

ORDINANCE NO. 2015-840
UPPER MERION TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA

**AN ORDINANCE AMENDING THE UPPER MERION TOWNSHIP ZONING
ORDINANCE, CHAPTER 165, ESTABLISHING GENERAL AND SPECIFIC
STANDARDS RELATING TO THE LOCATION, PLACEMENT, CONSTRUCTION
AND MAINTENANCE OF TOWER-BASED WIRELESS COMMUNICATIONS
FACILITIES AND NON-TOWER WIRELESS COMMUNICATION FACILITIES;
PROVIDING FOR PURPOSES, FINDINGS OF FACT, AND DEFINITIONS RELATED
TO THE ADOPTION OF THE AMENDMENT; PROVIDING FOR THE REGULATION
OF SUCH FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY AND OUTSIDE
THE PUBLIC RIGHTS-OF-WAY; AND PROVIDING FOR THE ENFORCEMENT
OF SAID REGULATIONS**

WHEREAS, pursuant to the Second Class Township Code, 53 P.S. 65101, *et seq.*, Upper Merion Township (the "Township") is authorized to make and adopt Ordinances it deems necessary for the proper management and control of the Township and welfare of the Township and its citizens that are consistent with the Constitution and the laws of the Commonwealth;

WHEREAS, the Board of Supervisors of Upper Merion Township desires to establish standards and general guidelines for the siting, design, permitting, maintenance, and use of Wireless Communications Facilities in the Township in order to protect residential areas and land uses from potential adverse impacts of such facilities, while enhancing the ability of the providers of telecommunication services to provide quick, effective, and efficient services to the Township.

WHEREAS, the Board of Supervisors of Upper Merion Township has met the procedural requirements of 53 P.S. § 10101, *et seq.*, the Pennsylvania Municipalities Planning Code, for the adoption of the proposed ordinance, including holding a public hearing; and

WHEREAS, the Township, after due consideration of the proposed ordinance at a duly advertised public hearing, has determined that the health, safety and general welfare of the residents of Upper Merion Township will be served by this amendment of the Upper Merion Township Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors for Upper Merion Township, and it is hereby ordained and enacted, by the authority of the same, to wit:

SECTION I. CODE AMENDMENT.

A. THE UPPER MERION TOWNSHIP ZONING ORDINANCE, CHAPTER 165, IS HEREBY AMENDED BY ADDING THE ADDITIONAL DEFINITIONS TO SECTION 165-5, "WORD USAGE; DEFINITIONS"

Accessory Equipment: Any equipment serving or being used in conjunction with a wireless telecommunications facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar equipment.

Antenna: Telecommunications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless telecommunications services. An antenna shall not include private residence-mounted satellite dishes or television antennas or amateur radio equipment including, without limitation, ham or citizen band radio antennas.

Base Station: A structure or equipment at a fixed location that enables Federal Communications Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the Township under this subpart, supports or houses equipment described in sub-paragraphs (i) and (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the Township under this section, does not support or house equipment described in sub-paragraphs (i) or (ii) of this section.

Collocation: The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Eligible Facilities Request: Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

Emergency: A condition that (i) constitutes a clear and immediate danger to the health, welfare, or safety of the public or (ii) has caused or is likely to cause facilities in the rights-of-way to be unusable and result in loss of the services provided.

Equipment Compound: An area surrounding or adjacent to a wireless support structure within which base stations, power supplies or accessory equipment are located.

Ft. Worth Attachment: A non-freestanding pole which is attached to an electrical transmission tower which is used to support antennas and accessory equipment and which is anchored to the ground and obtains lateral bracing by direct attachment to the electrical transmission tower.

Height, Wireless Communications Facility (WCF): The vertical measurement from the mean level of the ground surrounding the WCF if ground-mounted, or the higher of a roof or parapet if building-mounted, to the highest part of the WCF, Monopole, Tower or other Wireless Support Structure.

Modification or Modify: The improvement, upgrade or expansion of existing wireless telecommunications facilities or base stations on an existing wireless support structure or the improvement, upgrade or expansion of the wireless telecommunication 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.

Monopole: A tower which consists of a single pole structure, designed and erected on the ground or on top of a structure, to support communications antennas and connect appurtenances.

Non-Tower Wireless Communications Facilities (Non-Tower WCF): Wireless communications facilities other than Tower-Based Wireless Communications Facilities.

Replacement: The replacement of existing wireless telecommunications facilities on an existing wireless support structure or within an existing equipment compound due to maintenance, repair or technological advancement with equipment composed of the same wind loading and structural loading that is substantially similar in size, weight and height as the wireless telecommunications facilities initially installed and that does not substantially change the physical dimensions of the existing wireless support structure.

Right-of-Way (ROW): The surface of and space above and below any real property in the municipality in which the federal government, Commonwealth, municipality or municipal authority has a regulatory interest, or interest as a trustee for the public, as such interests now or

hereafter exist, including, but not limited to, all streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the federal government, Commonwealth, municipality or municipal authority, and any non-exclusive public or utility easements established, dedicated, platted, improved or devoted for utility purposes. Private rights-of-way and other government-owned lands not listed above shall not be considered a right-of-way. The phrase "in the right(s)-of-way" means in, on, over, along, above and/or under the Right(s)-of-Way.

Site: For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

Stealth Technology: State-of-the-art design techniques used to blend objects into the surrounding environment and to minimize the visual impact as much as possible. These design techniques are applied to wireless communications towers, antennas and other facilities which blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it less visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure and facilities constructed to resemble trees, shrubs, and light poles.

Substantial Change OR Substantially Change: A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(i) for towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) for towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) for any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new

equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) it entails any excavation or deployment outside the current site.

Tower: Any structure that exceeds ten feet (10') in height and is built for the sole or primary purpose of supporting any Federal Communications Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. A Ft. Worth Attachment shall not be considered a tower.

Tower-Based Wireless Communications Facilities (Tower-Based WCF): Wireless communications facilities that include the installation of a new tower to support the transmission equipment.

Transmission Equipment: Equipment that facilitates transmission for any Federal Communications Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as a microwave backhaul.

Wireless: Transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, personal communications service (PCS), microwave, satellite, or radio signals.

Wireless Communications Facility (WCF): The set of equipment and network components including antennas, transmitters, receivers, base stations, cabling and accessory equipment, used to provide wireless data and telecommunication services. The term shall not include the wireless support structure.

Wireless Support Structure: A freestanding structure, such as a guyed or self-supporting monopole or tower, electrical transmission tower, water tower or other structure not classified as a wireless support structure, including but not limited to buildings, light poles, utility poles, traffic signals and other similar structures that could support the placement or installation of wireless telecommunications facilities if approved by the municipality.

**B. THE UPPER MERION TOWNSHIP ZONING ORDINANCE, CHAPTER 165, IS
HEREBY AMENDED BY ADDING A NEW ARTICLE ENTITLED
COMMUNICATION TOWERS (WIRELESS COMMUNICATION FACILITIES)
AS FOLLOWS:**

§1. Communication Towers (Wireless Communications Facilities)

A. Purposes and Findings of Fact.

- 1) The purposes of this ordinance include a desire to establish reliable, uniform standards for the construction, siting, design, permitting, maintenance, and use of wireless communication facilities in recognition of the federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); the federal Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) Pub. L. No. 112-96, 126 Stat. 156 (2012), and FCC regulations promulgated thereunder by the Federal Communications Commission (FCC), including the FCC's Report and Order of October 21, 2014, FCC 14-153 (rel. Oct. 21, 2014); and the Pennsylvania Wireless Broadband Collocation Act (Act 191), 53 P.S. § 11702.1 *et seq.* in Upper Merion Township. Moreover, the Township desires to plan and accommodate for the managed deployment of infrastructure that is necessary to accommodate the wireless communications needs of the Township's residents, businesses and emergency service providers. While the Township recognizes the benefit of wireless communication facilities in providing high quality communications service and enhancement to its residents and businesses, the Township also recognizes that it has an obligation to protect public safety and to minimize the adverse visual effects of such facilities through the standards set forth in the following provisions.
- 2) By enacting these provisions, the Township intends to:
 - a. Accommodate the need for Wireless Communications Facilities while regulating their location and number so as to ensure the provision for necessary services;
 - b. Provide for the managed development of Wireless Communications Facilities in a manner that enhances the benefits of wireless communication and accommodates the needs of both Township residents and wireless carriers in accordance with federal and state laws and regulations;
 - c. Establish procedures for the design, siting, construction, installation, maintenance and removal of both Tower-Based and Non-Tower based Wireless Communications Facilities in the Township, including facilities both inside and outside the public rights-of-way;
 - d. Address new wireless technologies, including but not limited to, distributed antenna systems, data collection units, cable Wi-Fi and other communications facilities;

- e. Minimize the adverse visual effects and the number of such facilities through proper design, siting, screening, material, color and finish and by requiring that competing providers of wireless communications services co-locate their commercial communications antennas and related facilities on existing towers;
- f. Promote the health, safety and welfare of the Township's residents and businesses with respect to wireless communication facilities;
- g. Protect the Township's resident and businesses from the potential adverse impacts of wireless communication facilities and to preserve, to the extent permitted under law, the visual character of established communities and the natural beauty of the landscape; and
- h. Ensure compliance with federal and state regulation.

§2. Permitted Uses for Wireless Communication Facilities

1. Tower-Based WCFs not located within a right-of way are prohibited in the following districts: R1-A, R1, R2-A, R2, R3, R3-A, R3-B, R55-A, and R55-B.
2. Tower-Based WCFs not located within a right-of-way, are permitted by Conditional Use, subject to the requirements of Section 3 and Section 7, in the following districts: AG, RA, G, HR, UR, AR, AR-1, CO, NC, LC, GC, SC, SM, SM-1, LI, HI, and KPMU..
3. Tower-Based WCFs not located within a right-of-way are permitted by right on all land owned by the Township or a Township authority, regardless of zoning district.
4. Tower-Based WCFs located within a right-of-way are permitted by Conditional Use, subject to the requirements of Section 3 and Section 7, in the following districts: R1-A, R1, R2-A, R2, R3, R3-A, R3-B, R55-A, R55-B, AG, RA, G, HR, UR, AR, AR-1, CO, NC, LC, GC, SC, SM, SM-1, LI, HI, and KPMU.
5. Non-Tower WCFs are permitted by right in all zoning districts and within a right-of-way subject to the requirements of Section 3 and Section 7.
6. Eligible Facilities Requests that do not substantially change the tower or base station are permitted by right in all zoning districts and within a right-of-way without regard to the other requirements of this section, Section 3, or Section 7.

§3. Bulk and Area Requirements

TOWER BASED			
		WCF out of ROW	WCF in ROW
Height		If permitted in the zoning district, Tower-Based WCFs shall be designed to minimum functional height. Applicants must submit documentation justifying the total height.	If permitted in the zoning district, Tower-Based WCFs shall be designed to minimum functional height, not to exceed 40 feet on a new tower or 45 feet on an existing tower, in the R1-A, R1, R2-A, R2, R3, R3-A, R3-B, R55-A, and R55-B districts, and 60 feet in AG, RA, G, HR, UR, AR, AR-1, CO, NC, LC, GC, SC, SM, SM-1, LI, HI, and KPMU districts. Applicants must submit documentation justifying the total height.
Lot size	Only use on lot:	Subject to underlying zoning district.	Not Applicable.
	Combined with another use on lot:	Area needed to accommodate the WCF and guy wires (if approved), equipment building or cabinets, security fence, and buffer planting.	Not Applicable.
Setbacks	Towers:	Setback from property lines at least (50%) of the combined height of the wireless support structure and antenna, or the applicable minimum building setback in the underlying zoning district, whichever is greater.	Not Applicable.
	Equipment buildings/cabinets:	Subject to applicable minimum building setback in the underlying zoning district.	Not Applicable.

§3. Bulk and Area Requirements (continued)

NON-TOWER BASED			
		WCF out of ROW	WCF in ROW
Height	On building or similar structure:	WCF shall not exceed a height of 15 feet above the roof or parapet, whichever is higher, unless the WCF applicant obtains a Conditional Use under Section 7.	Not Applicable.
	On electrical transmission towers, street lights, utility poles, traffic signals, signs and similar structures:	Not Applicable.	WCF located above the surface grade shall consist of equipment components designed at the minimum functional height.
Setbacks	Mounted antenna:	Not Applicable.	Not Applicable.
	Equipment buildings/cabinets:	WCF Equipment buildings/cabinets shall comply with the applicable minimum building setback requirements in the underlying zoning district.	Not Applicable.
Lot size	Subject to applicable minimum lot size in the underlying zoning district.		Not Applicable.

§4. Design, Construction and Operations

1. All WCFs shall be designed, constructed, inspected, operated, maintained, repaired, modified and removed in strict compliance with all current applicable federal and state technical and safety codes.
2. Subdivision plan approval shall not be required when a WCF is located on a leased parcel that is less than the entire lot.
3. All WCFs shall be operated in accordance with all applicable FCC rules regarding interference with public safety communications or the reception of broadband, television, radio or other communication services.
4. Collocation. Tower-based WCFs outside of the right-of-way shall be designed to accommodate both the WCF applicant's antennas and comparable antennas for future users. As a condition of approval for all tower-based WCFs, the WCF applicant shall agree to allow other service providers to collocate antennas on tower-based WCFs where technically and economically feasible.
5. Signage. Tower-based WCFs not located within the right of way shall include a posted sign at the location. Such signage shall include the ownership, contact name and phone number in the event of an emergency and Federal Communication Commission (FCC) registration number (if applicable). Such signage shall not include commercial advertising and is subject to approval by the Township, and is limited to a maximum size of two (2) square feet. Tower-based WCFs located within the right of way shall have the same sign or label affixed to either the tower or the WCF, limited to the maximum size necessary to legibly provide the required information. Such signage shall not protrude from the tower or the WCF and is subject to approval by the Township.
6. Lighting. A tower shall not be artificially lighted beyond what is required by law. If lighting is required, the WCF Applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations.
7. Noise. WCFs shall be operated and maintained so as not to produce noise in excess of applicable noise standards established by the Township, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis. The use of generators for WCFs within the rights-of-way is prohibited.
8. Access.
 - a. An access drive and one off-street parking space shall be provided to ensure adequate emergency and service access to tower-based WCFs outside of the right-of-way.

- b. Maximum use of existing roads, whether public or private, shall be made to the extent practicable.
 - c. Where possible, access drive construction shall at all times minimize ground disturbance and the cutting of vegetation.
 - d. Access drive grades shall closely follow natural contours to assure minimal visual disturbance and minimize soil erosion.
 - e. Where applicable, the WCF owner shall present documentation to Township that the property owner has granted an easement for the proposed facility and maintenance responsibilities.
 - f. The access easement shall be a minimum of 20 feet in width and the access drive shall be improved with a dust-free, all weather surface to a width of at least 10 feet throughout its entire length.
 - g. Vehicular access to the WCF shall not interfere with the parking or vehicular circulations for a principal use, if located on the lot. However, where appropriate and available, existing parking for the principal use may be utilized.
9. Fencing. A security fence with a minimum height of eight (8) feet shall surround any Tower-Based WCF located outside a right-of-way, including guy wires, associated equipment, and buildings. The use of barbed-wire may be permitted if approved by the Board. The requirement for a security fence may be waived by the Board where, in the opinion of the Board, the fence would not be appropriate or feasible. All fencing must be in accordance with the provisions of §165-208(b) of the Township Code.
10. Mounting. Any applicant proposing a non-tower WCF to be mounted on a building or any other structure shall submit detailed construction and elevation drawings indicating how the non-tower WCF will be mounted on the structure for review by the Township building codes office and/or the Township Engineer for compliance with the building code.
11. Safety in Rights-of-Way.
- a. Schedule of operations. The Township shall determine the time, place and manner of construction, maintenance, repair and/or removal of all WCFs in the right-of-way based on public safety, traffic management, physical burden on the right-of-way and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the Township and the requirements of the Public Utility Code.

b. Emergency. Within 60 days following written notice from the Township, 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 WCF in the right-of-way shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the Township, consistent with its police powers and applicable Public Utility Commission regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under any one of the following circumstances:

- i) The construction, repair, maintenance or installation of any municipal or other public improvement in the right-of-way.
- ii) The operations of the Township or other governmental entity in the right-of-way.
- iii) Vacation of a street or road or the release of a utility easement.
- iv) An emergency as determined by the Township.
- v) No permit is required for such removal, relocation, change or alteration ordered by the Township.

12. Visual obstruction. All WCFs and accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the right-of-way as determined by the Township. When feasible, all equipment shall be pole mounted prior to ground mounting the equipment. For WCFs located within the right-of way, no ground-mounted equipment may extend or protrude past the associated tower to the edge of the curb or cartway..

13. Maintenance. The WCF applicant shall describe anticipated maintenance needs, including frequency of service, personnel needs and equipment needs, and the traffic, safety and noise impacts of such maintenance.

14. Soil report. A current soil report complying with the standards of geotechnical investigations of the Electronics Industry Association and Telecommunications Industry Association, shall be submitted to the Township Engineer prior to construction to document and verify the design specifications of the foundation for the wireless support structure and anchors for the guy wires, if used.

15. Interference. All WCFs shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties. In the event that the WCF causes interference with the radio or television reception within the Township, the WCF applicant, at the applicant's

sole expense, shall thereafter ensure that any interference problems are promptly corrected.

16. Aviation safety. All WCFs shall comply with federal and state laws and regulations concerning aviation safety.

17. Inspections.

- a. A copy of any inspection report shall be provided to the Township following the inspection. Any repairs advised by report shall be completed by the WCF owner within 60 calendar days after the report is filed with the Township.
- b. In accordance with and subject to existing law, the Township reserves the right to inspect any WCF to ensure compliance with the provisions of the Chapter and any other provisions found within the Township code, state, or federal law. The Township and/or its agents shall have the authority to enter the property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance

18. Historic buildings or districts. A WCF shall not be located upon a property, and/or on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places.

§5. Aesthetics, Landscaping, and Screening

1. Stealth Technology. The WCF shall employ the most current stealth technology available, where appropriate, in an effort to appropriately blend the proposed WCF into the surrounding environment and minimize aesthetic impact. All utility buildings and accessory structures shall be designed to blend into the environment in which they are situated. All proposed Tower-Based WCFs must provide documentation detailing the proposed stealth technology.
2. Landscaping Design. Tower-Based WCF located outside the right-of-way shall submit a landscape design describing the following:
 - a. The WCF applicant shall ensure that the existing vegetation, trees and shrubs located within proximity to the WCF structure shall be preserved to the maximum extent possible.
 - b. An evergreen screen shall be created by planting trees (a minimum of six feet [6'] tall at planting that will grow to a minimum of fifteen feet [15'] tall at maturity) on ten foot (10') centers maximum around the perimeter of the security fence.

- c. Ground mounted equipment associated with, or connected to, a tower-based WCF shall be screened from public view using landscaping and/or screening, as described above.
- d. In lieu of an evergreen screen, the Board may instead approve the use of an artificial screen, topography, walls, decorative fences or other features. Furthermore, the requirement for evergreen screening may be waived by the Board where in the opinion of the Board the evergreen screening would not be appropriate or feasible. The Board may elect to receive comment and feedback from the Upper Merion Township Planning Commission to assist with the Board's decision.
- e. Any graffiti on the tower or on any related equipment shall be immediately removed at the sole expense of the WCF owner.

§6. Replacement, Collocation, or Modification

1. Notwithstanding the requirements for Tower-Based WCF and Non-Tower Based WCFs, as set forth in this sub-part, an application for replacement, collocation or modification of a previously approved wireless support structure or wireless communication facility shall be reviewed for conformance with the Township building permit requirements, including requirements applicable to the added structural loading of the proposed antennas and accessory equipment. These previously approved facilities shall not be subject to the issuance of new zoning or land use approvals, provided that there is no substantial change.
2. Replacement of WCFs on existing wireless support structures or within existing equipment compounds may be performed by the applicant without obtaining building or zoning permits from the Township.
3. To the extent permissible under applicable state and federal law, any WCF Applicant proposing the modification of an existing Tower-Based WCF, resulting in any increase in the overall height of such WCF, Monopole, Tower or other Wireless Support Structure, shall first obtain all necessary permits and approvals from the Township. Non-routine modifications shall be prohibited without prior approval from the Township.

§7. Conditional Use and Permit Requirements

1. A permit from the Township shall be required for the construction, erection, maintenance or installation of all WCFs and wireless support structures. Within sixty (60) calendar days of the date that a fully completed application for a WCF is received by the Township, the Township shall review the application and advise the applicant if a permit will be issued.

2. In addition to all other permit requirements under this Chapter, a permit application for a WCF shall not be approved or considered complete unless the Township finds that the applicant has complied with all of the following conditions, as applicable:
- a. Collocation. An application for a new Tower-Based WCF outside of the right-of-way shall not be approved unless the Township finds that the wireless communications equipment planned for the proposed tower-based WCF cannot be collocated on an existing or approved structure or building within a 1/2 mile radius of the proposed tower-based WCF location to achieve the coverage or capacity objectives of the applicant.
 - b. Gap in Coverage, Lack of Adequate Capacity, and Lack of Alternatives. An applicant for a Tower-Based WCF must demonstrate that a significant gap in wireless coverage exists or lack of adequate capacity is likely to exist within six (6) months of the filing of its application with respect to the WCF applicant in the area. It shall be incumbent upon the applicant to prove to the reasonable satisfaction of the Board that the applicant cannot adequately extend or infill its communications system by the use of equipment such as redoes, repeaters, antenna(s) and other similar equipment installed on existing structures, such as utility poles or their appurtenances and other available tall structures. The applicant shall further demonstrate that the proposed Tower-Based WCF must be located where it is proposed in order to serve the applicant's service area and that no other viable alternative location exists.
 - c. Authorization. An applicant for all WCFs shall submit a copy of the lease or other form of written authorization with the property owner confirming that the applicant has standing to file the application and maintain the proposed facility on the subject property.
 - d. Licensing and applicable regulations. When applicable, an applicant must demonstrate that it is licensed by the Federal Communications Commission (FCC) and submit with its application copies of all FCC permits and licenses, including the name, address, and emergency telephone number for the operator of the facility.
 - e. Emissions. The applicant shall demonstrate that the proposed WCF, by itself or in conjunction with other WCFs, complies with all applicable standards established by the Federal Communications Commission governing human exposure to electromagnetic emissions.

- f. Insurance. The applicant shall provide a certificate of insurance issued to the owner/operators of the WCF, evidencing that there is or will be adequate current liability insurance in effect.
 - g. Engineer Inspection. Prior to the Township's issuance of a permit authorizing construction and erection of a Tower-Based WCF, a structural engineer registered in Pennsylvania shall issue to the Township a written certification of the proposed WCF's ability to meet the structural standards offered by either the Electronic Industries Association or the Telecommunication Industry Association and certify the proper construction of the foundation and the erection of the structure. This certification shall be provided during the conditional use hearing or, at a minimum, be made as a condition attached to any approval given such that the certification be provided prior to issuance of any building permits.
 - h. Additional Antennae. As a condition of approval for all Tower-Based WCFs, the WCF Applicant shall provide the Township with a written commitment that it will allow other service providers to co-locate antennae on Tower-Based WCFs where technically and economically feasible. The owner of a Tower-Based WCF shall not install any additional antennae without obtaining the prior written approval of the Township.
3. Conditional Use Authorization. Prior to the Board's approval of a conditional use authorizing the construction and installation of a Tower-Based WCF, the applicant must provide the following along with a conditional use application:
- a. A propagation study evidencing the need for the proposed tower or other communication facilities and equipment, a description of the type and manufacturer of the proposed transmission/radio equipment, the frequency range (megahertz band) assigned to the WCF Applicant, the power in watts at which the WCF Applicant transmits, and any relevant related tests conducted by the WCF Applicant in determining the need for the proposed site and installation.
 - b. Documentation demonstrating that the proposed Tower-Based WCF complies with all state and federal laws and regulations concerning aviation safety and designed to withstand the effects of wind according to the standard designed by the American National Standards Institute.
 - c. Where the Tower-Based WCF is located on a property with another principal use, the WCF Applicant shall present documentation to the Board that the owner of the property has granted an easement for the proposed WTF and that vehicular access will be provided to the facility, as set forth in this Chapter.

- d. Documentation and other evidence demonstrating that the proposed Tower-Based WCF complies with all applicable provisions in this Chapter, including but not limited to height requirements, design, construction and operation requirements, safety requirements, and aesthetic, landscaping, and screening requirements.
4. Conditional Use Approval for Tower-Based WCFs in Right-of-Way. In addition to the requirements in Section 3, Tower-Based WCFs located within a right-of-way in the R1-A, R1, R2-A, R2, R3, R3-A, R3-B, R55-A, and R55-B districts are permitted by Conditional Use unless the primary components of utilities, including but not limited to the main utility lines, are located underground within one hundred feet (100') of the proposed tower or base station. Documentation evidencing the location of surrounding utilities shall be provided by the applicant with the conditional use application.
5. Permit and Conditional Use Fees. The Township may assess appropriate and reasonable permit and conditional use fees directly related to the actual costs of experts and staff for reviewing and processing the application for approval of a WCF, as well as related inspection, monitoring, and related costs. The amount of this fee may not be in excess of the actual reasonable costs of such actions.
6. Reimbursement for right-of-way use. In addition to permit fees as described in this section, every Tower-Based WCF in a right-of-way is subject to the Township's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the right-of-way. Such compensation for the right-of-way use shall be directly related to the Township's actual right-of-way management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other right-of-way management activities by the Township. The owner of each Tower-Based WCF shall pay an annual fee to the Township to compensate the Township for the Township's costs incurred in connection with the activities described above.
7. Guy Wires Approval. Guy wires may only used for WCFs upon conditional use approval for the use of guy wires. Documentation evidencing the need for the guy wires and a description of the guy wire installation must be provided by the applicant with the conditional use application.
8. Township Planning Commission Review. The Board may elect to receive comment, recommendations, and feedback from the Upper Merion Township Planning Commission to assist with the Board's conditional use decisions.
9. Township Standards for Conditional Use Approval. In addition to demonstrating compliance with all requirements of this Article, an applicant seeking conditional use approval must also fulfill all requirements and standards for conditional use approval set forth under Township Code §165-219.1, Conditional Use Procedure.

§8. Discontinuation, Abandonment and Removal

1. Nonconforming WCFs. Any nonconforming WCF which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored at their former location, but must otherwise comply with the terms and conditions of this Chapter.
2. Discontinuation. In the event that use of a WCF is planned to be discontinued, the owner shall provide written notice to the Township of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:
 - a. All unused or abandoned WCFs and accessory facilities shall be removed within three (3) months of the cessation of operations at the site unless a time extension is approved by the Township.
 - b. If the WCF and/or accessory facility is not removed within three (3) months of the cessation of operations at a site, or within any longer period approved by the municipality, the WCF and accessory facilities and equipment may be removed by the municipality and the cost of removal assessed against the legal or equitable owner of the WCF.
 - c. Any unused portions of WCFs, including antennas, shall be removed within three (3) months of the time of cessation of operations. The Township must approve all replacements of portions of a Tower-Based WCF previously removed.
3. Bonding. The facility owner or operator shall post and maintain funds for removal of all structures associated with the WCF in an amount equal to the identified removal costs, as adjusted over time. The removal funds shall be posted and maintained with a bonding company or Federal or Commonwealth chartered lending institution chosen by the facility owner or operator and participating land owner posting the financial security, provided that the bonding company or lending institution is authorized to conduct business within the Commonwealth and is approved by the Township. An independent and certified Professional Engineer shall be retained by the applicant to estimate the cost of removal without regard to salvage value of the equipment. Said estimates shall be submitted to the Township after the first year of operation and every five (5) years thereafter.

SECTION II. POLICE POWERS.

The Township, by granting any permit or taking any other action pursuant to this chapter, does not waive, reduce, lessen or impair the lawful police powers vested in the Township under applicable federal, state and local laws and regulations.

SECTION III. REPEALER.

All Ordinances or parts of Ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed.

SECTION IV. REVISIONS.

The Upper Merion Township Board of Supervisors does hereby reserve the right, from time to time, to adopt modifications of, supplements to, or amendments of its Ordinance, including this provision.

SECTION V. SEVERABILITY.

In the event that any section, sentence, clause, phrase or word of this Ordinance shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude or otherwise foreclose enforcement of any of the remaining portions of this Ordinance.

SECTION VI. EFFECTIVE DATE.

This amendment shall become effective five (5) days after date of adoption.

SECTION VII. FAILURE TO ENFORCE NOT A WAIVER.

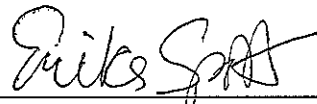
The failure of Upper Merion Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

ORDAINED AND ENACTED by the Board of Supervisors for Upper Merion Township, Montgomery County, Pennsylvania, this 12th day of November, 2015.

ATTEST:

**UPPER MERION TOWNSHIP
BOARD OF SUPERVISORS:**


David Kraynik, Township Manager

By: 
Erika Spott, Chairperson

Advertised proposed ordinance in the Times Herald: 10/28/15
and 11/04/15

Proof of Publication: 11/10/15

Hearing Held: 11/12/15

Ordinance Adopted: 11/12/15, as Township Ordinance No. 2015-840

Ordinance Entered: 11/12/15