

**LEBOEUF TOWNSHIP
ERIE COUNTY, PENNSYLVANIA**

ORDINANCE NO. 01-2019

AN ORDINANCE OF LEBOEUF TOWNSHIP, AMENDING TOWNSHIP ORDINANCE NO. 01-2018, GENERALLY KNOWN AS THE ZONING ORDINANCE, BY AMENDING ARTICLE 11, ENTITLED SUPPLEMENTARY REGULATIONS, SPECIFICALLY AMENDING SECTION 1101.01 REGARDING DEFINITIONS SPECIFIC TO WIRELESS COMMUNICATIONS FACILITIES, AMENDING SECTION 1101.02 REGARDING HISTORIC BUILDINGS OR DISTRICTS, AMENDING 1101.03 REGARDING BULK AND AREA REQUIREMENTS, AMENDING SECTION 1101.04 REGARDING DESIGN, CONSTRUCTION, AND OPERATIONS, AMENDING SECTION 1101.05 REGARDING AESTHETICS, LANDSCAPING, AND SCREENING, AMENDING SECTION 1101.06 REGARDING REPLACEMENT, COLLOCATION, OR MODIFICATION, AMENDING SECTION 1101.07 REGARDING PERMIT REQUIREMENTS, AMENDING 1101.08 REGARDING DISCONTINUATION, ABANDONMENT, AND REMOVAL, ESTABLISHING SECTION 1101.09 REGARDING FEE SCHEDULE, AND PROVIDING FOR A REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE

WHEREAS, on or about July 25, 2018, the Board of Supervisors of LeBoeuf Township (the “Board”) adopted Ordinance No. 01-2018, colloquially known as the LeBoeuf Township Zoning Ordinance (the “Zoning Ordinance”); and

WHEREAS, within the Zoning Ordinance, the Board adopted Article 11, entitled Supplementary Regulations, which contained Sections 1101.01-1101.08, regulating the placement of wireless communications facilities within LeBoeuf Township (the “Township”); and

WHEREAS, the Board adopted these Sections to promote the placement of wireless communication facilities within the Township while also maintaining its obligation to protect public safety and minimize visual impact of said facilities; and

WHEREAS, on September 27, 2018, the Federal Communications Commission (“FCC”) released regulations (the “Regulations”) governing local municipalities’ ability to regulate small wireless facilities; and

WHEREAS, the Regulations specifically impact the Zoning Ordinance and render certain provisions of Article 11 unenforceable by the Township; and

WHEREAS, the Board is desirous of revising the Zoning Ordinance to comply with the Regulations and that such amendments are in the best interest of the citizens and residents of LeBoeuf Township.

NOW THEREFORE, this 7th day of January, 2019, be it enacted and ordained by the Board of Supervisors of LeBoeuf Township, Erie County, Pennsylvania, as follows:

1. **Recitals**. The recitals set forth above are incorporated herein as if more fully set forth.

2. **Amendment of Section 1101.1**. That Section 1101.01 of the Zoning Ordinance, entitled Definitions Specific to Wireless Communications Facilities, be amended in applicable part, through the inclusion of the underlined terms and deletion of the terms struck out as follows:

- A. [Antenna] Any system of wires, rods, dishes, panels, flat panels, dishes, whips, or other similar devices used for the transmission or reception of wireless signals. An antenna may include an omnidirectional antenna (rod), directional antenna (panel), parabolic antenna (disc) or any other wireless antenna. An antenna shall not include tower-based wireless communications facilities (defined below). An apparatus designed for the purpose of emitting radiofrequency radiation, to be operated or operating from a fixed located pursuant to Federal Communications Commission authorization, for the provision of personal wireless service and any commingled information services. 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. . .

C. [Collocation] ~~The placement or installation of new wireless telecommunications facilities on previously approved and constructed wireless support structures, including self-supporting or guyed monopoles and towers, electrical transmission towers, water towers, or any other structure not classified as a wireless support structure that can support the placement or installation of wireless telecommunications facilities if approved by the municipality. The mounting or installing of an antenna on a pre-existing structure and/or the modifying of a structure for the purpose of mounting or installing an antenna on that structure. . .~~

K. ~~Non-Tower Wireless Communications Facilities (Non-Tower WCF): Wireless communications facilities, including but not limited to, antennae and related equipment. Non-tower WCF shall not include support structures for antennae and connect appurtenances.~~

K. [Replacement] . . .

L. [Right-of-Way (ROW)] . . .

M. Small Wireless Facilities (SWF). Facilities that meet the following conditions:

1. The facilities –

i. are mounted on structures 50 feet or less in height including their antennas, or

ii. are mounted on structure 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 of the facility, excluding any associated antenna equipment, is no more than three (3) cubic feet in volume;

3. All other wireless equipment associated with the facility, including associated antenna equipment, and any pre-existing facility equipment, is no more than 28 cubic feet in volume;
4. The facilities do not require antenna structure registration under the Federal Communications Commission regulations.
5. The facilities are not located on Tribal lands, as defined under 36 C.F.R. 800.16(x)
6. The facilities do not result in human exposure to radiofrequency radiation in excess of the Federal Communications Commission's safety standards.

~~N. 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 facilities, antennae, and other facilities which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof mounted antennae, building-mounted antennae painted to match the existing structure and facilities constructed to resemble trees, shrubs, and light poles.~~

N. [Substantial Change of Substantially Change] . . .

O. [Tower] . . .

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

P. [Wireless] . . .

Q. [Wireless Communication Facility (WCF)] . . .

R. [Wireless Support Structure] . . .

3. **Amendment of Section 1101.02.** That Section 1101.03 of the Zoning Ordinance, pertaining to Historic Buildings or Districts, be amended in applicable part, through the inclusion of the underlined terms and deletion of the terms struck out as follows:

~~Tower-based~~ WCFs and SWFs shall not be located on a structure or property that is listed on either the National or Pennsylvania Register of Historic Places or ; property designated by the municipality in an adopted plan as historically significant, ~~or in a designated historic district.~~

4. **Amendment of Section 1101.03.** That Section 1101.03 of the Zoning Ordinance, pertaining to Bulk and Area Requirements, be amended in applicable part, through the inclusion of the underlined terms and deletion of the terms struck out as follows:

Tower Based Wireless Communication Facilities			
		WCF/SWF outside Right-of-Way	WCF/SWF in Right-of-Way
Height		60 feet maximum height in residential zones. No maximum height in non-residential zones. Tower based WCFs shall be designed to minimum functional height. Applicants must submit documentation justifying the total height.	60 feet maximum height. Tower based WCFs shall be designed to minimum functional height. Applicants must submit documentation justifying the total height.
Minimum 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/SWF and guy wires, equipment building, security fence, and buffer/screening plantings.	Not Applicable
Setbacks	Towers:	Setback from property lines at least 110% of the combined height of the wireless support structure and antenna, or the underlying zoning district requirement, whichever is greater	Setback from existing buildings at least 110% of the combined height of the wireless support structure and antenna Subject to underlying zoning district.

		Subject to underlying zoning district.	
	Equipment Buildings	Subject to underlying zoning district	Not Applicable

Non-Tower Based Wireless Communication Facilities			
		WCF outside Right-of-Way	WCF in Right-of-Way
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 special exception.	Not applicable
	On 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 and that are compatible in scale and proportion to the structures upon which they are mounted. All equipment shall be the smallest and least visibly intrusive equipment feasible.
	General:	Applicants must submit documentation justifying the total height of the structure.	Applicants must submit documentation justifying the total height of the structure.
Minimum Lot Size		Subject to underlying zoning district.	Not Applicable
Setbacks	Mounted antenna:	Subject to underlying zoning district or setback of existing wireless support structure, whichever is greater.	Not Applicable
	Equipment Buildings	Subject to underlying zoning district.	Not Applicable

5. **Amendment of Section 1101.04.** That Section 1101.04 of the Zoning Ordinance, pertaining to Design, Construction, and Operations, be amended in applicable part, through the inclusion of the underlined terms and deletion of the terms struck out as follows:

- A. [General] All WCF and SWF shall be designed, constructed, inspected, operated, maintained, repaired, modified, and

removed in strict compliance with all currently applicable state and federal ~~technical, and safety codes laws~~. . .

- C. [Interference] No WCF or SWF shall interfere with public safety communications or the reception of broadband, television, radio, or other communication services.
- D. [Collocation] Collocation shall be permitted on all existing WCF, subject to the application and permitting procedures outlined in this Article. ~~Tower-based WCF shall be designed to accommodate both the WCF applicant's antennas and comparable antennae for future users. As a condition of approval for all tower-based WCF's, the WCF applicant shall provide the municipality with a written commitment that it will allow other service providers to collocate antennae on tower-based WCF's where technically and economically feasible.~~

6. **Amendment of Section 1101.05.** That Section 1101.05 of the Zoning Ordinance, pertaining to Aesthetics, Landscaping, and Screening, be amended in applicable part, through the inclusion of the underlined terms and deletion of the terms struck out as follows:

- A. ~~Stealth Technology. The WCF shall employ the most current stealth technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact.~~
 - 1. ~~Tower-based WCFs shall employ stealth technology and the tower shall be painted an appropriate color to harmonize with the character of the area and surrounding land uses.~~
 - 2. ~~Non-tower WCFs shall employ stealth technology and be treated to match the supporting structure in order to minimize aesthetic impact.~~
 - 3. ~~All utility buildings and accessory structures shall be designed to blend into the environment in which they are situated.~~
- B. A. [Landscaping Plan] . . .

7. **Amendment of Section 1101.06.** That Section 1101.06 of the Zoning Ordinance, pertaining to Replacement, Collocation or Modification, be amended in applicable part, through the inclusion of the underlined terms and deletion of the terms struck out as follows:

A. An application for replacement, collocation or modification of a previously approved wireless support structure, ~~or wireless communication facility, or small wireless facility~~ shall be reviewed for conformance with the municipal building permit requirements, including requirements applicable to the added structural loading of proposed antennas and accessory equipment must be received by the municipality prior to commencement of construction related to replacement, collocation or modification of a facility.

~~1. The proposed collocation, modification or replacement may not substantially change the physical dimensions of the wireless support structure to which the wireless telecommunications facilities are to be attached.~~

1. The proposed collocation, modification, or replacement may not further increase the height of a wireless support structure which had already been extended by more than 10% of its originally approved height or by the height of one additional antenna array; provided, however, that nothing herein shall preclude an applicant from further increasing the height of a wireless support structure which had already been extended by more than 10% of its originally approved height or by the height of one additional antenna array if permitted and approved by the municipality.

~~2.~~

~~3. The proposed collocation, modification, or replacement may not increase the dimensions of the equipment compound approved by the municipality.~~

2. The proposed collocation, modification, or replacement complies with applicable conditions of approval applied to the initial wireless telecommunications facilities, equipment compound and wireless support structure.

3. The proposed collocation, modification, or replacement may not exceed the applicable wind loading and structural loading requirements for the wireless support structure.

4.

5.

B. Replacement of wireless communications facilities on existing wireless support structures or within existing equipment compounds may be performed by the applicant without obtaining building or Zoning Permits from the municipality. However, the applicant shall submit documentation regarding any replacement of wireless communications facilities to the municipality.

C. Any Substantial Change to an existing ~~tower-based~~ WCF shall require approval of the municipality.

8. **Amendment of Section 1101.07.** That Section 1101.07 of the Zoning Ordinance, pertaining to Permit Requirements, be amended in applicable part through the inclusion of the underlined terms and the deletion of the terms struck out as follows:

A. An application for a new ~~tower-based~~ WCF or SWF shall not be approved unless the municipality finds that the wireless communications equipment for the proposed ~~tower-based~~ WCF or SWF cannot be collocated on an existing or approved structure or building.

B. An application for approval of a new ~~tower-based~~ WCF or SWF shall include a comprehensive inventory of all existing towers and other suitable structure within a 1 mile radius from the point of the proposed ~~tower~~ WCF or SWF, 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 or other suitable structure cannot be utilized.

C. [Gap in Coverage or Capacity.] An applicant for a ~~tower-based~~ WCF must demonstrate that a significant gap in wireless coverage or capacity exists with respect to the applicant in the area and that the type of WCF being proposed is the least intrusive means by which to fill that 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.

- D. The applicant shall demonstrate that the proposed WCF or SWF comply with all applicable standards established by the Federal Communications Commission governing human exposure to electromagnetic radiation.
- E. [Notification]. Upon receipt of an application for a ~~tower-based~~ WCF, the municipality shall mail notice thereof to the owner or owners of every residential property within 500 feet of the parcel or property of the proposed facility.
- F. [Review Timeframe.] Within 30 calendar days of the date that an application for a WCF or SWF is filed with the municipality, the municipality shall notify the applicant in writing of any information that may be required to complete such application.
 1. All applications for new WCFs shall be acted upon within 150 days (or the most recent timeframe established by the Federal Communications Commission) of the receipt of a fully completed application for the approval of such new WCF, and the municipality shall advise the applicant in writing of its decision.
 2. ~~All applications for modification or collocation WCFs shall be acted upon within 60 days (or the most recent timeframe established by the Federal Communications Commission) of the receipt of a fully completed application for the approval of such modification or collocation WCF, and the municipality shall advise the applicant in writing of its decision.~~ All applications for modification or collocation of a WCF on an existing WCF structure shall be acted upon within 90 days (or the most recent timeframe established by the Federal Communications Commission) of the receipt of a fully completed application for the approval of such modification or collocation, and the municipality shall advise the applicant in writing of its decision.
 3. ~~If additional information was requested by the municipality to complete an application, the time required by the applicant to provide the information shall not be counted toward the review periods noted in this section.~~ All applications for new SWFs shall be acted upon within 90 days (or the most recent timeframe established by the Federal Communications Commission) of the receipt of a

fully completed application for the approval of such new SWF, and the municipality shall advise the applicant in writing of its decision.

4. All applications for modification or collocation of a SWF on an existing WCF or SWF structure shall be acted upon within 60 days (or the most recent timeframe established by the Federal Communications Commission) of the receipt of a fully completed application for the approval of such modification or collocation, and the municipality shall advise the applicant in writing of its decision.
 5. For an initial application to deploy a new SWF, if the municipality notifies the applicant on or before the 10th day after the submission of the application that the application is materially incomplete, and clearly and specifically identifies the missing documents or information necessary to complete the application, the time period to review the application will reset and the municipality will be provided an additional 60 days from the date of applicant's re-submission to review the re-submitted application.
 6. For an initial application to deploy a new WCF or to collocate on or modify an existing WCF or SWF, the time period to review an application shall toll on the date the municipality receives the completed application from the applicant.
- G. [Retention of 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 WCF or SWF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this Ordinance.
- H. Permit Fees. ~~The municipality may assess appropriate and reasonable permit fees directly related to the municipality's actual costs in reviewing and processing the application for the approval of a WCF. The amount of this fee may not be in excess of the municipality's actual reasonable cost to review and process the application.~~

9. **Amendment of Section 1101.08.** That Section 1101.08 of the Zoning Ordinance, relating to Discontinuation, Abandonment, and Removal, be amended, in applicable part, through the inclusion of the underlined terms and the deletion of the terms struck out as follows:

- A. [Nonconforming WCFs]/SWFs: Any nonconforming WCF or SWF which are hereafter damaged or destroyed due to any reason may be repaired and/or restored at their former location, but must otherwise comply with the terms and conditions of this Ordinance.
- B. [Discontinuation]: In the event that use of a WCF or SWF is planned to be 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 SWFs shall be removed as follows:
 - 1. All unused or abandoned WCFs or SWFs and accessory facilities shall be removed within six months of the cessation of operations at the site unless a time extension is approved by the municipality.
 - 2. If the WCF, SWF, and/or accessory facility is not removed within 6 months of the cessation of operations at a site, or within any longer period approved by the municipality, it will be considered a violation of this Ordinance and the municipality will proceed with the enforcement remedies as outlined in Section 305 of this Ordinance.
 - 3. Any unused portions of WCFs or SWFs, including antennas, shall be removed within 6 months of the time of cessation of operations of the specific unused portion.
- C. [Bonding] The facility owner or operator shall post and maintain funds for removal of all structures associated with ~~the~~ a WCF in an amount 110% of the identified removal costs, as adjusted over time. It is within the municipality's discretion whether to require a facility owner or operator of a SWF, which has been identified for removal, to post bonding prior to the removal of the SWF structure. . . .

10. **Establishment of Section 1101.09.** Section 1101.09, entitled Fees for Wireless and Small Wireless Communications Facilities, is hereby created and established within the Zoning Ordinance and states as follows:

1101.09 Fees for Wireless and Small Wireless Communications Facilities

- A. The municipality shall be permitted to charge the following types of fees to owners of WCFs and SWFs existing within the municipality:
1. A one-time application processing fee for new WCFs and SWFs and modification or collocation applications.
 2. Recurring annual lease charges for SWFs located on municipality-owned property.
 3. Annual right-of-way access fees to compensate the municipality for WCF and SWF owners access to facilities built on a municipality right-of-way.
- B. The municipality shall, from time-to-time, establish a Wireless Facility Fee schedule, via Resolution approved by the Board of Supervisors. Fees established on the Wireless Facility Fee Schedule shall utilize the following factors:
1. A reasonable approximation of the cost incurred by the municipality regarding the particular fee.
 2. A review of similar fees incurred by the municipality in similar situations involving similarly situated entities.

11. **Repealer.** Any Ordinances, rules or resolutions, or parts of Ordinances in conflict herewith, are hereby repealed.

12. **Severability.** The provisions of this Ordinance are severable. If any sentence clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby

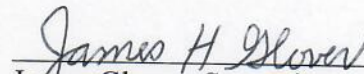
declared as the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section or part thereof not been included herein.

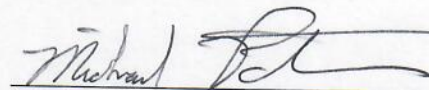
13. **Effective Date.** This Ordinance shall become effective on the fifth (5th) day after the enactment of this Ordinance.

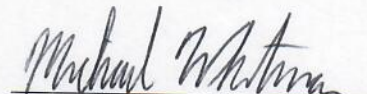
ENACTED AND ORDAINED by the Board of Supervisors of LeBoeuf Township, Erie County Pennsylvania, at a meeting duly assembled this 7th day of JANUARY, 2018.

ATTEST:


Catherine Wise, Secretary


James Glover, Supervisor


Michael Porter, Supervisor


Michael Whitman, Supervisor


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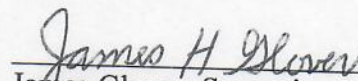
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ENACTED AND ORDAINED by the Board of Supervisors of LeBoeuf Township, Erie County Pennsylvania, at a meeting duly assembled this 7th day of JANUARY, 2018.

ATTEST:


Catherine Wise, Secretary


James Glover, Supervisor


Michael Porter, Supervisor


Michael Whitman, Supervisor