or compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327) or similar Federal or State standards regarding pedestrian access or movement.

- b. The Small WCF fails to comply with the Code of the Township of Lower Makefield, or any other applicable local ordinance or regulation.
 - c. The Small WCF fails to comply with the requirements specified under any applicable state law or regulation.
 - d. The Small WCF fails to comply with the requirements specified under federal law or regulation.
 - e. The Applicant fails to submit a written report by a Pennsylvania-licensed and registered Professional Engineer (P.E.), who is regularly involved in the maintenance, inspection, and/or modification of Small WCFs, demonstrating that the Small WCF in the Public Rights-of-Way will comply with all applicable FCC regulations.
6. Documentation of Denial in Writing. Within the applicable Shot Clock timeframes established by this Ordinance, the Municipality shall document the basis for an Application denial, in writing, including, but not limited to, the specific provisions of applicable codes on which the denial was based, and shall send the documentation to the Applicant within five (5) business days following the denial of an Application to construct, place, modify or operate a Small WCF in the Public Rights-of-Way.
7. Prohibited in Designated Flood Zones. Small WCF shall not be located in, or within one hundred (100) feet of a designated Flood Zone or Floodway Area.
8. Eligible Facilities Request.
- a. Small WCF Operators proposing a modification to an existing Small WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure shall be required only to obtain a building permit from the Municipality.

- b. In order to be considered for such permit, the Small WCF Operator must submit a building permit application to the Municipality in accordance with the Code of the Township of Lower Makefield.
- c. In order to be considered for such permit, the Small WCF Applicant must also submit a certified engineering report from a registered and active Professional Engineer (P.E.), licensed by the Commonwealth of Pennsylvania, who is regularly involved in the maintenance, inspection, and/or modification of Small WCFs.
- d. The timing of determination for Small WCF Operators proposing a modification to an existing Small WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure shall be as follows:
 - (i.) Within thirty (30) calendar days of the date that an application for a modification to an existing Small WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure is filed with the Township's Zoning Officer or their designee, the Municipality shall notify the applicant in writing if the application is incomplete and shall advise of any information that may be required to complete such application.
 - (ii.) An application for a modification to an existing Small WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure shall be deemed complete when all documents, information and fees required by the Municipality's regulations, laws, ordinances, and forms pertaining to the location, modification or operation of Wireless Communications Facilities are submitted by the Applicant to the Municipality. In case of incompleteness

of the application, the Municipality 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 complete application is received by the Municipality.

(iii.) Within sixty (60) days of receipt of a complete application a modification to an existing Small WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure, the Township Zoning Officer or their designee shall make a final decision on whether to approve or deny the application and shall notify the WCF Applicant in writing of such decision.

e. Within thirty (30) days of completion of any modification to an existing Small WCF that does not Substantially Change the dimensions of the underlying Wireless Support Structure, the Applicant shall have said modifications inspected by a Pennsylvania-licensed and registered and active Professional Engineer (P.E.) who is regularly involved in the maintenance, inspection, and/or modification of Small WCFs. A copy of said inspection report and certification of continued use shall be provided to the Township Zoning Officer following the inspection. Any repairs advised by the report shall be completed by the owner no later than sixty (60) calendar days after the report is filed with the Municipality. No later than thirty (30) calendar days upon completion of aforesaid repairs, the Small WCF shall again be inspected in accordance with the parameters and requirements described herein.

9. Non-Conforming Wireless Support Structures. Small WCF shall be permitted to collocate upon non-conforming Tower-Based WCF and other non-conforming structures. Collocation of WCF upon existing Tower-Based WCF is encouraged even if the Tower-Based WCF is non-conforming as to use within a zoning district.

10. Application Fees. The Municipality may assess appropriate and reasonable application fees directly related to the Municipality's actual costs in reviewing and processing the application for approval of a Small WCF, as well as related inspection, monitoring, and related costs, subject to the limitations in this section, in amounts specified by the Fee Schedule for Wireless Communications Facilities (WCF).
11. Standard of Care. Any Small WCF shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including, but not limited to, the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, National Electrical Code, the Pennsylvania Uniform Construction Code, or to the industry standard applicable to the structure. 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 Municipality.
12. Historic Buildings and Districts. No Small WCF may be located on, or within one thousand (1000) feet of, any historic or preservation district, property, building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or eligible to be so listed, or is included in the official historic structures list maintained by the Municipality, or so designated as a Landmark.
13. Wind and Ice. All Small WCF shall be designed and constructed to withstand the effects of wind and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended), or to the industry standard applicable to the structure. All Small WCF structures shall also be designed and constructed to withstand the wind and ice loads for the place of installation in accordance with the Pennsylvania Uniform Construction Code.
14. Radio Frequency Emissions. A Small WCF shall not, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including, but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended. The owner or operator of such Small WCF shall submit proof of compliance with any applicable radio frequency emissions

standards to the Township Zoning Officer on an annual basis, or within thirty (30) days following a written request by the Township. A Small WCF generating radio frequency emissions in excess of the standards and regulations of the FCC shall be considered an Emergency. The Municipality reserves the authority to revoke the permit of any Small WCF that (1) fails to timely submit annual proof of compliance; (2) fails to timely respond to Township's written request for compliance; or (3) is generating radio frequency emissions in excess of the standards and regulations of the FCC.

15. Time, Place and Manner. The Municipality shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Small WCF in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations.
16. Accessory Equipment. Small WCF and accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, create safety hazards to pedestrians and/or motorists, or to otherwise inconvenience public use of the ROW as determined by the Municipality.
17. Graffiti. Any graffiti on the Small WCF, including, but not limited to, the Antennae, the Structure, the Wireless Support Structure, or any Accessory Equipment, shall be removed at the sole expense of the owner within ten (10) days of notification by the Municipality.
18. Maintenance. The following maintenance requirements shall apply:
 - a. Any Small 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 public.
 - c. All maintenance activities shall utilize nothing less than the best available technology and practices for preventing failures and accidents.
 - d. The Municipality reserves the authority to require the cleaning, repainting, or repair, of a Small WCF, including, but not limited to, the Antennae, Wireless Support Structure, Accessory Equipment, and any other area where the exterior surface or appearance

of such facility is not regularly or properly maintained, cleaned, repainted, or repaired.

- e. In the event of defacement, vandalism, or any other form of harm or damage, the Municipality reserves the authority to require the immediate cleaning, repainting, or repair of a Small WCF, including, but not limited to, the Antennae, Wireless Support Structure, Accessory Equipment, and any other area where the exterior surface or appearance of such facility is defaced, vandalized, harmed, or otherwise damaged.
 - f. Small WCF operators bear sole financial responsibility for all maintenance or emergency repair costs. The financial responsibility of Small WCF operators for maintenance or emergency repair costs is exclusive and independent from the Municipality's costs in managing and maintaining the Public Rights-of-Way.
19. Design Standards. All Small WCF in the Municipality shall comply with the requirements of the Small Wireless Communications Facility Design Manual, a copy of which is on file with the Municipality.
20. Collocation Requirement. An application for a Small WCF with a new Wireless Support Structure in the Public Rights-of-Way shall not be approved unless the Municipality finds that the proposed Small WCF cannot be accommodated on an existing Structure or Wireless Support Structure, such as a utility pole. Any application for approval of a Small WCF shall include a comprehensive inventory of all existing Towers and other suitable Structures or Wireless Support Structures within a one-half (1/2) mile radius from the point of the proposed Small WCF, unless the applicant can show to the satisfaction of the Municipality that a different distance is more reasonable, and shall demonstrate conclusively why an existing Tower, Structure, or other suitable Wireless Support Structure cannot be utilized.
21. Relocation or Removal of Facilities. Within ninety (90) days following written notice from the Municipality, or such longer period as the Municipality determines is reasonably necessary or such shorter period in the case of an Emergency, an owner of a Small WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Small WCF when the

Municipality, 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 by the Municipality or other public improvement in the Public Rights-of-Way;
- b. The operations of the Municipality 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 Municipality.

22. Noise. Small WCFs shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law, the Code of the Township of Lower Makefield, and any other local law, ordinance, or regulation.

23. Height. Any Small WCF shall not exceed the maximum height permitted in the applicable zoning district, or sub-portion thereof.

24. Retention of Consultants or Experts. The Municipality may hire any consultant(s) and/or expert(s) necessary to assist the Municipality in reviewing and evaluating the application for approval of the Small 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 Small WCF shall reimburse the Municipality for all reasonable costs of the Municipality's consultant(s) and/or expert(s) in providing expert evaluation and consultation in connection with these activities, provided that such costs are a reasonable approximation of costs incurred, the costs are reasonable, and the costs are non-discriminatory.

25. Repair to Public Property. Whenever the operator of Small WCF or any of its agents, including, but not limited to, any contractor or subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any public or municipal property, the same shall be replaced and the surface restored in as reasonably good condition as before the disturbance within ten (10) business days of the completion of the disturbance, weather permitting. Upon failure of the Small WCF operator to comply within the time specified and the Township having notified the Small WCF operator in writing of the

restoration and repairs required, the Township may cause proper restoration and repairs to be made and the expense of such work shall be paid by the Small WCF operator upon demand by the Township.

26. Bond. Prior to the issuance of a permit, the owner of a Small 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. The bond shall provide that the Municipality may recover from the principal and surety any and all compensatory damages incurred by the Municipality for violations of this Ordinance, after reasonable notice and opportunity to cure. The owner shall file the bond with the Municipality and maintain the bond for the life of the respective facility. The owner of the Small WCF shall maintain a bond in the following amounts:
- a. An amount of \$75,000 (seventy-five thousand) dollars to assure the faithful performance of the terms and conditions of this Ordinance.
 - b. An amount determined by the Township Board based on engineering estimates, to cover the cost of removing and disposing of the Antenna and related facilities, and restoring the public rights-of-way. The Township Board of Supervisors may consider, but shall not be required to rely upon, applicant's written report, titled "Cost of Small Wireless Facilities Removal and Disposal" certified by a registered and active Professional Engineer (P.E.) licensed by the Commonwealth of Pennsylvania.
 - c. From time to time, but no more frequently than once during any five year period, the Township Board, at its sole discretion, may adjust the amount of the bond and require the submission of a new or modified bond based on engineering estimates of the cost of the removal and disposal of the Antenna and associated facilities, and restoring the public rights-of-way. The Wireless Communications Facility operator may submit a written report, titled "Adjusted Cost of Small Wireless Facilities Removal and Disposal" certified by a registered and active Professional Engineer (P.E.) licensed by the Commonwealth of Pennsylvania and containing engineering estimates of the cost of the removal and disposal of the Antenna and associated facilities, and restoring the public rights-of-way to the

Township Board. The Township Board may consider, but shall not be required to rely upon, operator's written report in determining the adjusted bond amounts.

27. Inspection Report Requirements. No later than the first day of December of each odd-numbered year, or within thirty (30) days following a written request by the Municipality, the owner of the Small WCF shall have said Small WCF inspected by a Pennsylvania-licensed and registered Professional Engineer (P.E.) who is regularly involved in the maintenance, inspection, and/or modification of Small WCFs. A copy of said inspection report and certification of continued use shall be provided to the the Zoning Officer, or his or her designee, following the inspection. Any repairs advised by the report shall be effected by the owner no later than sixty (60) calendar days after the report is filed with the Municipality. No later than thirty (30) calendar days upon completion of aforesaid repairs, the Small WCF shall again be inspected in accordance with the parameters and requirements described herein. In the event an inspection reveals an Emergency, the Small WCF operator shall immediately notify the Township Manager of the Emergency and shall immediately act to repair or resolve the Emergency.
28. Reimbursement for ROW Use. In addition to permit fees as described in this section, every Small WCF in the ROW is subject to the Municipality's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the ROW. Such compensation for ROW use shall be directly related to the Municipality'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 Municipality. The owner of each Small WCF shall pay an annual fee to the Municipality, in an amount specified by the Fee Schedule for Wireless Communications Facilities (WCF), to compensate the Municipality for the Municipality's costs incurred in connection with the activities described above. Such fees shall comply with the applicable requirements of the Federal Communications Commission. The Municipality reserves the authority to revoke the permit of any Small WCF that fails to timely remit payment of any Small WCF Right-of-Way fee to the Municipality.
29. Removal. In the event that use of a Small WCF is discontinued, the owner shall provide written notice to the Municipality 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 Small WCFs and accessory facilities shall be removed, and the location restored, within one (1) month of the cessation of operations at the site unless a time extension is approved by the Municipality.
 - b. Upon removal of the facility, the Small WCF owner and/or operator shall repair and restore the site, including, but not limited to, the premises and the surrounding environs, to alleviate the aesthetic impact. The Municipality reserves the right to specify minimum standards of repair and restoration of a location based upon aesthetic and land use impact, or any other lawful considerations related to the character, operation, or functionality of the Municipality.
 - c. If the Small WCF, accessory facilities, and Wireless Support Structure is not removed, or the location completely restored within one (1) month of the cessation of operations at a site, or within any longer period approved by the Municipality, the WCF and/or related facilities and equipment may be removed by the Municipality, and the location restored, and the cost of removal and/or restoration assessed against the owner of the WCF. Any cost to the Municipality for such removal and/or restoration shall be paid under the owner's bond.
 - d. Any unused portions of Small WCFs, including, but not limited to, Antennas, equipment, and Wireless Support Structure shall be removed within one (1) month of the time of cessation of operations and such location(s) restored. The Municipality must approve all replacements of portions of a Small WCF previously removed.
30. Inspection by Municipality. The Municipality reserves the right to inspect any Small WCF to ensure compliance with the provisions of this Ordinance and any other provisions of the Code of the Township of Lower Makefield or state or federal law or regulation. The Municipality and/or its agents shall have the authority to enter the property or public rights-of-way upon which a Small WCF is located

at any time, upon reasonable notice to the operator, to ensure such compliance.

§ 195.VII Requirements Applicable to All Wireless Facilities.

The following requirements shall apply to all Wireless Communications Facilities:

1. Municipal Property. Nothing in this Ordinance shall be deemed to create any offer, right, or entitlement to use Municipal property for the construction or operation of Tower-Based WCF, Non-Tower WCF, Small WCF, Wireless Support Structures, or related facilities. Any such Tower-Based WCF, Non-Tower WCF, Small WCF, Wireless Support Structure, or related facility proposed to be sited on property owned, leased, or otherwise controlled by Township may be exempt from the requirements of this Ordinance. The Township Board retains the right to require applicants to obtain site plan approval from it in accordance with the requirements of this Ordinance. No Tower-Based WCF, Non-Tower WCF, Small WCF, Wireless Support Structures, or related facilities may be constructed or installed on Municipal property or Public Rights-of-Way until a license or lease agreement authorizing such Wireless Facility has been approved by the Township Board.
2. Pedestrian Access and Movement. No Wireless Communications Facility, Accessory Facility, or Wireless Support Structure shall materially interfere with the safe operation of traffic control equipment, sight lines or clear zones for transportation or pedestrians or compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327) or similar Federal or State or Local standards regarding pedestrian access or movement.
3. Time, Place, and Manner. The Municipality shall determine the time, place, and manner of construction, maintenance, repair and/or removal of all Wireless Communications Facilities and associated facilities in the Public Rights-of-Way. The Municipality's considerations in reaching determination on the time, place, and manner of activity in the Public Rights-of-Way shall include, but shall not be limited to, public safety, traffic management, physical burden on the Public Rights-of-Way, timeliness of completion, and costs.
4. Repairing Damaged Public Property. If any permitted Wireless Communications Facility operator, or any agent, including, but not limited to, any contractor or sub-contractor, damages any public or municipal property in the Township, the permitted Wireless Communications Facility operator will repair or replace, as applicable, the property to its prior condition. Repairs or replacements will be completed within fifteen (15) days of the occurrence of the damage. If the permitted Wireless Communications Facility operator or agent reasonably requires a longer period to complete the repairs or replacement, the permitted wireless communications facility operator or agent and the Township will mutually agree on the revised timeline for the repair or

replacement. Upon failure of the permitted Wireless Communications Facility operator or agent to comply within the time specified and the Township having notified the permitted Wireless Communications Facility operator in writing of the restoration and repairs required, the Township may cause proper restoration and repairs to be made. All reasonable expenses incurred by the Township in properly restoring or repairing such property shall be paid by the Wireless Communications Facility operator within fifteen (15) days of receipt of a written demand by the Township.

5. Emergency Maintenance. In the event of a declared or undeclared Emergency involving or related to a Wireless Communications Facility or any associated accessory facility or Wireless Support Structure, the facility operator, or its agent, shall act immediately to (1) protect the health, welfare, or safety of the public; and to (2) protect the usability of the Public Rights-of-Way and prevent a loss of the services provided by the ROW. Failure to timely alleviate a declared or undeclared Emergency involving a Wireless Communications Facility, accessory facility, or Wireless Support Structure shall be considered a violation of this Ordinance and substantial evidence that the Wireless Communications Facility constitutes a threat to public safety, health, or welfare, or that the conditions of the permit have been materially violated.
6. Immediate Risk of Harm. Where a Wireless Communications Facility or any associated accessory facility or Wireless Support Structure creates, causes, or is a clear and immediate risk of harm to the health, welfare, or safety of the public, or has caused or is likely to cause facilities in the Public Rights-of-Way to be unusable and result in loss of the services provided by the ROW, the Township may remedy such condition without prior notice. All reasonable expenses incurred by the Township to remedy such condition shall be paid by the Wireless Communications Facility operator within fifteen (15) days of receipt of a written demand by the Township.
7. Penalties. Any Person violating any provision of this Ordinance shall be subject, upon finding by a magisterial district judge, to a penalty not exceeding \$500 (five hundred) dollars, 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 Municipality may apply to a 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.
8. Determination of Violation. In the event the Municipality determines 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 Municipality may, in its sole discretion, 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 Municipality may take any and all actions authorized by this Ordinance and/or federal and/or Pennsylvania law and regulations.

9. Revocation of Permitted Use. Any permit granted under this Ordinance may be revoked by the Township Board after a hearing, conducted on at least fifteen (15) days' written notice to the Wireless Communications Facility operator and any related facilities, and an opportunity to be heard. If at such hearing the Township Board determines that substantial evidence exists that the Wireless Communications Facility and related facilities constitute a threat to public safety, health, or welfare, or that the conditions of the permit have been materially violated, the Township Board may revoke the permit.
10. Payment of Fees, Expenses, and Penalties. No permit shall be caused to issue or renew by the Township until all fees due to the Township are paid-in-full including, but not limited to, application fees, expert and consultant fees, and permit fees. Failure to timely remit duly assessed fees shall be considered a violation of this Ordinance and substantial evidence that the conditions of the permit have been materially violated.
11. Fee Payments are Non-Refundable. All fees paid to the Municipality, including, but not limited to, application fees, repair expenses, expert and consultant fees, and permit fees, are non-refundable and shall not be returned to the Applicant.

§ 195.VIII Insurance and Indemnification of Wireless Facilities

The following requirements shall apply to all Wireless Communications Facilities:

1. Insurance.
 - a. Requirement of Insurance. Each Person that constructs, owns, operates, maintains, or removes a Tower-Based, Non-Tower, or Small Wireless Communications Facility shall purchase and maintain, at its sole expense, certain insurance coverages of specified minimum rating, as listed herein, and shall provide documentation to the Township Manager or their designee, upon request, and as provided herein.
 - b. No Payment or Reimbursement. Each Person that constructs, owns, operates, maintains, or removes a Tower-Based, Non-Tower, or Small Wireless Communications Facility shall be solely responsible for bearing the costs of furnishing and maintaining all required insurance coverages of specified minimum rating, as listed herein.

The Municipality shall not provide direct payment or reimbursement to Persons for the costs of maintaining, or the costs of furnishing, the required insurance coverages.

- c. Specified Minimum Insurance Ratings, Registration, and Additional Endorsement. All insurance carriers listed in the Certificate(s) of Insurance for the required insurance coverages shall have, at minimum, a credit rating of “Rated A VII or Better” from the A.M. Best Company and shall be licensed in the Commonwealth of Pennsylvania. Each Person that constructs, owns, operates, maintains, or removes a Tower-Based, Non-Tower, or Small Wireless Communications Facility shall name the Township as an Additional Insured by endorsement on the Certificate(s) of Insurance.
- d. Furnishment of Certificates Prior to Commencement. Prior to the commencement of any construction, operation, maintenance, or removal, each Person that constructs, owns, operates, maintains, or removes a Tower-Based, Non-Tower, or Small Wireless Communications Facility shall furnish Certificates of Insurance to the Township or their designee evidencing coverage in compliance with the regulations herein. The failure of the Township to object to the contents of the Certificate(s) of Insurance or absence of same shall not be deemed a waiver of any legal rights held by the Township.
- e. Revocation of Permit. The failure of any Person to construct, operate, maintain, or remove a Wireless Communications Facility without complying with the insurance coverage and administrative requirements herein shall constitute an Emergency. Upon such Emergency, the Municipality reserves the authority to revoke the permit of any Wireless Communications Facility for failure to comply with the insurance coverage and administrative requirements herein.
- f. Minimum Insurance Requirements. Each Person that constructs, owns, operates, maintains, or removes a Tower-Based, Non-Tower, or Small Wireless Communications Facility shall maintain the following minimum insurance coverages:
 - (i.) Worker’s Compensation and Employers Liability Policy, covering operations in the Commonwealth of Pennsylvania. Where applicable, U.S. Longshore and Harbor Workers Compensation Act Endorsement and Maritime Coverage Endorsement shall be attached to the policy. Evidence must be provided to the Township

Manager or their designee. Waiver of Subrogation to be included with documentation provided to the Township Manager or their designee.

- (ii.) Commercial General Liability Policy, with limits of no less than \$1,000,000 (one million) dollars each occurrence, per WCF location and \$2,000,000 (two million) dollars General Aggregate, per WCF location, with limits for Bodily Injury and Property Damage, and shall contain the following coverages and endorsements:
 - (A.) Premises and Operations;
 - (B.) Products/Completed Operations;
 - (C.) Independent Contractors;
 - (D.) Personal and Advertising Injury;
 - (E.) Blanket Contractual Liability;
 - (F.) Explosion, Collapse, Underground Liability (XCU);
 - (G.) Township and their assigns, officers, employees, volunteers, representatives and agents should be named as an “Additional Insured” on the policy using ISO Additional Insured Endorsement CG 20 10 11/85 or an endorsement providing equivalent or broader coverage and shall apply on a primary and noncontributory basis, including any self-insured retentions.
 - (H.) The Certificate of Insurance should show this applies to the General Liability coverage on the certificate, and Additional Insured Endorsement shall be attached.
 - (I.) To the extent permitted by Pennsylvania law, each Person that constructions, owns, operates, maintains, or removes a Tower-Based, Non-Tower, or Small Wireless Communications Facility waives all rights of subrogation or similar rights against the Township, assigns,

officers, employees, volunteers,
representatives and agents.

- (J.) Cross Liability coverage (Commercial General Liability and Business Automobile Liability policies only.)
- (K.) Coverage must be written on an Occurrence Policy Form.
- (L.) No deductible or Self Insured Retention should exceed \$50,000 (fifty-thousand) dollars.

(iii.) Comprehensive Automobile Policy, with limits of no less than \$1,000,000 (one million) dollars. Bodily Injury and Property Damage liability including, but not limited to, coverage for owned, any auto non-owned, and hired private passenger and commercial vehicles. Township and their assigns, officers, employees, representatives and agents should be named as an “Additional Insured” on the policy. The Certificate of Insurance should show this applies to the Automobile Liability coverage on the certificate, and Additional Insured Endorsement shall be attached. To the extent permitted by Pennsylvania law, each Person that constructs, owns, operates, maintains, or removes a Tower-Based, Non-Tower, or Small Wireless Communications Facility waives all rights of subrogation or similar rights against the Township, assigns, officers, employees, representatives and agents. Coverage must apply on a primary and noncontributory basis.

(iv.) Umbrella Liability, with limits of no less than \$5,000,000 (five million) dollars each occurrence per WCF location and \$5,000,000 (five million) dollars General Aggregate per WCF location, including, but not limited to, coverage for General Liability, Automobile, Workers Compensation. Coverage must be written as an Occurrence Policy.

(v.) Professional Liability (if applicable), with limits no less than \$1,000,000 (one million) dollars per Claim. Coverage must be written as an Occurrence Policy.

g. Increasing the Minimum Insurance Requirements. The Minimum Insurance Requirements specified herein may be increased at any time upon the review and determination of the Board of Supervisors.

- h. Notice Prior to Cancellation or Expiration of Insurance. The Certificate(s) of Insurance shall provide that thirty (30) days written notice prior to cancellation or expiration be given to the Township Manager via U.S. Postal Mail. Insurance policies that lapse and/or expire during term of work shall be recertified and received by the Township Manager no less than thirty (30) days prior to expiration or cancellation of the respective policy.

- 2. Indemnification.
 - a. Requirement to Indemnify and Hold Harmless. Each Person that constructs, owns, operates, maintains, or removes a Tower-Based WCF, a Non-Tower WCF, or a Small WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Municipality, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including, but not limited to, 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, operation, maintenance or removal of each of its WCF.

 - b. Requirement to Defend. Each Person that constructs, owns, operates, maintains, or removes a Tower-Based WCF, a Non-Tower WCF, or a Small WCF shall defend any actions or proceedings against the Municipality in which it is claimed that personal injury, including, but not limited to, death, or property damage was caused by the construction, operation, maintenance or removal of each of its 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.

 - c. Indemnification and Hold Harmless Agreement Requirement. Prior to the initial commencement of any construction, operation, maintenance, or removal, each Person that constructs, owns, operates, maintains, or removes a Tower-Based, Non-Tower, or Small Wireless Communications Facility shall furnish an "Indemnification and Hold Harmless Agreement" to the Township Manager or their designee.

§ 195.IX Police Powers; Severability; Conflicts of Law; and Effective Date.

1. Police Powers. The Municipality, 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 Municipality under applicable federal, state and local laws, ordinances, and regulations.

2. Severability. If any section, subsection, sentence, clause, phrase or word of this Chapter is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this Chapter invalid.

3. Conflicts of Law. To the extent that any provision of this Chapter is inconsistent or conflicts with other provisions related to Wireless Communications Facilities in the Code, the provisions of this Chapter shall control. Otherwise, this Chapter shall be construed consistently with the Code, laws, and regulations of the Municipality.

4. Effective Date. This Ordinance shall become effective upon enactment by the Board of Supervisors of Lower Makefield Township.

ATTEST:

LOWER MAKEFIELD TOWNSHIP
BOARD OF SUPERVISORS:

Township Manager

Chair