

**BOROUGH OF BADEN
BEAVER COUNTY, PENNSYLVANIA**

ORDINANCE NO. 969

AN ORDINANCE OF THE BOROUGH OF BADEN, BEAVER COUNTY, PENNSYLVANIA; PROVIDING FOR THE AMENDMENT OF CHAPTER 193 OF THE BADEN BOROUGH 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 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 Borough of Baden, Beaver County, Commonwealth of Pennsylvania, 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 Borough of Baden (referred to herein as the "Borough"). While the Borough recognizes the importance of wireless communications facilities in providing high quality communications service to its residents, the Borough 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 Borough intends to:
 - (a) Accommodate the need for wireless communications facilities 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 Borough residents and wireless carriers in accordance with federal and state laws and regulations;
 - (c) Establish procedures for the design, siting, construction, installation, maintenance and removal of both tower-based and non-tower based wireless communications facilities in the Borough, 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 wireless communications facilities, 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 Borough's residents.

SECTION II. Amendment to Section 193-3(B), "Meaning of Words"

Section 193-3(B) of the Baden Borough Zoning Ordinance is hereby amended by adding the 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, including but 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. *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.
5. *Equipment Compound* — An area surrounding or adjacent to a wireless support structure within which base stations, power supplies, or accessory equipment are located.
6. *FCC* — Federal Communications Commission.
7. *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 Antennas mounted on the tower and any other appurtenances.
8. *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.
9. *Non-Tower Wireless Communications Facility (Non-Tower WCF)* — Wireless communications facilities 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.
10. *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 composed of the same wind loading and structural loading that is substantially similar in size, weight and height as the wireless communications facilities initially installed and that does not substantially change the physical dimensions of the existing wireless support structure.
1. *Small Wireless Communications Facility* — A wireless communications facility that meets the following criteria:
 - (1) The wireless support 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 accessory equipment) is no more than three cubic feet in volume; and

(3) All accessory equipment associated with the wireless communications facility (excluding Antennas) is cumulatively no more than 28 cubic feet in volume.

(4) The wireless communications facility does not require Antenna structure registration under 47 CFR Part 17;

(5) The wireless communications facility is not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The wireless communications facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b).

11. *Stealth Technology* — Camouflaging methods applied to wireless communications facilities and accessory equipment which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted antennae, building-mounted antennae painted to match the existing structure and facilities constructed to resemble trees, shrubs, and light poles.
12. *Substantial Change* — A modification substantially changes the physical dimensions of an support structure if it meets the criteria established by 47 CFR §1.6100.
13. *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, and the accompanying Antenna and Accessory Equipment.
14. *WBCA* — Pennsylvania Wireless Broadband Collocation Act (53 P.S. §11702.1 *et. seq.*)
15. *Wireless* — Transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.
16. *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.
17. *Wireless Communications Facility Applicant (WCF Applicant)*—Any entity that applies for a wireless communication facility building permit, zoning approval and/or permission to use the public Right-of-Way (ROW) or other City-owned land or property.
18. *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: AMENDMENT OF WIRELESS COMMUNICATIONS FACILITIES PROVISIONS

Chapter 193 of the Baden Borough zoning ordinance is hereby amended by adding a new Article III entitled and provided for as follows:

Article III: Wireless Communications Facilities

§193-43 General and Specific Requirements for Non-Tower Wireless Communications Facilities.

A. The following regulations shall apply to all Non-Tower WCFs that do not meet the definition of a Small WCF:

- (1) Conditional Use Authorization Required. Non-Tower WCFs are permitted in all zoning districts as a Conditional Use subject to the requirements of this Section 193-43 and generally applicable permitting as required by the Borough Code.
- (1) Eligible Facilities Request. WCF Applicants proposing a Modification to an existing WCF that does not Substantially Change the dimensions of the underlying structure shall be required only to obtain a building permit from the Borough Building Inspector. In order to be considered for such permit, the WCF Applicant must submit a permit application to the Borough in accordance with applicable permit policies and procedures.
- (2) Non-commercial usage exemption. Borough 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 193-43.
- (3) Small WCF Exemption. Non-Tower WCFs that meet the definition of a Small WCF shall be exempt from the requirements of this Section 193-43(A). Such Small WCFs shall be subject only to applicable permitting and the requirements of Section 193-45.
- (4) 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.
- (5) 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 either the National or Pennsylvania Registers of Historic Places, or eligible to be so listed, located within a historic district, or is included in the official historic structures list maintained by the Borough
- (6) Non-conforming Wireless Support Structures. Non-Tower WCFs shall be permitted to Collocate upon non-conforming Tower-Based WCFs and other non-conforming structures. Collocation of WCF upon an existing Tower-Based WCF is encouraged even if the Tower-Based WCF is non-conforming as to use within a zoning district.
- (7) 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 any property in the Borough.

- (8) Wind and ice. All Non-Tower WCFs 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.
- (9) Aviation safety. Non-Tower WCFs shall comply with all federal and state laws and regulations concerning aviation safety.
- (10) Public safety communications. Non-Tower WCFs shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- (11) Radio frequency emissions. A Non-Tower WCF shall not, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- (12) Removal. In the event that use of a Non-Tower WCF is to be discontinued, the owner shall provide written notice to the Borough 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:
 - (a) All abandoned or unused WCFs and Accessory Equipment shall be removed within sixty (60) days of the cessation of operations at the site unless a time extension is approved by the Borough.
 - (b) If the WCF or Accessory Equipment is not removed within sixty (60) days of the cessation of operations at a site, or within any longer period approved by the Borough, the WCF and/or Accessory Equipment may be removed by the Borough and the cost of removal assessed against the owner of the WCF.
- (13) Maintenance. To the extent permitted by law, the following maintenance requirements shall apply:
 - (a) The Non-Tower WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or Emergency repair.
 - (b) Such maintenance shall be performed to ensure compliance with applicable structural safety standards and radio frequency emissions regulations.
 - (c) All maintenance activities shall conform to industry maintenance standards.
- (14) Timing of Approval.
 - (a) Within thirty (30) calendar days of the date that an application for a Non-Tower WCF is filed with Borough Council, the Borough shall notify the WCF Applicant in writing of any information that may be required to complete such application.
 - (b) Within sixty (60) days of receipt of a complete 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 Borough Zoning Officer shall issue the required building and zoning permits authorizing construction of the WCF. All applications for such WCF shall designate that the proposed WCF meets the requirements of an Eligible Facilities Request.
 - (c) Within ninety (90) days of receipt of a complete application for a Non-Tower WCF on a preexisting Wireless Support Structure that Substantially

Changes the Wireless Support Structure to which it is attached, Borough Council shall make a final decision on whether to approve the application and shall notify the WCF Applicant in writing of such decision.

- (15) Permit Fees. The Borough may assess appropriate and reasonable permit fees directly related to the Borough'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 Borough Fee Schedule and shall comply with the applicable requirements of the FCC.
- (16) Development Regulations.
- (a) A Non-Tower WCF shall extend a maximum of twenty (20) feet beyond the existing Wireless Support Structure to which the Non-Tower WCF is attached.
 - (b) All Non-Tower WCF Applicants must submit documentation to the Borough justifying the total height of the WCF.
 - (c) 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.
 - (d) A security fence not to exceed eight (8) feet in height shall surround any separate communications equipment building. Vehicular access to the communications equipment building shall not interfere with the parking or vehicular circulations on the site for the principal use.
- (17) Design. 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 Borough.
- (18) Removal, Replacement and Substantial Change.
- (a) 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.
 - (b) Any Substantial Change to a WCF shall require notice to be provided to the Borough Zoning Officer, and possible supplemental permit approval as determined by the Borough Zoning Officer.
- (19) Inspection. The Borough reserves the right to inspect any WCF to ensure compliance with the provisions of the Zoning Ordinance and any other provisions found within the Borough Code or state or federal law. The Borough 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.
- (20) Insurance. Each Person that owns or operates a Non-Tower WCF shall annually provide the Borough 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 Non-Tower WCF.
- (21) Indemnification. Each Person that owns or operates a Non-Tower WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, 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 Borough 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.

§193-44 General and Specific Requirements for Tower-Based Wireless Communications Facilities.

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

(2) Conditional Use Authorization Required. Tower-Based WCFs are permitted as a Conditional Use and at a height necessary to satisfy their function in the WCF Applicant's wireless communications system, subject to the requirements of this Section 193-44.

(a) 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 five hundred (500) feet of the proposed facility, advising of the subject matter and date of such hearing. Such notice shall be sent ten (10) days in advance of any such hearing. The WCF Applicant shall provide proof of the notification to the Borough Council along with the list of return receipts received.

(b) Prior to the Borough Council's approval of a Conditional Use authorizing the construction and installation of a Tower-Based WCF, it shall be incumbent upon the WCF Applicant for such Conditional Use approval to prove to the reasonable satisfaction of Borough Council that the WCF Applicant cannot adequately extend or infill its communications system by the use of equipment such as repeaters, Antenna(s) and other similar equipment installed on existing structures, such as utility poles or their appurtenances and other available structures. The WCF Applicant shall further demonstrate that the proposed Tower-Based WCF must be located where it is proposed in order to serve the WCF Applicant's service area and that no other viable, less-intrusive alternative location exists. This test is also met when the WCF Applicant demonstrates that the WCF is being proposed to densify an existing wireless network, introduce new services or otherwise improve service capabilities.

(c) The Conditional Use application shall include a site plan, drawn to scale, showing all property boundaries, power locations, the total height of the Tower-Based WCF, guy wires and anchors, existing structures, elevation drawings, typical design of proposed structures, parking, fences, landscaping and existing uses on adjacent properties within a radius equal to 150% of the total proposed Height of the Tower-Based WCF.

(d) The Conditional Use application shall be accompanied by a description of the type and manufacturer of the proposed transmission/radio equipment, the frequency range (megahertz band) assigned to the WCF Applicant, the power in watts at which the WCF Applicant transmits, and any relevant related tests conducted by the WCF Applicant in determining the need for the proposed site and installation.

(e) The Conditional Use application shall also be accompanied by documentation demonstrating that the proposed Tower-Based WCF

complies with all state and federal laws and regulations concerning aviation safety.

- (f) Where the Tower-Based WCF is located on a property that is not owned by the WCF Applicant, the WCF Applicant shall present documentation to Borough Council that the owner of the property has granted an easement or other property right, if necessary, for the proposed WCF and that vehicular access will be provided to the facility.
 - (g) Prior to the Borough Zoning Officer's issuance of a zoning permit authorizing construction and erection of a Tower-Based WCF, a structural engineer licensed in the Commonwealth of Pennsylvania shall issue to the Borough Zoning Officer 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 zoning permit.
 - (h) 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 Borough Council 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 demonstrate that it contacted the owners of tall structures, buildings, and towers within a one (1) 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 Accessory 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 Accessory 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.
 - (i) The Conditional Use application shall also be accompanied by documentation demonstrating that the proposed Tower-Based WCF complies with all generally applicable provisions of the Township Code, including but not limited to Section 193-16.
- (2) Emergency Communications. A Tower-Based WCF that serves emergency communications by a Borough-recognized police, fire or ambulance organization, and is on the same lot as an emergency services station, shall be permitted by right. Such Tower-Based WCF may also serve commercial purposes.
- (3) Development Regulations.
- (a) Tower-Based WCF shall not be located in, or within fifty (50) feet of an area in which all utilities are located underground.

(b) Tower-Based WCF are permitted outside the public Rights-of-Way in the following zoning districts by Conditional Use, subject to the requirements of this Chapter:

- [1] C-2 Highway Commercial District
- [2] C-3 General Commercial District
- [3] LI Light Industrial District

(c) 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.

(d) 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:

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

[2] 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.

(4) Design Regulations.

(a) 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 one hundred fifty (150) feet in height. 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.

(b) 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 Borough Council 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 Borough Council shall consider 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.

(c) Any proposed Tower-Based WCF shall be designed structurally, electrically, and in all respects to accommodate both the WCF Applicant's Antennae and comparable Antennae for future users.

(d) Any Tower-Based WCF shall be equipped with an anti-climbing device, as approved by the manufacturer.

(e) 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 100% of the proposed WCF structure's height or the applicable

principal building setback, whichever is greater, unless the Applicant shows to the satisfaction of the Borough Council 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.

(5) Surrounding Environs.

- (a) The WCF Applicant shall ensure that the existing vegetation, trees and shrubs located within proximity to the WCF structure shall be preserved to the maximum extent possible.
- (b) The WCF Applicant shall submit a soil report to the Borough Council 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.

(6) Fence/Screen.

- (a) A security fence having a height not to exceed 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.
- (b) A screen consisting of a hedge planted three (3) feet on center maximum or consisting of evergreen trees each at least four (4) feet in height and planted ten (10) feet on center maximum, shall surround the Tower-Based WCF and security fence. Existing vegetation shall be preserved to the maximum extent possible.

(7) Accessory Equipment.

- (a) Ground-mounted Accessory Equipment associated or connected with a Tower-Based WCF shall not be located within fifty (50) feet of a lot in residential use.
 - (b) 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.
 - (c) Either one single-story wireless communications equipment building not exceeding five hundred (500) square feet in area or its equivalent may be permitted for each unrelated company sharing commercial communications Antenna(e) space on the Tower-Based WCF outside of the public ROW.
- (8) 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 Pennsylvania 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 any property in the Borough.
- (9) Additional Antennae. As a condition of approval for all Tower-Based WCF, the WCF Applicant shall provide the Borough Council with a written commitment that it will allow at least two (2) other service providers to collocate Antennae on Tower-Based WCF where technically and economically feasible. To the extent

permissible under state and federal law, the owner of a Tower-Based WCF shall not install any additional Antennae without complying with the applicable requirements of this Section 193-44.

- (10) Eligible Facilities Request. WCF Applicants proposing a Modification to an existing WCF that does not Substantially Change the dimensions of the underlying structure shall be required only to obtain a building permit from the Borough Building Code Official. In order to be considered for such permit, the WCF Applicant must submit a permit application to the Borough in accordance with applicable permit policies and procedures.
- (11) 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.
- (12) Inspection. The Borough reserves the right to inspect any Tower-Based WCF to ensure compliance with the Zoning Ordinance and any other provisions found within the Borough Code or state or federal law. The Borough 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.
- (13) Wind and ice. 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).
- (14) Public Safety Communications. No Tower-Based WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- (15) Maintenance. The following maintenance requirements shall apply:
 - (a) Any Tower-Based WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance, repair or replacement.
 - (b) Such maintenance shall be performed to ensure the upkeep of the WCF in order to promote the safety and security of the Borough's residents and utilize industry standard technology for preventing failures and accidents.
- (16) Radio Frequency Emissions. A Tower-Based WCF shall not, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- (17) Signs. All Tower-Based WCFs shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an Emergency. The only other signage permitted on the WCF shall be those required by the FCC, or any other federal or state agency.
- (18) Lighting. 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 Borough Secretary.
- (19) Noise. 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 Borough Code, except in Emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.

- (20) Storage. The storage of unused equipment, materials or supplies is prohibited on any Tower-Based WCF site.
- (21) Timing of Approval.
- (a) Within thirty (30) calendar days of the date that an application for a Tower-Based WCF is filed with the Borough Zoning Officer, the Borough shall notify the WCF Applicant in writing of any information that may be required to complete such application.
 - (b) 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 Borough Council shall advise the WCF Applicant in writing of its decision. If additional information was requested by the Borough 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.
- (22) Non-Conforming Uses. 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.
- (23) Removal. In the event that use of a Tower-Based WCF is planned to be discontinued, the owner shall provide written notice to the Borough 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:
- (a) 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 Borough.
 - (b) 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 Borough, the WCF and Accessory Equipment may be removed by the Borough and the cost of removal assessed against the owner of the WCF.
 - (c) Any unused portions of Tower-Based WCF, including Antennae, shall be removed within ninety (90) days of the time of cessation of operations. The Borough must approve all Replacements of portions of a Tower-Based WCF previously removed.
- (24) Permit Fees. The Borough may assess appropriate and reasonable permit fees directly related to the Borough'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 Borough fee schedule and shall comply with the applicable requirements of the FCC.
- (25) Insurance. Each Person that owns or operates a Tower-Based WCF shall provide the Borough Zoning Officer with a certificate of insurance evidencing general liability coverage in the minimum amount of \$5,000,000 per occurrence and property damage coverage in the minimum amount of \$5,000,000 per occurrence covering the Tower-Based WCF.
- (26) Indemnification. Each Person that owns or operates a Tower-Based WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, 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 Borough 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.

(27) Engineer signature. All plans and drawings for a Tower-Based WCF shall contain a seal and signature of a professional structural engineer, licensed in the Commonwealth of Pennsylvania.

§193-45 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 from the Borough Zoning Officer in all Borough zoning districts, subject to the requirements of this Section 193-45 and generally applicable permitting as required by the Borough Code.
 - (2) Eligible Facilities Request. WCF Applicants proposing a Modification to an existing WCF that does not Substantially Change the dimensions of the underlying structure shall be required only to obtain a building permit from the Borough Building Code Official. In order to be considered for such permit, the WCF Applicant must submit a permit application to the Borough in accordance with applicable permit policies and procedures.
 - (3) Small WCF in the public ROW requiring the installation of a new Wireless Support Structure shall not be located in front of any building entrance or exit.
- 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. 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 any property in the Borough.
- D. Historic Buildings. No Small WCF may be located within one hundred (100) feet of any property, or on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or eligible to be so listed, located within a historic district, or is included in the official historic structures list maintained by the Borough.
- 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. Aviation safety. Small WCF shall comply with all federal and state laws and regulations concerning aviation safety.

- G. 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.
- H. Radio frequency emissions. A Small WCF shall not, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- I. Time, Place and Manner. The Borough 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.
- J. 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 Borough.
- K. Graffiti. Any graffiti on the Wireless Support Structure or on any Accessory Equipment shall be removed at the sole expense of the owner within thirty (30) days of notification by the Borough.
- L. Design standards. All Small WCF in the Borough shall comply with the requirements of the Borough *Small Wireless Communications Facility Design Manual*. A copy of such shall be kept on file at the Borough Zoning Office.
- M. Timing of Approval.
 - (1) Within sixty (60) days of receipt of an application for Collocation of a Small WCF on a preexisting Wireless Support Structure, the Borough Zoning Officer 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 Borough Zoning Officer shall make a final decision on whether to approve the application and shall notify the WCF Applicant in writing of such decision.
 - (3) Within ten (10) calendar days of the date that an application for a Small WCF is filed with the Borough Zoning Officer, the Borough shall notify the WCF Applicant in writing of any information that may be required to complete such application.
- N. Relocation or Removal of Facilities. Within ninety (90) days following written notice from the Borough, or such longer period as the Borough 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 Borough, 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 Borough or other public improvement in the right-of-way;
 - (2) The operations of the Borough 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 Borough.

- O. Permit Fees. The Borough may assess appropriate and reasonable permit fees directly related to the Borough's actual costs in reviewing and processing the application for approval of a Small WCF, as well as related inspection, monitoring and related costs. Such permit fees shall be established by the Borough Fee Schedule and shall comply with the applicable requirements of the FCC.
- P. Reimbursement for ROW Use. In addition to permit fees as described in this section, every Small WCF in the ROW is subject to the Borough's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the ROW. Such compensation for ROW use shall be directly related to the Borough's actual ROW management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other ROW management activities by the Borough. The owner of each Small WCF shall pay an annual fee to the Borough to compensate the Borough for the Borough's costs incurred in connection with the activities described above. Such fees shall comply with the applicable requirements of the Federal Communications Commission.
- Q. Insurance. Each Person that owns or operates a Small WCF shall provide the Borough Zoning Officer with a certificate of insurance evidencing general liability coverage in the minimum amount of \$5,000,000 per occurrence and property damage coverage in the minimum amount of \$5,000,000 per occurrence covering the Small WCF.
- R. Indemnification. Each Person that owns or operates a Small WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Borough, 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 Small WCF. Each Person that owns or operates a Small WCF shall defend any actions or proceedings against the Borough in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of Small 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.


SECTION IV. Miscellaneous

- A. Police powers. The Borough, 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 Borough 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 Borough of Baden.

ENACTED AND ORDAINED this 21st day of April, 2020.

ATTEST:

BADEN BOROUGH COUNCIL:


Secretary


Vice-President