

COUNCIL BILL NO. 1914

INTRODUCED BY: Diane Bernardo

ORDINANCE NO. 1815

AN ORDINANCE OF THE CITY OF DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, AMENDING CHAPTER 27 OF THE CODE OF ORDINANCES OF THE CITY OF DUBOIS ENTITLED ZONING AMENDING PART 2, SECTION 203.2 AND ADDING PART 20 THERETO ESTABLISHING CERTAIN GENERAL AND SPECIFIC STANDARDS RELATING TO THE LOCATION, PLACEMENT, CONSTRUCTION AND MAINTENANCE OF TELECOMMUNICATIONS TOWERS AND TELECOMMUNICATIONS ANTENNA; PROVIDING FOR THE REGULATION OF SUCH FACILITIES WITHIN THE PUBLIC RIGHT-OF-WAY AND OUTSIDE THE PUBLIC RIGHTS-OF-WAY; IMPOSING PERMIT FEES AND PROVIDING FOR THE ENFORCEMENT OF SAID REGULATIONS.

WHEREAS, the City recognizes the importance of Wireless Communications Facilities in providing high quality communications service to its residents and businesses, but the City also recognizes that it has an obligation to promote public safety and to minimize the adverse visual effects of such facilities through the standards set forth in the following provisions; and

WHEREAS, it is the purpose of this section to establish uniform standards for the siting, design, permitting, maintenance and use of Wireless Communications Facilities in the City of DuBois (hereinafter referred to as the "City").

WHEREAS, by enacting these provisions, the City intends to:

- a. Accommodate the need for Wireless Communications Facilities while regulating their location and number so as to insure the provision of necessary services;
- b. Provide for the managed development of Wireless Communications Facilities in a manner that enhance 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 both Telecommunications Towers and Telecommunications Antennas 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 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 communication services co-locate their Telecommunications Antenna and related facilities on existing tower and infrastructure; and
- f. Promote the health, safety and welfare of the City's residents.

NOW, THEREFORE, be it and it is hereby ORDAINED by the City Council of the City of DuBois, Clearfield County, Commonwealth of Pennsylvania, and it is hereby ENACTED and ORDAINED by authority of the same as follows:

SECTION I. Amendment to Chapter 27, Part 2, Section 203 of the Zoning Ordinance of the City of DuBois

Chapter 27, Part 2, Section 203.2 of the Code of Ordinances of the City of DuBois is hereby repealed and replaced in its entirety with the following language:

§203. Height Regulations

2. Height regulations shall not apply to spires, belfries, cupolas, penthouses, or domes not used for skylights, water tanks constructed for the purposes of storing water, bulkheads, television antennae, silos, flagpoles not incidental to a wireless communications facility, and ornamental or necessary or mechanical appurtenances.

SECTION II. Amendment to Chapter 27 of the Code of Ordinances by the Addition of Part 20 Entitled Wireless Communications Facilities with the Addition of the Following Sections:

Chapter 27 is hereby amended by the addition of Part 20, Section 2000 as follows:

§2000. Definitions

1. *Applicant* – any entity or person who applies for a wireless communications facility building permit, zoning approval and/or permission to use the public right-of-way, City-owned land, or other property.
2. *Co-location*– the mounting of one or more Telecommunications Antennas on an existing Telecommunications Tower, or on any structure that has been approved by the City to support at least one Telecommunications Antenna.
3. *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 it provides.
4. *FCC* – Federal Communications Commission.
5. *Height of a Telecommunications Tower* – the vertical distance measured from the ground level, including any base pad, to the highest point on a Telecommunications Tower, including Telecommunications Antennas mounted on the tower and any other appurtenances.
6. *Related Equipment* – any piece of equipment related to, incidental to, or necessary for, the operation of a Telecommunications Tower or Telecommunications Antenna. By way of illustration, not limitation, Related Equipment includes generators and base stations.
7. *Stealth Technology* – camouflaging methods applied Wireless Communications Facilities which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screen roof-mounted antenna, building – mounted antennas painted to match the existing structure and facilities constructed to resemble trees, shrubs, flagpoles and light poles.
8. *Substantially Change or Substantial Change* – A modification to an existing Wireless Communications Facility that changes the physical dimensions of a Telecommunications Tower or base station if it meets any of the following criteria:
 - (a) For a Telecommunications Tower outside the public rights-of-way:
 - (1) It increases the height of the facility by more than 10% , or by the height of one additional antenna array with separation from the nearest existing antenna, not to exceed twenty (20) feet, whichever is greater; or
 - (2) It protrudes from the edge of the Wireless Communications Facility by more than twenty (20) feet, or more than the width of the Tower structures at the level of the appurtenance, whichever is greater.
 - (b) For a Telecommunications Tower in the public rights-of-way:
 - (1) It increases the height of the facility by more than ten percent (10%) or ten (10) feet, whichever is greater; or
 - (2) It protrudes from the edge of the structure by more than six (6) feet; or

- (3) It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or
 - (4) It entails any excavation or deployment outside the current site of the Telecommunications Tower; or
 - (5) It does not comply with conditions associated with prior approval of construction or modification of the Telecommunications Tower unless the non-compliance is due to an increase in height, increase in width, or addition of cabinets.
9. *Telecommunications Antenna* – any antenna and Related Equipment attached to a Wireless Support Structure. Telecommunications Antennas shall not include support structures for antenna or any Related Equipment that is mounted to the ground or at ground-level.
 10. *Telecommunications Tower* – any structure that is constructed for the primary purpose of supporting one or more Telecommunications Antenna, including, but not limited to, self-supporting lattice towers, guy towers and monopoles. Distributed antenna system hub facilities are considered to be Telecommunications Towers.
 11. *WBCA* – Pennsylvania Wireless Broadband Collocation Act (53 P.S. §11702.1, et. seq.)
 12. *Wireless* – transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite or radio signals.
 13. *Wireless Communications Facility (WCR)* – the antennas, nodes, control boxes, towers, poles, conduits, ducts, pedestals, electronics and other equipment used for the purpose of transmitting, receiving, distributed, providing or accommodating wireless communications services.
 14. *Wireless Support Structure* – a freestanding structure, such as Telecommunications Tower or any other support structure that could support the placement or installation of a wireless communications facility, if approved by the City.

SECTION III. Adoption of New Wireless Communications Facilities Provisions

Chapter 27 is amended by the addition of Part 20, Section 2001 as follows:

§2001. General and Specific Requirements for Telecommunications Antenna

- (1) The following regulations shall apply to all Telecommunications Antennas, except those operated by a federally licensed amateur radio operator:
 - a. **Standard of care.** All Telecommunications Antennas 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 Pennsylvania Uniform Commercial Code, American National Standards Institute (ANSI) Code, and the National Electrical Code. Any Telecommunications Antennas 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 nor damage any property in the City.
 - b. **Permitted in all zoning districts pursuant to regulation.** Telecommunications Antennas are permitted pursuant to this zoning ordinance in all certain zoning districts, so long as they comply with all of the terms and conditions of this Zoning Ordinance
 - c. **Historic areas.** No Telecommunications Antenna may be located upon any property, or upon a building or structure, that is listed on either the National or Pennsylvania Registers of Historic Places (either inside or out-the public rights-of-way), or that is deemed by the City to be of specific historical significance.
 - d. **Wind.** All Telecommunications Antennas structures shall be designed to withstand the effects of wind gusts of at least one hundred (100) miles per hour in addition to the

standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and the Telecommunications Industry Association (ANSI/TIA-222, as amended).

- e. **Aviation safety.** Telecommunications Antennas shall comply with all federal and state laws and regulations concerning aviation safety.
- f. **Public safety communications and other communications services.** Telecommunications Antennas 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 Telecommunications Antenna shall not, by itself or in conjunction with other Telecommunications Antennas and/or Telecommunications Towers, 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. **Removal.** In the event that use of a Telecommunications Antenna is 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 Telecommunications Antennas, or portion of Telecommunications Antennas, shall be removed as follows:
 - (1) All abandoned or unused Telecommunications Antennas and Related Equipment shall be removed within two (2) months of the cessation of operations at the site unless a time extension is approved by the City.
 - (2) If the Telecommunications Antenna or Related Equipment is not removed within two (2) months of the cessation of operations at a site, or within any longer period approved by the City, the Telecommunications Antenna and/or Related Equipment may be removed by the City. As security, the City reserves the right to the salvage value of any removed Telecommunications Antenna and/or Related Equipment, if such Telecommunications Antenna and/or Related Equipment are not removed by the owner within the specific timeframe enumerated in this Chapter.
- i. **Insurance.** Each person who owns or operates a Telecommunications Antenna shall provide the City with a certificate of insurance, naming the City as an additional insured, and evidencing general liability coverage in the minimum amount of \$1,000,000.00 per occurrence and property damage coverage in the minimum amount of \$1,000,000.00 per occurrence covering the Telecommunication Antenna.
- j. **Indemnification.** Each person who owns or operates a Telecommunications Antenna 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 Telecommunications Antenna. Each person who owns or operates a Telecommunications Antenna 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 Telecommunications Antenna. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorney's fees, reasonable expert fees, court costs and other costs of indemnification.
- k. **To the extent permitted by law, the following maintenance requirements shall apply:**
 - (1) The Telecommunications Antenna 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 facility in order to promote the safety and security of the City's residents.

- (3) All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.

I. Removal, Replacement and Modification.

- (1) To the extent by permitted by law, the removal and replacement of Telecommunications Antennas and/or Related Equipment for the purpose of upgrading or repairing the Telecommunications Antenna is permitted, so long as such repair or upgrade does not substantially change the overall size of the Wireless Support Structure or the numbers of Telecommunications Antennas.
- (2) To the extent permitted by state law, any material modification to a Telecommunications Antenna shall require notice to be provided to the City, and possible supplemental permit approval to the original permit or authorization.

SECTION IV. Chapter 27 is amended by the addition of Part 20, Section 202 Providing as follows:

§2002. Additional Regulations Applying only to Telecommunications Antennas that fall under the Pennsylvania Wireless Broadband Collocation Act.

In addition to the regulations enumerated in Section 2001, the following regulations shall apply only to Telecommunications Antenna that fall under the Pennsylvania Wireless Broadband Collocation Act:

- a. Permit required. Telecommunications Antenna Applicants proposing the modification of an existing Telecommunications Tower, which does not substantially change the dimensions of the existing structure, shall obtain a building permit from the City. In order to be considered for such permit, the Applicant must submit a permit application to the City in accordance with applicable permit policies and procedures.
- b. Timing of approval for applications that fall under the WBCA. Within thirty (30) calendar days of the date that an application for a Telecommunications Antenna is filed with the City, the City shall notify the Applicant in writing of any information that may be required to complete such application. Within sixty (60) calendar days of receipt of a complete application, the City shall make its final decision on whether to approve the application and shall advise the Applicant in writing of such decision.
- c. Related Equipment. Ground-mounted Related Equipment greater than three (3) cubic feet shall not be located within one hundred (100) feet of a lot in residential use or zoned residential.
- 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 Telecommunications Antenna or \$1,000.00, whichever is less.

SECTION V. Chapter 27 is amended by the addition of Part 20, Section 2003 as follows:

§2003. Regulations Applying to Telecommunications Antenna that do not fall under the Pennsylvania Wireless Broadband Collocation Act.

In addition to the regulations enumerated in Section 2001, the following regulations shall apply to Telecommunications Antennas that do not fall under the Pennsylvania Wireless Broadband Collocation Act:

- a. Prohibited on certain structures. No Telecommunications Antenna shall be located on single-family residences, duplexes or townhouses.
- b. Retention of experts. The City may hire any consultant(s) and/or expert(s) necessary to

assist the City in reviewing and evaluating the application for approval of the Telecommunications Antenna and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of these Telecommunications Antenna provisions. The Applicant and/or owner of the Telecommunications Antenna shall reimburse the City for all costs of the City's consultant(s) in providing expert evaluation and consultation in connection with these activities.

- c. 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 Telecommunications Antenna, as well as related inspection, monitoring and all other related costs.
- d. Development regulations. Telecommunications Antenna shall be co-located on existing Wireless Support Structures subject to the following conditions:
 - (1) The total height of any Wireless Support Structure and mounted Telecommunications Antenna shall not exceed twenty (20) feet above the maximum height permitted in the underlying zoning district.
 - (2) In accordance with industry standards, all Telecommunications Antenna Applicants must submit documentation to the City justifying the total height of the Telecommunications Antenna. Such documentation shall be analyzed in the context of such justification on an individual basis.
 - (3) If the Applicant proposed to locate the Related Equipment in a separate building, the building shall comply with the minimum requirements for the applicable zoning district, and landscaping shall be required to screen as much of the equipment building as possible. An evergreen screen shall surround the site. The evergreen screen shall be a minimum height of six (6) feet at planting and shall not exceed ten (10) feet on a center.
- e. Security fence. A security fence with a maximum height of eight (8) feet shall surround the separate communications equipment building. Vehicular access to the communications equipment building, or any structure housing related equipment, shall not interfere with the parking or vehicular circulations on the site for the principal use.
- f. Non-commercial usage exemption. City residents utilizing satellite dishes and antenna for the purpose of maintaining television, phone, radio and/or internet connections at their respective residences shall be exempt from the regulations enumerated in the this section of the Zoning Ordinance. Amateur radio operators are exempt from the regulations enumerated in this Ordinance.
- g. Design regulations. Telecommunications Antennas 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 chosen by the Applicant shall be subject to the approval of the City.
- h. Inspection. The City reserves the right to inspect any Telecommunications Antenna to ensure compliance with the provisions of the Zoning Ordinance and any other provisions found within the City Code of Ordinances or state or federal law. The City and/or its agents shall have the authority to enter the property upon which the Telecommunication Antenna is located at any time, upon reasonable notice to the operator, to ensure such compliance.

SECTION VI. Chapter 27 is amended by the addition of Part 20, Section 2004 as follows:

§2004. Regulations Applicable to all Telecommunications Antennas located in the Public Rights-of-Way

In addition to the regulations enumerated in Section 2001 hereof, the following regulations shall apply to Telecommunications Antennas located in the public rights-of-way:

- a. Co-location. Telecommunications Antennas in the ROW shall be co-located on existing poles, such as existing utility poles or light poles. If co-location is not

technologically feasible, the Applicant, with the City's approval, shall locate its Telecommunication Antennas on existing poles or freestanding structures that do not already act as Wireless Support Structures.

- b. Conditional use approval required. Any applicant proposing the construction of a new Telecommunication Antenna, or modification of an existing Telecommunication Antenna, shall first obtain conditional use approval from the City. New constructions, modifications, and replacements that fall under the WBCA or the applicable provisions of the FC's October 2014 Report and Order, shall not be subject to the conditional use approval process. The conditional use application, and accompanying documentation, shall demonstrate that the proposed facility complies with all applicable provisions in the DuBois City Zoning Ordinance.
- c. Design requirements:
 - (1) Telecommunications Antenna installations located above the surface grade in the public ROW including, but not limited to, those on streetlights and utility poles, shall consist of equipment components that are no more than six (6) feet in height and that are compatible in scale and proportion to the structures upon which they are mounted. All equipment shall be the smallest and least visibly intrusive equipment feasible.
 - (2) Telecommunications Antennas and related equipment shall be treated with Stealth Technology by the Telecommunications Antenna owner or applicant to match the Wireless Support Structure and may be required to be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.
- d. Time, place and manner. The city shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Telecommunications Antennas in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police power of the City and the requirements of the Public Utility Code.
- e. Equipment location. Telecommunications Antennas and related equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the ROW as determined by the City. In addition:
 - (1) Ground-mounted Related Equipment shall be located between the sidewalk and the curb. For reasons of safety and aesthetics, such equipment shall neither protrude onto the curb, nor obstruct the sidewalk.
 - (2) Ground-mounted Related Equipment that cannot be placed underground shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the City.
 - (3) Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the City.
 - (4) Any graffiti on any Wireless Support Structures or any Related Equipment shall be removed at the sole expense of the owner.
 - (5) Any proposed underground vault related to Telecommunications Antennas shall be reviewed and is subject to approval by the City.
- f. Relocation or removal of facilities. Within two (2) months 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, the owner of the Telecommunications Antenna in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Telecommunication Antenna when the City, consistent with its police powers and applicable Public Utility Commission regulations,

shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:

- (1) The construction, repair, maintenance or installation of any City or other public improvement in the right-of-way;
- (2) The operation 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) Any Emergency as determined by the City.

SECTION VII.

Chapter 27 is amended by the addition of Part 20, Section 2005 as follows:

§2005. General and Specific Requirements for All Telecommunications Towers:

- (1) The following regulations shall apply to all Telecommunication Towers, excluding any Telecommunications Towers that is owned and operated by a federally licensed amateur radio operator:
 - a. Standard of care. Any Telecommunications Tower 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 Pennsylvania Uniform Commercial Code, American National Standards Institute (ANSI) Code, responsible workmanlike industry practices of the National Association of Towers Erectors. At all times, Telecommunications Towers shall 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 City.
 - b. Notice. Upon submission of an application for a Telecommunications Tower and the scheduling of the mandatory public hearing in front of the City Council of the City of DuBois, the applicant shall mail notice to all owners on every property within five hundred (500) feet of the proposed facility. The applicant shall provide proof of the notification to the City.
 - c. Conditional use authorization required. Telecommunications Towers are permitted by conditional use in commercial and industrial zoning districts, at a height necessary to satisfy their function in the Applicant's wireless communication system. No 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 Applicant shall demonstrate that the proposed Telecommunications Tower is the minimum height necessary for its service area.

SECTION VII.

Chapter 27 is amended by the addition of Part 20, Section 2005 as follows:

§2005. General and Specific Requirements for All Telecommunications Towers:

- (1) The following regulations shall apply to all Telecommunication Towers, excluding any Telecommunications Tower that is owned and operated by a federally licensed amateur radio operator:
 - a. Standard of care. Any Telecommunications Tower 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 Pennsylvania Uniform Commercial Code, American National Standards Institute (ANSI) Code, Electrical Code, as well as he accepted and responsible workmanlike industry practices of the National Association of Towers Erectors. At all times, Telecommunication Towers shall 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 City.

- b. Notice. Upon submission of an application for a Telecommunications Tower and the scheduling of the mandatory public hearing in front of the City Council of the City of DuBois, the Applicant shall mail notice to all owners of every property within five hundred (500) feet of the proposed facility. The Applicant shall provide proof of the notification to the City.
- c. Conditional use authorization required. Telecommunications Towers are permitted by conditional use in commercial and industrial zoning districts, at a height necessary to satisfy their function in the Applicant's wireless communications system. No 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 Applicant shall demonstrate that the proposed Telecommunications Tower is the minimum height necessary for its service area.
 - (1) Prior to the City Council's consideration of a conditional use application authorizing the construction and installation of a Telecommunications Tower, it shall be incumbent upon the Applicant for such conditional use approval to prove to the reasonable satisfaction of the City Council that the Applicant cannot adequately extend or infill its communication system by the use of equipment such as redoes, repeaters, Telecommunications Antennas, and other similar equipment installed on existing structures, such as utility poles or their appurtenances and other available tall structures. The Applicant shall further demonstrate that the proposed Telecommunications Tower must be located where it is proposed in order to serve the Applicant's service area and that no other viable alternative location exists.
 - (2) The conditional use application shall be accompanied by a propagation study evidencing the need for the proposed tower or other communication facilities and equipment, a description of the type and manufacture of the proposed transmission/radio equipment, the frequency range (megahertz band) assigned to the Applicant, the power in watts at which the Applicant transmits, and any relevant related tests conducted by the Applicant in determining the need for the proposed site and installation.
 - (3) The conditional use application shall be accompanied by documentation demonstrating that the proposed Telecommunications Towers complies with all state and federal laws and regulations concerning aviation safety.
 - (4) Where the Telecommunications Tower is located on a property with another principal use, the Applicant shall present documentation to the City Council that the owner of the property has granted an easement for the proposed Telecommunications Tower and that vehicular access will be provided to the facility.
 - (5) The conditional use application shall be accompanied by documentation demonstrating that the proposed Telecommunications Tower complies with all applicable provisions in this section.
- d. Engineer inspection. Prior to the City's issuance of a permit authorizing construction and erection of a Telecommunications Tower, a structural engineer registered in Pennsylvania shall issue to the City a written certification of the proposed Telecommunications Tower'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. The certification shall be provided during the conditional use hearing before the City Council of the City of DuBois, or at a minimum, be made as a condition attached to any approval given such that the certification be provided prior to issuance of any building permits.

- e. Visual appearance. Telecommunications Towers shall employ Stealth Technology. All Telecommunications Towers and related equipment shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of a like façade to blend with the existing surrounding and neighboring buildings to the greatest extent possible. The City Council shall refer the request for a conditional use to the City's Planning Commission to consider whether the City's decision upon the subject application will promote the harmonious and orderly development of the zoning district and/or surrounding area involved; encourage compatibility with the character and type of development existing in the area; benefit neighboring properties by preventing a negative impact on the aesthetic character of the communities; preserve woodlands and trees existing at the site to the greatest possible extent; and encourage sound engineering and construction principals, practices and techniques. Any utilities extending to the Telecommunications Tower shall be placed underground.
- f. Co-location and siting. An application for a new Telecommunications Tower shall demonstrate that the proposed Telecommunications Tower cannot be accommodated on an existing or approved structure or building, or on land owned by the City of DuBois. The City Council may deny an application to construct a new Telecommunications Tower if the Applicant has not made a good faith effort to mount the Telecommunications Antenna on an existing structure. The Applicant shall demonstrate that it contacted the owners of tall structures, buildings, and towers within a one-quarter (1/4) of a mile radius of the site proposed, sought permission to install a Telecommunications Antenna on those structures, buildings and towers and was denied for one of the following reasons:
 - (1) The proposed antenna and related equipment would exceed the structural capacity of the existing building, structure or tower, and its reinforcement cannot be accomplished at a reasonable cost.
 - (2) The proposed antenna and related equipment would cause radio frequency interference with other existing equipment for that existing building, structure, or tower and the interference cannot be prevented at a reasonable cost.
 - (3) Such existing buildings, structures, or towers do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.
 - (4) A commercially reasonable agreement could not be reached with the owner of such building, to tower.
- g. Permit required for modifications. To the extent permissible under applicable state and federal law, any Applicant proposing the modification of the existing Telecommunications Towers, which increases the overall height of such Wireless Support Structure, shall first present a copy of the plans for such modification to the Planning Commission of the City of DuBois before obtaining a building permit from the City. Non-routine modifications shall be prohibited without prior recommended approval from the City Planning Commission and the subsequent building permit.
- h. Gap in coverage or capacity. An Applicant for a Telecommunications Tower must demonstrate that a significant gap in wireless coverage or capacity exists in the applicable area and that the type of Telecommunications Tower being proposed is the least intrusive means by which to fill that gap. The existence or

non-existence of a gap in wireless coverage or capacity shall be a factor in the decision of the City Council on an application for approval of Telecommunications Tower as a conditional use.

- i. **Additional Telecommunications Antennas.** As a condition of approval for all Telecommunications Towers, the WCF Applicant shall provide the City with a written commitment that it will allow other service providers to co-locate Telecommunications Antennas on Telecommunications Towers where technically and economically feasible. To the extent permission under federal and state law, the owner of a Telecommunication Antenna without obtaining the prior wrote approval of the City.
- j. **Wind.** Any Telecommunications Tower structures shall be designed to withstand the effects of wind gusts of at least one hundred (100) miles per hour in addition 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/EIA/TIA - 222), as amended.
- k. **Height.** Any Telecommunications Tower shall be designed at the minimum functional height. The maximum height of any new Telecommunications Tower outside the public rights-of-way shall be one hundred seventy-five (175) feet. Telecommunications Towers in the ROW shall not exceed a height comparable to the average height of utility poles or electrical poles within a two (2) block radius of the proposed facility.
- l. **Related Equipment.** Either a one single-story wireless communications equipment building not exceeding to hundred fifty (250) square feet in area or up to five metal boxes placed on a concrete pad not exceeding ten (10) feet by twenty (20) feet in area housing the receiving and transmitting equipment, may be located on the site for each unrelated company sharing space on the Telecommunications Tower.
- m. **Public safety communications and other communications services.** No Telecommunications Tower shall interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties.
- n. **Maintenance.** The following maintenance requirements shall apply:
 - (1) Any Telecommunications Tower shall be fully automated and unattended on daily basis and shall be visited only for maintenance or emergency repair.
 - (2) Such maintenance shall be performed to ensure the upkeep of the Telecommunications Tower in order to promote the safety and security of the City's residents and to utilize the best available technology for preventing failures and accidents.
- o. **Radio frequency emissions.** A Telecommunications Tower shall not, by itself or in conjunction with other Telecommunications Towers or Telecommunications Antennas, general 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 Electromagnet Fields," as amended.
- p. **History building or districts.** No Telecommunications Tower may be located upon any property, or on a building or structure, that is listed on either the National or Pennsylvania Registers of Historic Places (either inside or outside the public right-of-way), or that is deemed by the City to be of local historic significance.
- q. **Signs.** All Telecommunications Towers shall post a sign in a readily visible location identifying the name and phone number of a party to contract in the event of an emergency. The only other signage permitted on the

Telecommunications Tower shall be those required by the FCC, or any other federal or state agency.

- r. **Lighting.** No Telecommunications Tower shall be artificially lighted, except as required by law. If lighting is required, the Applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. Automatic lighting is prohibited; all lighting must be controlled manually by an on-site switch. The Applicant shall promptly report any outage or malfunction of FAA - mandated lighting to the appropriate governmental authorities and to the City Manager.
- s. **Noise.** Telecommunications Towers shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and the ordinances of the City of DuBois, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.
- t. **Aviation safety.** Telecommunications Towers shall comply with all federal and state laws and regulations concerning aviation safety.
- u. **Retention of experts.** The City may hire any consultant and/or expert necessary to assist the City in reviewing and evaluating the application for approval of the Telecommunications Tower and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of these provisions. The Applicant and/or owner of the Telecommunications Tower shall reimburse the City for all costs of the City's consultant(s) in providing expert evaluation and consultation in connection with these activities.
- v. **Timing of approval.** Within thirty (30) calendar days of the date that an application for a Telecommunications Tower is filed with the City, the City shall notify the Applicant in writing of any information that may be required to complete such application. All applications for Telecommunications Towers shall be acted upon within one hundred fifty (150) days of the receipt of a fully completed application for the approval of such Telecommunications Towers and the City shall advise the Applicant in writing of its decision. If additional information was requested by the City to complete an application, the time required by the Applicant to provide the information shall not be counted toward the one hundred fifty (150) day review period.
- w. **Non-conforming uses.** Non-conforming Telecommunications Towers 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.
- x. **Removal.** In the event that use of a Telecommunications Tower 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 Telecommunications Towers or portions of Telecommunication Towers shall be removed as follows:
 - (1) All unused or abandoned Telecommunications Towers and related equipment shall be removed within two (2) months of the cessation of operations at the site unless a time extension is approved by the City.
 - (2) If the Telecommunications Tower and/or Related Equipment is not removed within two (2) months of the cessation of operations at a site, or within any longer period approved by the City, the Telecommunications Tower and related equipment may be removed by the City and cost of removal assessed against the owner of the Telecommunications Tower. As security, the City reserves the right to the salvage value of any removed Telecommunications Tower and/or related equipment, if such Telecommunications Tower and/or related equipment are not removed by the owner within the timeframes enumerated in this Chapter

- (3) Any unused portions of Telecommunications Tower, including antennas shall be removed within two (2) months of the time of cessation of operations. The City must approve all replacements of portions of a Telecommunications Tower previously removed.
- y. 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 Telecommunications Tower, as well as related inspection, monitoring and related costs.
- z. FCC license. Each person who owns or operates a Telecommunications Tower over forty (40) feet in height shall submit a copy of its current FCC license, including the name, address and emergency telephone number for the operator of the facility.
- aa. Insurance. Each person who owns or operates a Telecommunications Tower greater than forty (40) feet in height shall provide the City with a certificate of insurance naming the City as an additional insured, and evidencing general liability coverage in the minimum amount of \$5,000,000.00 per occurrence and property damage coverage in the minimum amount of \$5,000,000.00 per occurrence covering the Telecommunication Tower forty (40) feet or less in height shall provide the City with the certificate of insurance naming the City as an additional insured, and evidencing general liability coverage in the minimum amount of \$1,000,000.00 per occurrence and property damage coverage in the minimum amount of \$1,000,000.00 per occurrence covering each Telecommunications Tower.
- bb. Indemnification. Each person who owns or operates a Telecommunications Tower shall, at his 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 of 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 Telecommunications Tower. Each person who owns or operates a Telecommunications Tower 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 the Telecommunications Tower. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgements, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.
- cc. Engineer signature. All plans and drawings for a Telecommunications Tower shall contain a seal and signature of a professional structural engineer, licensed in the Commonwealth of Pennsylvania.
- dd. Financial security. Prior to receipt of conditional use approval and a building permit for the construction or placement of a Telecommunications Tower, the Applicant shall provide to the City financial security sufficient to guarantee the construction of the Telecommunications Tower. Said financial security shall remain in place until the Telecommunications Tower is fully constructed. Should the Telecommunications Towers be abandoned by the owner and/or operator, and not removed within two (2) months of such abandonment, the City shall have the authority to remove the Telecommunications Tower and sell all of its pieces, as well as related equipment, used in the operation of the Telecommunications Tower, in order to recover the cost of said removal.

SECTION VIII.

Chapter 27 is amended by the addition of Part 20, Section 2006 as follows:

§2006. Regulations for Telecommunications Towers outside of the Public Right-of-Way

In addition to the regulations enumerated in Section 2005, the following regulations shall apply to Telecommunications Towers located outside the public Right-of-Way:

a. Development regulations.

- (1) Telecommunications Towers shall not be located in, or within seventy-five (75) feet of an area in which all utilities are located underground.
- (2) Telecommunications Towers are permitted outside the public Right-of-Way as conditional use, subject to the prohibitions contained herein, in the following zoning districts:
 - (a) commercial districts
 - (b) industrial districts
- (3) Sole use on a lot. A Telecommunications Tower shall be permitted as a sole use on a lot, provided that the underlying lot meets the minimum size specifications set forth in the City Zoning Code for the district in which such a lot is located.
- (4) Combined with another use. A Telecommunications Tower 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 Telecommunications Tower.
 - (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 Telecommunications Tower and guy wires, the equipment building, security fence, and buffer planting if the proposed Telecommunications Towers is greater than forty (40) feet height.
 - (c) Minimum setbacks. The minimum distance between the base of a Telecommunications Tower and any adjoining property line or street right-of-way line shall be equal to one hundred percent (100%) of the height of the Telecommunications Tower. The underlying lot must be large enough to accommodate Related Equipment, storm water runoff mechanisms, and all other features typically found within the immediate area of a Telecommunications Tower.

b. Design regulations.

- (1) The Telecommunications Tower shall employ the most current Stealth Technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. Application of the Stealth Technology chosen by the applicant shall be subject to the approval of the City Council of the City of DuBois after review by the City Planning Commission.
- (2) To the extent permissible by law, any height extensions to an existing Telecommunications Tower shall require prior approval of the City.
- (3) Any proposed Telecommunications Tower shall be designed structurally, electrically, and in all respects, to accommodate both the Applicant's Telecommunications Antennas and comparable Telecommunications Antennas, for the maximum amount of future users based on the size of the proposed Telecommunications Tower.
- (4) Any Telecommunications Tower over forty (40) feet in height shall be equipped with an anti-climbing device as approved by the manufacturer.

c. Surrounding environs.

- (1) The Applicant shall ensure that the existing vegetation, trees and shrubs located within proximity to the Telecommunications Tower shall be preserved to the maximum extent possible.
- (2) The Applicant shall submit a soil report to the City complying with the standards of Appendix I: Geotechnical Investigations, ANSI/EIA-222, as amended, to document and verify the design specifications of the foundation of the Telecommunications Towers, and anchors for guy wires, if used.

d. Fence/screen.

- (1) A security fence with a maximum height of eight (8) feet shall completely surround any Telecommunications Tower greater than forty (40) feet in height, as well as guy wires, or any building housing Related Equipment.
- (2) The Applicant shall comply with the requirements for buffer yards and screening as required by the City's Zoning Code.

e. Related Equipment.

- (1) Ground mounted Related Equipment associated with or connected to a Telecommunications Tower shall be placed underground or screened from public view using Stealth Technologies, as described herein.
- (2) All Related Equipment shall be architecturally designed to blend into the environment in which it is situated and shall meet the minimum setback requirements of the underlying zoning district.

f. Access road. An access road, turnaround space and parking shall be provided to insure adequate emergency and service access to Telecommunications Towers. The access road shall be a dust-free, all-weather surface for its entire length. 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 Telecommunications Tower owner shall present documentation to the City that the property owner has granted an easement for the proposed facility.

g. Parking. For each Telecommunications Tower greater than forty (40) feet in height, there shall be two off-street parking spaces.

h. Inspection. The City reserves the right to inspect any Telecommunications Tower to ensure compliance with the Zoning Ordinance 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 property upon which a Telecommunications Tower is located at any time, upon reasonable notice to the operator, to ensure such compliance.

SECTION IX. Chapter 27 is hereby amended to add Part 20, Section 2007 as follows:

§2007. Regulations for Telecommunications Towers located within Public Rights-of-Way

In addition to the regulations enumerated in Section 2005, the following regulations shall apply to Telecommunications Towers located in the Public Rights-of-Way.

a. Location and development standards:

- (1) Telecommunications Towers in the ROW shall not exceed a height comparable to the average height of utility poles or electrical poles within a two (2) block radius of the proposed facility. Telecommunications owners are prohibited in areas in which all utilities are located underground.

- (2) Telecommunications Towers shall not be located in the front façade area of any structure.
 - (3) Telecommunication Towers shall be permitted along roads already having above ground utility poles or light poles along them as a conditional use throughout the City, regardless of the underlying zoning district. A listing of such roads is kept on file at the City Zoning Office and is adopted via Resolution of City Council.
- b. Time, place and manner. The City shall determine the time, place and manner of construction, maintenance, repair and /or removal of all Telecommunications Towers in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the City and the requirements of the Public Utility Code.
- c. Equipment location. Telecommunications Towers and Related Equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and /or motorists or to otherwise inconvenience public use of the ROW as determined by the City. In addition:
- (1) Ground-mounted Related Equipment shall be located between the sidewalk and the curb. For reasons of safety and aesthetics, such equipment shall neither protrude onto the curb, nor obstruct the sidewalk.
 - (2) Ground-mounted Related Equipment that cannot be placed underground shall be screened to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the City Council upon recommendation by the City Planning Commission.
 - (3) Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the DuBois City Council upon review and recommendation by the City Planning Commission.
 - (4) Any graffiti on the tower or on any Related Equipment shall be removed at the sole expense of the owner.
 - (5) Any underground vaults related to Telecommunications Towers shall be reviewed and approved by the City Council after recommendation by the City Planning Commission.
- d. Design regulations.
- (1) The Telecommunications Tower shall employ the most current Stealth Technology available in an effort to appropriately blend into the surrounding environment and minimize the aesthetic impact. The application of the Stealth Technology chosen by the Applicant shall be subject to the approval of the DuBois City Council after review and recommendation by the City Planning Commission.
 - (2) Telecommunications Towers in the public ROW shall not exceed a height comparable to the average height of utility poles or electrical within a two (2) block radius of the proposed facility.
 - (3) To the extent permissible under state and federal law, any height extensions to an existing Telecommunications Tower shall require prior approval of the City, and shall not violate the provisions described herein.
 - (4) Any proposed Telecommunications Towers shall be designed structurally, electrically, and in all respects to accommodate both the Applicant's Telecommunications Antennas and comparable Telecommunications Antennas the maximum amount of future users based on the size of the proposed Telecommunications Tower.

- e. Relocation or removal of facilities. Within sixty (60) 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 Telecommunications Tower in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Telecommunications Tower when the City, consistent with its police powers and applicable Public Utility Commission regulations, shall determine that such removal, relocation, change or alternation is reasonable 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.

- f. Reimbursement for ROW use. In addition to permit fees as described in this section, every Telecommunications Tower in the ROW is subject to the City'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 City'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 City. The owner of each Telecommunications Tower shall pay an annual fee(s) to the City to compensate the City for the City's costs incurred in connection with the activities described above.

SECTION X. Chapter 27 is hereby amended by the addition of the following miscellaneous provisions to Part 20:

§2008. 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 application federal, state and local laws and regulations.

§2009. 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.

§2010. Effective Date.

This Ordinance shall become effective ten (10) days after final enactment by the City of DuBois.

ENACTED AND ORDAINED this 10th day of October, 2016.

ATTEST:

CITY OF DUBOIS



 City Manager

By 

 Mayor and President of Council

PASSED BY COUNCIL:

_____ 10/10/2016 _____

APPROVED: 
