

TOWNSHIP OF DAMASCUS
WAYNE COUNTY, PENNSYLVANIA

ORDINANCE NO. 2015-08

AN ORDINANCE OF THE TOWNSHIP OF DAMASCUS, WAYNE COUNTY, PENNSYLVANIA; PROVIDING FOR THE AMENDMENT OF THE ZONING ORDINANCE OF THE TOWNSHIP OF DAMASCUS, 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 COMMERCIAL COMMUNICATION DEVICES AND NON-TOWER COMMERCIAL COMMUNICATION DEVICES; PROVIDING FOR THE REGULATION OF SUCH FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY; AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION I. AMENDMENT TO ARTICLE II, DEFINITION OF TERMS OF THE DAMASCUS TOWNSHIP ZONING ORDINANCE

Article II of the Damascus Township Zoning Ordinance is hereby amended to include the following definitions to the "Definitions" section:

1. *Antenna* — any system of wires, rods, discs, panels, flat panels, dishes, whips, or other similar devices used for the transmission or reception of wireless signals. An antenna may include an omnidirectional antenna (rod), directional antenna (panel), parabolic antenna (disc) or any other wireless antenna. An antenna shall not include Tower-Based Commercial Communication Devices as defined below.
2. *Non-Tower Commercial Communication Devices (Non-Tower CCD)* — all Non-Tower CCD, including but not limited to, antennae and Related Equipment, that are located within the public rights-of-way. Non-Tower CCD shall not include support structures for antennae or any Related Equipment that is mounted to the ground or at ground-level .
3. *Related Equipment*—any piece of equipment related to, incidental to, or necessary for, the operation of a Tower-Based CCD or Non-Tower CCD. By way of illustration, not limitation, Related equipmet includes generators and base stations.
4. *Stealth Technology*—camouflaging methods applied to Commercial Communication Devices 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.

5. *Substantially Change or Substantial Change* - (1) Any increase in the height of a Wireless Support Structure by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater, except that the mounting of the proposed wireless communications facility may exceed the size limits set forth herein if necessary to avoid interference with existing antennae; or (2) any further increase in the height of a Wireless Support Structure which has already been extended by more than 10% of its originally approved height or by the height of one additional antenna array
6. *Tower-Based Commercial Communication Devices (Tower-Based CCD)*—any structure that is used for the purpose of supporting one or more Antennae, including, but not limited to, self-supporting lattice towers, guy towers and monopoles, utility poles and light poles, that is located within the public rights-of-way. Distributed Antenna System hub sites are considered to be Tower-Based CCD.
7. *WBCA* - Pennsylvania Wireless Broadband Collocation Act (53 P.S. §11702.1 *et. seq.*)
8. *Wireless Support Structure*—a freestanding structure, such as a Tower-Based CCD or any other support structure that could support the placement or installation of a wireless communications facility if approved by the Township.

SECTION II. AMENDMENT TO SECTION 413.1, PURPOSES OF THE ZONING ORDINANCE

Section 413.1 of the Damascus Township Zoning Ordinance is hereby amended to include the following definitions to the “Purposes” section:

- E. Provide for the managed development of Commercial Communication Devices 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;
- F. Establish procedures for the design, siting, construction, installation, maintenance and removal of Commercial Communication Devices in the Township, including facilities both inside and outside the public rights-of-way;

SECTION III. ADOPTION OF NEW COMMERCIAL COMMUNICATION DEVICES PROVISIONS

- A. Section 413.2 of the Damascus Township Zoning Ordinance is hereby AMENDED to include a new Section 413.2(E) entitled and provided for as follows:
 - E. CCD in the Public Rights-of Way – CCD shall be permitted in the public-rights-of way subject to the following regulations:
 1. Non-Tower CCD shall be located on municipally owned poles and traffic lights. If such placement is not possible, Non-Tower CCD are permitted by conditional use in all zones subject to the restrictions and conditions prescribed below, and subject to applicable permitting by the Township. Non-Tower CCDs that fall under the Pennsylvania Wireless Broadband Co-location Act shall be permitted and regulated via building permit, rather

than conditional use

2. CCDs shall be permitted by conditional use in the public rights-of-way of any zoning district subject to the regulations of Section 413.4 of the Damascus Township Zoning Ordinance. The regulations of Section 413.3 of the Zoning Ordinance do not apply to CCDs in the public rights-of-way.

SECTION IV. ADOPTION OF NEW COMMERCIAL COMMUNICATION DEVICES STANDARDS PROVISIONS

A. The Damascus Township Zoning Ordinance is hereby AMENDED to include a new Section 413.4 entitled and provided for as follows:

413.4 Standards for Facilities in the Public Rights-of-Way

A. Location and development standards.

1. Tower-Based CCD in the public ROW shall not exceed thirty five (35) feet in height and are prohibited within fifty (50) feet of areas in which all utilities are located underground.
2. Tower-Based CCD in the ROW shall not be located in the front façade area of any structure.
3. Tower-Based CCD in the ROW shall be permitted along roads throughout the Township, regardless of the underlying zoning district, provided that they are not situated within fifty (50) feet of an area in which utilities are underground. However, the location of Tower-Based CCD are prohibited in the following ROW:
 - a. Edward Street.
 - b. Elizabeth Street.
 - c. First Street.
 - d. Second Street.
 - e. Third Street.
 - f. Main Street.
 - g. Shady Lane.
 - h. Overlook Drive.
 - i. Circle Drive.

4. Non-Tower CCD in the ROW shall be located or co-located on existing infrastructure, such as existing utility poles or light poles. If co-location is not technologically feasible, the CCD Applicant shall locate its Non-Tower CCD on existing poles or freestanding structures that do not already act as support structures for CCD with the Township's approval.
5. CCDs and any Related Equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the ROW as determined by the Township. In addition:
 - a. In no case shall ground-mounted Related Equipment, walls, or landscaping be located within eighteen (18) inches of the face of the curb or within an easement extending onto a privately-owned lot;
 - b. Ground-mounted Related Equipment that cannot be placed underground shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Township.
 - c. Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Township.
 - d. Any graffiti on any Wireless Support Structures or any Related Equipment shall be removed at the sole expense of the owner.
 - e. Any proposed underground vault related to Non-Tower CCD shall be reviewed and approved by the Township.

B. Design regulations.

1. The CCD shall employ the most current Stealth Technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. The application of the Stealth Technology chosen by the CCD Applicant shall be subject to the approval of the Township.
2. All equipment shall be the smallest and least visibly intrusive equipment feasible.
3. To the extent permissible under state and federal law, any height extensions to an existing Tower-Based CCD shall require prior approval of the Township, and shall not increase the overall height of the Tower-Based CCD to more than thirty five (35) feet.
4. Any proposed Tower-Based CCD shall be designed structurally, electrically, and in all respects to accommodate both the CCD Applicant's antennae and comparable antennae for future users.
5. All Tower-Based CCDs 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. The only

other signage permitted on the CCD shall be those required by the FCC, or any other federal or state agency.

C. Conditional Use Application. Conditional use authorization is required for all proposed Tower-Based CCD and for Non-Tower CCD that do not fall under the Pennsylvania Wireless Broadband Co-location Act. The conditional use application shall consist of the following:

1. A propagation study evidencing the need for the proposed CCD or and its accompanying equipment, a description of the type and manufacturer of the proposed transmission/radio equipment, the power in watts at which the CCD transmits, and any relevant related tests conducted by the applicant in determining the need for the proposed site and installation;
2. Documentation evidencing that the applicant provided notice of the conditional use hearing to all Township residents within five hundred (500) feet of the proposed Tower-Based facility, or two hundred (200) feet of the proposed Non-Tower facility;
3. If the conditional use application is for a Tower-Based CCD, documentation demonstrating that a proposed Tower-Based CCD complies with all state and federal laws and regulations pertaining to wireless communications facilities shall be provided to the Board; and
4. Documentation demonstrating that the proposed CCD complies with all other applicable provisions in this section.

D. Engineer Inspection. Prior to the Township's issuance of a permit authorizing construction and erection of a Tower-Based CCD, a structural engineer registered in Pennsylvania shall issue to the Township a written certification of the proposed CCD'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 hearings 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.

E. Co-Location of Tower-Based CCD. An application for a new Tower-Based CCD shorter than thirty-five (35) feet in height in the public rights-of-way shall demonstrate that the proposed Tower-Based CCD cannot be accommodated on an existing or approved structure or building, or sited on land owned and maintained by Damascus Township. The Board may deny an application to construct a new Tower-Based CCD if the Applicant has not made a good faith effort to mount the CCD antenna(e) on an existing structure. The CCD Applicant shall demonstrate that it contacted the owners of tall structures, buildings, and towers within a one quarter ($\frac{1}{4}$) of a mile radius of the site proposed, sought permission to install an antenna on those structures, buildings, and towers and was denied for one of the following reasons:

- (1) The proposed antenna and Related Equipment would exceed the structural capacity of the existing building, structure or tower, and its reinforcement cannot be accomplished at a reasonable cost.

- (2) The proposed antenna and Related Equipment would cause radio frequency interference with other existing equipment for that existing building, structure, or tower and the interference cannot be prevented at a reasonable cost.
- (3) Such existing buildings, structures, or towers do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.
- (4) A commercially reasonable agreement could not be reached with the owner of such building, structure, or tower.

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

G. Timing of Approval.

1. Timing of approval for Non-Tower CCD applications that fall under the WBCA. Within thirty (30) calendar days of the date that an application for a Non-Tower CCD is filed with the Township, the Township shall notify the applicant in writing of any information that may be required to complete such application. Within sixty (60) calendar days of receipt of a complete application, the Township shall make its final decision on whether to approve the application and shall advise the CCD Applicant in writing of such decision. If additional information was requested by the Township to complete an application, the time required by the CCD applicant to provide the information shall not be counted toward the Township's sixty (60) day review period. The timing requirements in this section shall only apply to proposed facilities that fall under the Pennsylvania Wireless Broadband Collocation Act.

2. Timing of Approval for new Tower-Based CCDs. Within thirty (30) calendar days of the date that an application for a Tower-Based CCD is filed with the Township, the Township shall notify the CCD Applicant in writing of any information that may be required to complete such application. All applications for Tower-Based CCDs shall be acted upon within one hundred fifty (150) days of the receipt of a fully completed application for the approval of such Tower-Based CCD and the Township shall advise the CCD Applicant in writing of its decision. If additional information was requested by the Township to complete an application, the time required by the CCD Applicant to provide the information shall not be counted toward the one hundred fifty (150) day review period.

H. Wind. All CCDs shall be designed to withstand the effects of wind in accordance with 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.)

- I. Public Safety Communications. No CCD shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- J. Radio Frequency Emissions. A CCD shall not, by itself or in conjunction with other CCDs, 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.
- K. Inspection. The Township reserves the right to inspect any CCD to ensure compliance with the provisions of the Zoning Ordinance and any other provisions found within the Township Code or state or federal law. The Township and/or its agents shall have the authority to enter the property upon which a CCD is located at any time, upon reasonable notice to the operator, to ensure such compliance.
- L. Relocation or Removal of Devices - Within three (3) months following written notice from the Township, or such longer period as the Township determines is reasonably necessary or such shorter period in the case of an Emergency, an owner of tower in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any CCD when the Township, consistent with its police powers and applicable Public Utility Commission regulations, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
1. The construction, repair, maintenance or installation of any Township or other public improvement in the Right-of-Way;
 2. The operations of the Township or other governmental entity in the right-of-way;
 3. Vacation of a street or road or the release of a utility easement; or
 4. An emergency, as determined by the Township.
- M. Insurance. Each person or company that owns or operates a CCD in the public rights-of-way shall provide the Township with a certificate of insurance evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering the CCD.
- N. Indemnification. Each person that owns or operates a CCD in the public rights-of-way shall, at its sole cost and expense, indemnify, defend and hold harmless the Township, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the CCD. Each person that owns or operates a CCD shall defend any actions or proceedings against the Township in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of a CCD. 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.

SECTION V. AMEDMENT TO SECTION 413.3(B) OF THE ZONING ORDINANCE OF DAMASCUS TOWNSHIP

Section 413.3(B) of the Damascus Township Zoning Ordinance, entitled *Standards, Co-location; New Tower*, is hereby amended to change the requirements for co-location attempts. Such amendment will appear as follows: ~~struck out~~ for items removed and underlined for items added:

B Co-location; New Tower. If the applicant proposes to build a tower (as opposed to mounting the CCD on an existing structure), the Township shall require the applicant to demonstrate that it contacted in writing the owners of tall structures within a two and a half (2 ½) mile radius of the site proposed, asked for permission to install the CCD on those structures, and was denied for reasons other than economic ones.

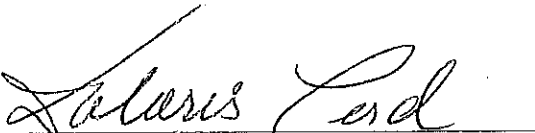
SECTION VI. Miscellaneous

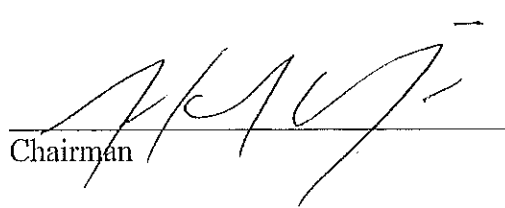
A. Effective Date - This Ordinance shall become effective five (5) days after enactment by the Board of Supervisors of Damascus Township

ENACTED AND ORDAINED this 15 day of June, 2015.

ATTEST:

DAMASCUS TOWNSHIP BOARD OF SUPERVISORS:


Secretary


Chairman