

**CITY OF REHOBOTH BEACH
SUSSEX COUNTY, DELAWARE**

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF REHOBOTH BEACH, SUSSEX COUNTY, DELAWARE; PROVIDING FOR THE AMENDMENT OF CHAPTER 270 OF THE REHOBOTH BEACH CITY CODE; PROVIDING FOR PURPOSES RELATED TO THE ADOPTION OF THE AMENDMENTS; 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 COMMUNICATIONS FACILITIES, AND SMALL WIRELESS COMMUNICATIONS FACILITIES; PROVIDING FURTHER FOR THE REGULATION OF SUCH WIRELESS COMMUNICATIONS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY AND OUTSIDE THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE ENFORCEMENT OF SAID REGULATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW THEREFORE, be it, and it is hereby **ORDAINED** by the Council of the City of Rehoboth Beach, Sussex County, State of Delaware, and it is hereby **ENACTED** and **ORDAINED** by authority of same as follows:

SECTION I. Purposes

A. Purposes.

(1) The purpose of this section is to establish uniform standards for the siting, design, permitting, maintenance, and use of wireless communications facilities in the City of Rehoboth Beach (referred to herein as the “City”). While the City recognizes the importance of wireless communications facilities in providing high quality communications service to its residents, the City also recognizes that it has an obligation to protect public safety and to minimize the adverse effects of such facilities through the standards set forth in the following provisions.

(2) By enacting these provisions, the City intends to:

- (a) Promote the deployment of wireless communications facilities in the City while regulating their location and number so as to ensure the provision of 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 City 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 tower-based wireless communications facilities, non-tower wireless communications facilities, and small wireless communications facilities in the City, 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, small cells, cable Wi-Fi and other wireless 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 collocate their commercial communications antennas and related facilities on existing towers;
- (f) Promote the health, safety and welfare of the City's residents.

SECTION II. Amendment to Section 270-4, Definitions

Section 270-4 of the Zoning Ordinance is hereby amended by adding following definitions to the “Definitions” section:

1. *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.
2. *Antenna* — an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of wireless service and any commingled information services.
3. *Collocation*—the mounting of one or more WCFs, including antennae, on a pre-existing structure, or modifying a structure for the purpose of mounting or installing a WCF on that structure.
4. *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.
5. *Emergency*—a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the rights-of-way to be unusable and result in loss of the services provided.

6. *Equipment Compound*—an area surrounding or adjacent to a wireless support structure within which base stations, power supplies, or accessory equipment are located.
7. *FCC*—Federal Communications Commission.
8. *Height of a Tower-Based WCF* - the vertical distance measured from the ground level, including any base pad, to the highest point on a tower-based WCF, including antennae mounted on the tower and any other appurtenances.
9. *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.
10. *Non-Tower Wireless Communications Facility (Non-Tower WCF)*—Wireless communications facilities located or collocated on existing structures, such as, but not limited to buildings, water towers, electrical transmission towers, utility poles, light poles, traffic signal poles, flag poles and other similar structures that do not require the installation of a new tower. This term includes the replacement of an existing structure with a similar structure that is required to support the weight of the proposed WCF. This definition excludes any installation constituting a Small Wireless Communications Facility.
11. *Person*—individuals, corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, corporations and other entities established pursuant to statutes of the State of Delaware, provided that “Person” does not include or apply to the City, or to any department or agency of the City.
12. *Replacement* -- the replacement of existing wireless communications facilities on an existing wireless support structure or within an existing equipment compound due to maintenance, repair or technological advancement with equipment that does not result in increased wind or structural loading, is substantially similar in size and weight as the wireless communications facilities initially installed, and that does not substantially change the physical dimensions of the existing wireless support structure.
13. *Small Wireless Communications Facility* -- A wireless communications facility that meets the following criteria:
 - (1) The structure on which antenna facilities are mounted—
 - (i) is 50 feet or less in height, or
 - (ii) is no more than 10 percent taller than other adjacent structures, or

(iii) is not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and

(2) Each antenna associated with the deployment (excluding the associated equipment) is no more than three cubic feet in volume; and

(3) All antenna equipment associated with the facility (excluding antennas) are cumulatively 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).

14. *Stealth Technology*—camouflaging or screening 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 a manner appropriate to the site's context and surrounding environment. 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.

15. *Substantially Change or Substantial Change* - A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(1) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 25% 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;

(i) 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.

(1) 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;

- (2) 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;
- (3) It entails any excavation or deployment outside the current site;
- (4) It would defeat the concealment elements of the eligible support structure; or
- (5) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

16. *Tower-Based Wireless Communications Facility (Tower-Based WCF)*—any structure that is used for the primary purpose of supporting one or more antennae, including, but not limited to, self-supporting lattice towers, guy towers and monopoles. This definition excludes any installation constituting a Small Wireless Communications Facility.

17. *Wireless*—transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.

18. *Wireless Communications Facility (WCF)*— an antenna facility or a wireless support structure that is used for the provision of wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

19. *Wireless Communications Facility Applicant (WCF Applicant)*—any person that applies for a wireless communications facility building permit, zoning approval and/or permission to use the public right-of-way or other City owned land or property.

20. *Wireless Support Structure*—a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of wireless service (whether on its own or comingled with other types of services).

SECTION III: ADOPTION OF NEW WIRELESS COMMUNICATIONS FACILITIES PROVISIONS

Chapter 270 of the Rehoboth Beach City Code is hereby amended by adding a new Section 270-46.1.2 entitled and provided for as follows:

Wireless Communications Facilities

§270-46.1.2 Wireless Communications Facilities

A. General and Specific Requirements for Non-Tower Wireless Communications Facilities

- (1) The following regulations shall apply to all Non-Tower WCF that do not meet the definition of a Small WCF:
 - (a) Permitted in all zones subject to regulations. Non-Tower WCF are permitted by Special Exception in all zones subject to the exceptions and requirements of this §270-46.1.2 and generally applicable permitting by the City.
 - (b) Non-commercial usage exemption. City residents utilizing satellite dishes, citizen and/or band radios, and Antennae for the purpose of maintaining television, phone, and/or internet connections at their residences shall be exempt from the regulations enumerated in this Section 270-46.1.2.
 - (c) Building permit required. WCF Applicants proposing the Collocation of a Non-Tower WCF that does not Substantially Change the physical dimensions of the Wireless Support Structure to which it is attached shall obtain a building permit from the City Building Inspector. In order to be considered for such permit, the WCF Applicant must submit a permit application to the City in accordance with applicable permit policies and procedures pursuant to §270-84. The WCF Applicant shall designate in writing that such applications constitute an Eligible Facilities Request pursuant to 47 CFR §1.40001.
 - (d) Non-conforming Wireless Support Structures. Non-Tower WCF shall be permitted to Collocate upon non-conforming Tower-Based WCF and other non-conforming Wireless Support 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.
 - (e) 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, National Electrical 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 damage any property in the City.

- (f) Wind and ice. All Non-Tower WCF shall be designed to withstand the effects of wind gusts 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/TIA-222, as amended), or to the industry standard applicable to the structure.
- (g) Aviation safety. Non-Tower WCF shall comply with all federal and state laws and regulations concerning aviation safety.
- (h) Public safety communications. Non-Tower WCF shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services by occupants of nearby properties.
- (i) Radio frequency emissions. A Non-Tower WCF shall not, by itself or in conjunction with other WCFs existing on the same structure at the time of installation, 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. Proof of compliance with such requirements shall be submitted to the Board of Commissioners as part of any application for a Non-Tower WCF.
- (j) Removal. In the event that use of a Non-Tower WCF is to be discontinued, the owner shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCF, or portions of WCF, shall be removed from the structure as follows:
 - [1] All abandoned or unused WCFs and Accessory Equipment shall be removed from the structure within ninety (90) days of the cessation of operations at the site unless a time extension is approved by the City.
 - [2] If the WCF or Accessory Equipment is not removed from the structure within ninety (90) days of the cessation of operations at a site, or within any longer period approved by the City, the WCF and/or associated facilities and equipment may be removed by the City and the cost of removal assessed against the owner of the WCF.
- (k) Insurance. Each Person that owns or operates a Non-Tower WCF shall annually provide the City with a certificate of insurance evidencing general liability coverage in the amount of \$1,000,000 per occurrence and property damage coverage in the amount of \$1,000,000 per occurrence covering the Non-Tower WCF. Each person that owns or operates a Non-Tower WCF shall have the option of self-insuring.
- (l) All Non-Tower WCF owners shall post a sign in a readily visible location identifying the name, phone number of a party to contact in the event of an

Emergency, and permit number. The only other signage permitted on the WCF shall be those required by the FCC, or any other federal or state agency.

(m) Indemnification. Each Person that owns or operates a Non-Tower WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the City, 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 Non-Tower WCF. Each Person that owns or operates a Non-Tower WCF shall defend any actions or proceedings against the City 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 Non-Tower 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. Notwithstanding the foregoing, the obligation to indemnify, hold harmless and defend shall not apply to claims arising from gross negligence or willful misconduct by the City or its contractors.

(n) Maintenance. The following maintenance requirements shall apply:

[1] The Non-Tower WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or Emergency repair.

[2] Such maintenance shall be performed to ensure compliance with applicable structural safety standards and radio frequency emissions regulations.

[3] All maintenance activities shall conform to industry maintenance standards.

(o) Timing of Approval.

[1] Within thirty (30) days of receipt of an application for a Non-Tower WCF on a preexisting Wireless Support Structure, the City Board of Commissioners shall notify the WCF Applicant in writing of any additional information required to complete the Special Exception application. Within ninety (90) days of receipt of an application for a Non-Tower WCF on a preexisting Wireless Support Structure that Substantially Changes the Wireless Support Structure to which it is attached, the City Board of Commissioners shall make a final decision on whether to approve the Special Exception application and the City Manager shall notify the WCF Applicant in writing of such decision.

[2] Within sixty (60) days of receipt of an application for a Non-Tower WCF on a preexisting Wireless Support Structure that does not Substantially

Change the Wireless Support Structure to which it is attached, the City Building Inspector shall issue the required building permit authorizing construction of the WCF. All applications for such WCF shall designate that the proposed WCF meets the requirements of an Eligible Facilities Request.

[3] Such timeframes shall be subject to the tolling procedures established by the FCC.

(2) In addition to the requirements in Section 270-46.1.2(A)(1) above, the following regulations shall apply to all Non-Tower WCF that do not meet the definition of a Small WCF and that Substantially Change the Wireless Support Structure to which they are attached:

- (a) Prohibited on Certain Structures. No Non-Tower WCF shall be located on single-family detached residences, single-family attached residences, semi-detached residences, duplexes, or any residential accessory structure.
- (b) Special Exception Authorization Required. Any WCF Applicant proposing the construction of a new Non-Tower WCF or the Modification of an existing Non-Tower WCF shall first obtain special exception authorization from the City Board of Commissioners pursuant to §270-76 of the Rehoboth Beach City Code. The Special exception application shall demonstrate that the proposed facility complies with all applicable provisions in the Rehoboth Beach City Zoning Ordinance.
- (c) Historic Buildings. No Non-Tower WCF may be located within one hundred (100) feet of any property, or on a building or structure that is listed on the National Register of Historic Places unless approved by the City Board of Commissioners.
- (d) Permit Fees. The City may assess appropriate and reasonable permit fees directly related to the City's actual costs in reviewing and processing the application for approval of a Non-Tower WCF, as well as related inspection, monitoring and related costs. Such permit fees shall be established by the City Fee Schedule and shall comply with the applicable requirements of the FCC.
- (e) Development Regulations. Non-Tower WCF shall be Collocated on existing Wireless Support Structures, such as existing buildings or Tower-Based WCF, subject to the following conditions:

[1] The total height of any Wireless Support Structure and mounted WCF shall not exceed the maximum height permitted in the underlying zoning district. The WCF Applicant shall retain the right to seek a variance in accordance with the requirements of the City Code should it be necessary to exceed the maximum height permitted in the underlying zoning district.

[2] In accordance with industry standards, all Non-Tower WCF Applicants must submit documentation to the City justifying the total height of the WCF.

[3] If the WCF Applicant proposes to locate the Accessory Equipment in a separate building, the building shall comply with the minimum requirements for the applicable zoning district.

[4] A security fence with a minimum height of six (6) feet and a maximum height of eight (8) feet shall surround any separate communications equipment building located outside the ROW. Vehicular access to the communications equipment building shall not interfere with the parking or vehicular circulations on the site for the principal use.

(f) Design Regulations.

[1] Where appropriate, Non-Tower WCF shall employ Stealth Technology and be treated to match the Wireless Support Structure in order to minimize aesthetic impact. The application of the Stealth Technology utilized by the WCF Applicant shall be subject to the approval of the City Board of Commissioners.

(g) Removal, Replacement and Substantial Change.

[1] The removal and Replacement of Non-Tower WCF and/or Accessory Equipment for the purpose of upgrading or repairing the WCF is permitted, so long as such repair or upgrade does not Substantially Change the overall height of the WCF or increase the number of Antennae.

[2] Any Substantial Change to a WCF shall require notice to be provided to the City Building Inspector, and possible supplemental permit approval as determined by the City Building Inspector.

(h) Inspection. The City reserves the right to inspect any WCF to ensure compliance with the provisions of the Zoning Ordinance and any other provisions found within the City Code or state or federal law. The City and/or its agents shall have the authority to enter the lease area of any property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

(3) Regulations Applicable to all Non-Tower WCF located in the Public Rights-of-Way. In addition to the applicable Non-Tower WCF provisions listed in Section 270-46.1.2(A)(1) the following regulations shall apply to Non-Tower WCF located in the public Rights-of-Way that do not meet the definition of a Small WCF:

(a) Design Requirements:

[1] WCF installations located above the surface grade in the public ROW including, but not limited to, those on streetlights and joint utility poles, shall consist of Antennas that are no more than three (3) feet in height and that are compatible in scale and proportion to the structures upon which they are mounted.

[2] Antenna and Accessory Equipment shall be treated to match the supporting structure and may be required to be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.

(b) Time, Place and Manner. At the discretion of the City Manager, the City shall determine the time and manner of construction, maintenance, repair and/or removal of all Non-Tower WCF in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. All construction, maintenance, repair and/or removal of Non-Tower WCF shall comply with the applicable requirements of the City code, including but not limited to Chapter 105.

(c) Equipment Location. Ground-mounted Accessory Equipment shall be located underground or, if undergrounding is demonstrated to be technically unfeasible or would materially inhibit deployment, 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 City Board of Commissioners. In addition:

[1] In no case shall ground-mounted Accessory Equipment, walls, or landscaping be located within eighteen (18) inches of the face of the curb, within four (4) feet of the edge of the cartway, or within an easement extending onto a privately-owned lot;

[2] Ground-mounted Accessory Equipment that cannot be placed underground shall be screened from surrounding views, to the fullest extent practicable, through the use of landscaping or other decorative features to the reasonable satisfaction of the City Board of Commissioners. Ground-mounted Accessory Equipment shall be screened, when possible, by utilizing existing structures. If screening by utilizing existing structures is not possible, ground-mounted Accessory Equipment shall be made architecturally and aesthetically compatible with the surrounding area through the use of coatings, landscaping, and/or screening walls or enclosures to the reasonable satisfaction of the City Board of Commissioners. Screening shall not 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 City Board of Commissioners.

- [3] Required electrical meter cabinets shall be screened to blend in with the surrounding area to the reasonable satisfaction of the City Board of Commissioners. The WCF owner shall be solely responsible for this requirement.
 - [4] Any graffiti on any Accessory Equipment shall be removed within thirty (30) days upon notification by the City at the sole expense of the owner.
 - [5] Any proposed underground vault related to Non-Tower WCF shall be reviewed and approved by the City Board of Commissioners.
 - [6] Accessory equipment attached to the Wireless Support Structure shall have a minimum of eight (8) feet of vertical clearance above finished grade.
- (d) Relocation or Removal of Facilities. Within ninety (90) days following written notice from the City, or such longer period as the City determines is reasonably necessary or such shorter period in the case of an Emergency, an owner of a WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the City, consistent with its police powers, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
- [1] The construction, repair, maintenance or installation of any City or other public improvement in the Right-of-Way;
 - [2] The operations of the City 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 City.

In such cases the City will make reasonable efforts to assist the WCF owner in identifying and permitting an alternate location for the WCF.

- (e) Reimbursement. In addition to permit fees as described in this section, every Non-Tower WCF in the ROW is subject to the City's right to recover its actual costs incurred as a result of the WCF's presence in the ROW 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 City related to the WCF. The owner of each Non-Tower WCF shall reimburse the City for the City's costs reasonably incurred in connection with the activities described above. Such fees shall comply with the applicable requirements of the FCC.

B. General and Specific Requirements for Tower-Based Wireless Communications Facilities and Pole Facilities.

(1) The following regulations shall apply to all Tower-Based Wireless Communications that do not meet the definition of a Small WCF.

(a) 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, the Delaware Uniform Construction Code, as well as the accepted and responsible workmanlike industry practices of the National Association of Tower Erectors. Any Tower-Based WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any Person or damage any property in the City.

(b) Special Exception Authorization Required. Tower-Based WCF are permitted by special exception and at a height necessary to satisfy their function in the WCF Applicant's wireless communications system, subject to the requirements of this Section 270-46.1.2(B)(1)(b).

[1] The special exception application shall be accompanied by a description of the type and manufacturer of the proposed transmission/radio equipment, 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.

[2] The special exception application shall also be accompanied by documentation demonstrating that the proposed Tower-Based WCF complies with all applicable state and federal laws and regulations concerning aviation safety.

[3] Where the Tower-Based WCF is located on a property that is not owned by the WCF Applicant, the WCF Applicant shall present evidence of owner consent.

[4] Prior to the City Board of Commissioners' issuance of a zoning permit authorizing construction and erection of a Tower-Based WCF, a structural engineer licensed in the State of Delaware shall issue to the City Board of Commissioners 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 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.

[a] An application for a new Tower-Based WCF shall demonstrate that the proposed Tower-Based WCF cannot be accommodated on an existing or approved structure or building. The Board may deny an application to construct a new Tower-Based WCF if the WCF Applicant has not made a good faith effort to mount the Antenna(s) on an existing structure. The WCF Applicant shall address the viability of any existing Wireless Support Structures within a one quarter (1/4) mile radius of the site proposed and demonstrate that such alternative candidates are inferior with respect to technical feasibility, cost, or terms of use.

[5] The special exception application shall also be accompanied by documentation demonstrating that the proposed Tower-Based WCF complies with all applicable provisions of this Chapter.

(c) Any Tower-Based WCF shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering department of the Telecommunications Industry Association (ANSI/TIA-222, as amended).

(d) No Tower-Based WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services by occupants of nearby properties.

(e) The following maintenance requirements shall apply:

[1] Any Tower-Based WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or Emergency repair.

[2] Such maintenance shall be performed to ensure the upkeep of the WCF in order to promote the safety and security of the City's residents and utilize industry standard technology for preventing failures and accidents.

(f) A Tower-Based WCF shall not, by itself or in conjunction with other WCFs existing on the same structure at the time of installation, 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. Proof of compliance with such requirements shall be submitted to the Board of Commissioners as part of any application for a Tower-Based WCF.

(1) No Tower-Based WCF may be located within one hundred (100) feet of a building or structure that is listed on the National Register of Historic Places unless approved by the City Board of Commissioners.

- (g) All Tower-Based WCFs shall post a sign in a readily visible location identifying the name, phone number of a party to contact in the event of an Emergency, and permit number. The only other signage permitted on the WCF shall be those required by the FCC, or any other federal or state agency.
- (h) No Tower-Based WCF shall be artificially lighted, except as 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. The WCF Applicant shall promptly report any outage or malfunction of FAA-mandated lighting to the appropriate governmental authorities and to the City Secretary.
- (i) Tower-Based WCF shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and the City Code, except in Emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.
- (j) Timing of Approval.

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

- (k) Non-conforming Tower-Based 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 section. The Collocation of Antennae is permitted on non-conforming structures.
- (l) In the event that use of a Tower-Based WCF is planned to be discontinued, the owner shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCF or portions of WCF shall be removed as follows:

[1] All unused or abandoned Tower-Based WCFs and Accessory Equipment shall be removed within ninety (90) days of the cessation of operations at the site unless a time extension is approved by the City.

- [2] If the WCF and/or Accessory Equipment is not removed within ninety (90) days of the cessation of operations at a site, or within any longer period approved by the City, the WCF and accessory facilities and equipment may be removed by the City and the cost of removal assessed against the owner of the WCF.
- [3] Any unused portions of Tower-Based WCF, including Antennae, shall be removed within ninety (90) days of the time of cessation of operations. The City must approve all Replacements of portions of a Tower-Based WCF previously removed.
- (m) The City may assess appropriate and reasonable permit fees directly related to the City's actual costs in reviewing and processing the application for approval of a Tower-Based WCF, as well as related inspection, monitoring, and related costs. Such permit fees shall be established by the City fee schedule and shall comply with the applicable requirements of the FCC.
- (n) Each Person that owns or operates a Tower-Based WCF shall provide the City Board of Commissioners with a certificate of insurance evidencing general liability coverage in the amount of \$5,000,000 per occurrence and property damage coverage in the amount of \$5,000,000 per occurrence covering the Tower-Based WCF. Each Person that owns or operates a Tower-Based WCF shall have the option to self-insure.
- (p) Each Person that owns or operates a Tower-Based WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the City, 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 Tower-Based WCF. Each Person that owns or operates a Tower-Based WCF shall defend any actions or proceedings against the City in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of Tower-Based 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. Notwithstanding the foregoing, the obligation to indemnify, hold harmless and defend shall not apply to claims arising from gross negligence or willful misconduct by the City or its contractors.
- (o) All plans and drawings for a Tower-Based WCF shall contain a seal and signature of a professional structural engineer, licensed in the State of Delaware.

(2) In addition to the applicable regulations in Section 270-46.1.2(B)(1) the following regulations shall apply to Tower-Based Wireless Communications Facilities located outside the Public Rights-of-Way:

(a) Development Regulations.

[1] Tower-Based WCF shall not be located in, or within twenty-five (25) feet of an area in which all utilities are located underground, unless the WCF Applicant proves to the reasonable satisfaction of the City Board of Commissioners that installing its WCF in such a location is necessary to provide Wireless service and that no other practical alternative exists.

[2] Tower-Based WCF are permitted outside the public Rights-of-Way in the following zoning districts by Special exception, subject to the requirements of this Chapter:

[a] xxxx

[b] xxx

[c] xxxx

[3] Sole use on a lot. A Tower-Based WCF shall be permitted as a sole use on a lot, provided that the underlying lot meets the minimum requirements of the underlying zoning district or the Applicant receives the necessary zoning to accommodate such use.

[4] 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 use, except residential, subject to the following conditions:

[a] The existing use on the property may be any permitted use in the applicable district and need not be affiliated with the WCF.

[b] Minimum lot area. The minimum lot shall comply with the requirements for the applicable zoning district and shall be the area needed to accommodate the Tower-Based WCF and guy wires, the equipment building, security fence, and buffer planting. The WCF Applicant shall retain the right to seek a variance in accordance with the requirements of the City Code should the proposed lot not comply with the requirements for the applicable zoning district.

(b) Design Regulations.

[1] Height. Tower-Based WCFs shall be designed and kept at the minimum functional height. The maximum total height of a Tower-Based WCF,

which is not located in the public ROW, shall not exceed the one hundred fifty (150) feet, as measured vertically from the ground level to the highest point on the WCF, including Antennae, and subsequent alterations. No WCF Applicant shall have the right under these regulations to erect a tower to the maximum height specified in this section unless it proves the necessity for such height. The WCF Applicant shall demonstrate that the Tower-Based WCF is the minimum height necessary for the service area.

[2] Visual Appearance and Land Use Compatibility. Tower-Based WCF shall employ Stealth Technology which may include the tower portion to be painted brown or another color approved by the Board of Commissioners or shall have a galvanized finish. All Tower-Based WCF and Accessory Equipment shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of a like facade to blend with the existing surroundings and neighboring buildings to the greatest extent possible. The Board of Commissioners may consider the aesthetic impact of the proposed facility, including but not limited to whether its decision upon the subject application will promote the harmonious and orderly development of the zoning district involved; encourage compatibility with the character and type of development existing in the area; prevent a negative impact on the aesthetic character of the community; preserve woodlands and trees existing at the site to the greatest possible extent; and encourage sound engineering and land development design and construction principles, practices and techniques.

[3] Any proposed Tower-Based WCF shall be designed structurally to accommodate both the WCF Applicant's Antennae and at least two (2) comparable Antennae for future users.

[4] Any Tower-Based WCF over forty (40) feet in height shall be equipped with an anti-climbing device, as approved by the manufacturer.

(c) Upon submission of an application for a Tower-Based WCF and the scheduling of the public hearing upon the application, the WCF Applicant shall send via First Class Mail notice to all owners of every property within one hundred and fifty (150) feet of the proposed facility, advising of the subject matter and date of such hearing. The WCF Applicant shall provide proof of such notification to the City Manager along with the list of return receipts received.

(d) Minimum setbacks. The minimum distance between the base of a Tower-Based WCF and any adjoining property line or street Right-of-Way line shall equal $\frac{1}{10}$ of the proposed height of the Tower-Based WCF, unless the Applicant shows to the satisfaction of the City Board of Commissioners that the proposed Tower-Based WCF has been designed in such a manner that a lesser setback will have no negative effects on public safety.

(e) Surrounding Environs.

[1] 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.

[2] The WCF Applicant shall submit a soil report to the City Board of Commissioners complying with the standards of Appendix I: Geotechnical Investigations, ANSI/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.

(f) Fence/Screen.

[1] A security fence having a minimum height of six (6) feet and a maximum height of eight (8) feet shall completely surround any Tower-Based WCF located outside the Public Rights-of-Way, as well as guy wires, or any building housing WCF equipment.

[2] A screen of evergreen trees planted eight (8) feet on center, each at least four (4) feet in height, shall surround the Tower-Based WCF and security fence. Existing vegetation shall be preserved to the maximum extent possible and landscaping is not required where landscaping already exists

(g) Accessory Equipment.

[1] If necessary, Accessory Equipment associated, or connected, with a Tower-Based WCF shall be placed underground or screened from public view using Stealth Technology. All ground-mounted Accessory Equipment, utility buildings and accessory structures shall be architecturally designed to blend into the environment in which they are situated and shall meet the minimum setback requirements of the underlying zoning district.

[2] Accessory Equipment. Accessory Equipment not exceeding five hundred (500) square feet in area shall be permitted for each unrelated company sharing space on the Tower-Based WCF outside of the public ROW.

(h) Additional Antennae. As a condition of approval for all Tower-Based WCF, the WCF Applicant shall provide the City Board of Commissioners with a written commitment that it will allow a minimum of two (2) other service providers the opportunity to Collocate Antennae on Tower-Based WCF where technically feasible. To the extent permissible under state and federal law, the owner of a Tower-Based WCF shall not install any additional Antennae without obtaining the prior written approval of the City Building Inspector.

- (i) FCC License. Each Person that owns or operates a Tower-Based WCF shall submit a copy of its current FCC license, including the name, address, and Emergency telephone number for the operator of the facility.
- (j) Access Road. Where necessary, an access road, turnaround space and parking shall be provided to ensure adequate Emergency and service access to Tower-Based WCF. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road grades shall closely follow natural contours to assure minimal visual disturbance and minimize soil erosion. Where applicable, the WCF owner shall present documentation to the City Board of Commissioners that the property owner has granted an easement or other property right for the proposed facility.
- (k) Construction. All construction, maintenance, repair and/or removal of Tower-Based WCF shall comply with the applicable requirements of the City code, including but not limited to Chapter 105.
- (l) Inspection. The City reserves the right to inspect any Tower-Based WCF to ensure compliance with the Zoning Ordinance and any other applicable provisions found within the City Code or state or federal law. The City and/or its agents shall have the authority to enter the lease property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

C. Regulations Applicable to all Small Wireless Communications Facilities.

The following regulations shall apply to Small Wireless Communications Facilities:

- (a) Location and development standards.
 - [1] Small WCF are permitted by administrative approval by the City Building and Licensing Department in all City zoning districts, subject to the requirements of this Section 270-46.1.2(C).
 - [2] 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 such that it would interfere with ingress or egress.
 - [3] All Small WCF shall comply with the applicable requirements of the Americans with Disabilities Act and all applicable City Code requirements pertaining to streets and sidewalks, as codified in Chapter 232 of the City Code.
- (b) 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.

- (c) Any WCF Applicant for a Small WCF requiring the installation of a new utility pole shall first obtain a license from the City pursuant to §232-51 of the Rehoboth Beach City Code.
- (d) 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, 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 damage any property in the City.
- (e) Wind and ice. All Small WCF shall be designed to withstand the effects of wind gusts 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/TIA-222, as amended), or to the industry standard applicable to the structure.
- (f) Public safety communications. Small WCF shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- (g) Radio frequency emissions. A Small WCF shall not, by itself or in conjunction with other WCFs existing on the same structure at the time of installation, 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.
- (h) Time, Place and Manner. The City Building Inspector 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. All construction, maintenance, repair and/or removal of Small WCF shall comply with the applicable requirements of the City code, including but not limited to Chapter 105.
- (i) 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 City.
- (j) Any graffiti on the Small WCF or on any Accessory Equipment shall be removed at the sole expense of the owner within thirty (30) days of notification by the City.

(k) Design regulations. All Small WCF shall be designed to meet the requirements of the City “Small Wireless Communications Facility Design Manual,” a copy of which is kept on file at the City Building and Licensing Office and available on the City’s website.

(l) Timing of Approval.

[1] Within sixty (60) days of receipt of a complete application for Collocation of a Small WCF on a preexisting Wireless Support Structure, the City Building Inspector shall make a final decision on whether to approve the application and shall notify the WCF Applicant in writing of such decision.

[2] Within ninety (90) days of receipt of an application for a Small WCF requiring the installation of a new Wireless Support Structure, the City Building Inspector shall make a final decision on whether to approve the application and shall notify the WCF Applicant in writing of such decision.

(m) Relocation or Removal of Facilities. Within ninety (90) days following written notice from the City, or such longer period as the City 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 WCF when the City, 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 City or other public improvement in the right-of-way;

[2] The operations of the City 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 City

In such cases the City will make reasonable efforts to assist the WCF owner in identifying and permitting an alternate location for the WCF.

(n) Reimbursement. In addition to permit fees as described in this section, every Small WCF in the ROW is subject to the City’s right to recover its actual costs incurred as a result of the Small WCF’s presence in the ROW, 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 City. The owner of each Small WCF shall reimburse the City for the City’s costs reasonably incurred in connection with the activities described above. All fees shall comply with applicable state and federal law and not exceed amounts presumed reasonable by the FCC.

SECTION VII. Miscellaneous

- A. Police powers. The City, 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 City under applicable federal, state and local laws and regulations.
- B. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance 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.
- C. Effective Date. This Ordinance shall become effective five (5) days after enactment by the Council of the City of Rehoboth Beach.

ENACTED AND ORDAINED this day of , 2019.

ATTEST:

REHOBOTH BEACH CITY COUNCIL:

Manager

President