

WTFO-WIRELESS TELECOMMUNICATION FACILITY OVERLAY
DISTRICT
SECTION 16

16.1 PURPOSE AND INTENT:

The Wireless Telecommunication Facility Overlay District is established to provide for the construction and use of Wireless Telecommunication Towers and Facilities as permitted uses, conditional uses, and accessory uses depending upon the specific land areas of the Township in which they are proposed to be located. The purpose of this District is to balance the competing interests created by the Federal Telecommunications Act of 1996, Public Law 104-104, and the interests of the Township in regulating Wireless Telecommunication Towers and related Facilities for the following purposes: to regulate a commercial use so as to provide for orderly and safe development within the Township; to protect property values; to maintain the aesthetic appearance of the Township, including its rural character; to provide for and protect the health, safety and general welfare of the residents of the Township; to protect properties, parks, open spaces and the nonintensive commercial zoning districts which are characteristic of the Township from the adverse effects of Towers and related Facilities; to promote collocation of Wireless Telecommunication Facilities in order to decrease the number of Towers in the Township; and to maintain, where possible, the integrity of the existing regulations contained in the Zoning Resolution.

The Wireless Telecommunication Tower Overlay District regulations shall control and supersede wherever they are inconsistent with other provisions of the Zoning Resolution. If no inconsistency exists between the provisions of this Overlay District and the provisions of the underlying zoning district, the underlying district regulations and other provisions of this Zoning Resolution shall remain in full force and effect and shall regulate all land use and development.

The Wireless Telecommunication Facility Overlay District establishes a hierarchy of acceptable land areas for location of Wireless Telecommunication Towers and related Facilities through the establishment of such use as a permitted use in certain land areas, as a conditional use in other, more sensitive land areas, or as an accessory use for erection of Wireless Telecommunication Antennas only, which determination is dependent upon the location and characteristics of such land areas and the impact such Towers will have on adjoining properties.

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Except as provided in this Section 16, Wireless Telecommunication Facilities are prohibited in the Township.

16.2 PERMITTED USE:

A Wireless Telecommunication Tower and Facility may be located as a permitted use in the following areas, as set forth on the Township Zoning map, under the following circumstances and upon an application for a zoning certificate and issuance of such certificate from the Zoning Inspector:

- (a) A Wireless Telecommunication Tower and/or Antenna Facility is permitted in an Industrial District.
- (b) A Wireless Telecommunication Tower and/or Antenna Facility is permitted in any interstate highway interchange right-of-way. A Tower located within an interstate right-of-way shall not be subject to setback requirements.
- (c) A Wireless Telecommunication Tower and /or Antenna Facility is permitted in a Commercial or Residential District only in the areas designated as a WTFO District on the Zoning Map which are within the fifty (50) foot area adjacent to an interstate highway right-of-way. A Tower located within the fifty (50) foot area adjacent to an interstate right-of-way shall:
 - 1. be set back three hundred (300) feet from existing dwelling units;
 - 2. be set back one hundred ten percent (110%) of the height of the Tower from property lines other than the interstate highway right-of-way;
 - 3. not be subject to a setback requirement from the interstate highway right-of-way.
- (d) A Wireless Telecommunication Tower and /or Antenna Facility may be permitted on any property owned or controlled by the Board of Township Trustees under such conditions, standards and regulations as deemed appropriate by formal approval of the Board of Township Trustees, provided such property is used for the provision of public services such as fire services, police services, or road or other maintenance services. In the event such property is located in a residentially zoned district, prior to the

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- (d) (continued)
approval by the Township Board of Trustees of any construction of a Wireless Telecommunication Tower Facility on such property, advance notice by certified mail of a public meeting by the Trustees on the issues shall be given to each property owner, as shown on the County Auditor's current tax list, whose land is contiguous to or directly across a street or roadway from the property on which the Tower is proposed to be constructed.

16.3 CONDITIONAL USE:

A Wireless Telecommunication Tower Facility may be located as a conditional use in a Commercial District only in the areas designated as a WTFO District on the Zoning map and upon the approval of the Board of Zoning Appeals and issuance of a zoning certificate, provided the applicant demonstrates compliance with the following standards, as well as the standards set forth in Section 16.5 herein:

- (a) There is no Technically Suitable space for the applicant's Wireless Telecommunication Antenna(s) and related Facilities reasonably available on an existing Wireless Telecommunication Tower, building or structure within the geographic area to be served, including the areas set forth in Subsection 16.2. With the zoning certificate application, the applicant shall list the location of every Tower, building or structure and all the areas set forth in Subsection 16.2 that could support the proposed Antenna(s) or Tower Facility so as to allow it to serve its intended function. The applicant must demonstrate that a Technically Suitable location is not reasonably available on an existing Tower, building or structure or that a Technically Suitable location for a Tower Facility is not available in any area set forth in Subsection 16.2. If another Tower, building or structure, or an area set forth in Subsection 16.2 is Technically Suitable, the applicant must show that it has requested to Collocate on the existing Tower, building or structure and the Collocation request was rejected by the owner of the Tower, building or structure or that it has requested all property owners with Technically Suitable locations to permit it to locate a Tower Facility in all Technically Suitable area(s) set forth in Subsection 16.2 under reasonable terms and that each request was rejected. In all circumstances, owners of existing Towers shall promptly respond to requests for Collocation, but in no event shall they respond more than thirty (30) days from the date of receipt of a written request for Collocation. If there is a Technically Suitable location on an existing

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16.3 (a) (Continued)

Tower, the applicant must further show that it has offered to allow the owner of the existing Tower to Collocate an Antenna(s) on reasonably reciprocal terms on another Tower owned or controlled by the applicant within the Township, if such Tower exists and space is available on such Tower for Collocation, and the offer was not accepted. In all cases, the Township shall use its best efforts to encourage Collocation.

(b) As a condition of issuing a conditional zoning certificate to construct and operate a Wireless Telecommunication Tower in the Township, the owner/operator of the Tower is required to allow Collocation until the Tower has reached full Antenna capacity, but in no event fewer than three (3) additional Antenna platforms for the three (3) additional providers unrelated to the owner/operator. Agreement to this provision must be included in the applicant's lease with the landowner, if different from the owner/operator of the Tower. Written documentation must be presented to the Zoning Inspector evidencing that the landowner of the property on which the Tower is to be located has agreed to the terms of this Subsection as well as all other applicable requirements, regulations and standards set forth in this Section 16.

(c) The color of the Wireless Telecommunication Tower shall be as required by the Board of Zoning Appeals.

16.4 ACCESSORY USE:

The erection or construction of a Wireless Telecommunication Antenna(s) on an existing Wireless Telecommunication Tower in any zoning district shall be a permitted accessory use as a Collocation on such Tower and shall be approved upon submission of an application for a zoning certificate to the Zoning Inspector which meets all applicable regulations in Subsection 16.5 hereof related to the placement of the Antenna and related Facilities.

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16.5 STANDARDS APPLICABLE TO ALL WIRELESS TELECOMMUNICATION TOWER FACILITIES:

Except as otherwise provided in Section 16, all Wireless Telecommunication Tower Facilities shall comply with the following standards:

- (a) **Design:**
All Wireless Telecommunication Towers shall be of a monopole design. Towers and Antennas shall be designed to meet all Medina County Building Department requirements.

- (b) **Maximum Height of Wireless Telecommunication Tower and Related Facilities:**
A Wireless Telecommunication Tower shall be less than two hundred (200) feet in height as measured from the average ground level at the base of the Tower. The intent of this height restriction is to avoid the necessity for lighting of the Tower. No Equipment Building for a Wireless Telecommunication Facility shall exceed ten (10) feet in height from the building grade.

- (c) **Additional Permitted Use:**
A Wireless Telecommunication Tower Facility may be located on a lot with another use.

- (d) **Minimum lot area:**
The lot upon which a Wireless Telecommunication Facility is located shall have the minimum lot area as that required for the underlying zoning district and the lot area shall be sufficient to provide for all requirements of setbacks, yards and building coverage as may be specified in the underlying zoning district. The Facility may be located, however, on a leased area of a lot, which leased area is smaller than the minimum lot area required for the underlying zoning district.

- (e) **Location of Wireless Telecommunication Tower on the Lot:**
 - 1. Unless otherwise provided in this Section, a Wireless Telecommunication Facility must comply with the setback and yard requirements applicable to buildings in the underlying zone in which it is located, except the minimum setback from the nearest lot line of residentially-zoned property or property used for a residential use shall be one hundred ten percent (110%) of the height of the Tower. A Telecommunication Tower shall be set back a minimum of three hundred (300) feet from a dwelling unit.

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2. When such Facility is located on property adjoining an interstate highway right-of-way, this setback requirement shall not apply to the boundary line of the interstate right-of-way as set forth on the Zoning Map.
3. A Wireless Telecommunication Tower must be placed upon the lot in such a way as to minimize the visual impact on adjoining roads and properties. In no event shall any portion of a Wireless Telecommunication Facility be located in front of the principal building on the lot, if any.

(f) **Spacing:**

Except as otherwise provided for in this Section, there shall be a separation of at least one-half mile between Wireless Telecommunication Towers.

(g) **Collocation:**

A report shall be prepared and submitted by a qualified and licensed professional engineer which report shall certify that the Tower shall have the structural loading capacity to support at least four antenna platforms of equal loading capacity.

(h) **Access and Parking:**

The access driveway to the wireless telecommunication facility shall, whenever feasible, be provided along with circulation driveways of the existing use on the lot, if any. Where use of an existing driveway is not feasible, the driveway to the facility shall be a minimum of ten (10) feet in width and shall be setback a minimum of twenty (20) feet from the nearest side or rear line. There shall be a maximum of one (1) off-street parking space on the site.

(i) **Fencing:**

Fencing shall be provided for public safety reasons. A fence at least six (6) feet in height, but no greater than eight (8) feet in height, shall be erected completely around those portions of the Wireless Telecommunication Facility that come in contact with the ground. One "No Trespassing" sign of no greater than four (4) square feet shall be conspicuously posted on the perimeter fence of the Facility with a telephone number of a person to contact in the event of an emergency.

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- (j) **Buffer Area:**
A landscaped buffer area of not less than fifteen (15) feet in depth shall be placed between the Wireless Telecommunication Facilities and the public right-of-way and any adjacent properties from which a direct view can be had of the Facilities, other than the Tower itself. The fifteen (15) foot landscape buffer shall consist of a tight screen fence of hardy evergreen shrubbery not less than six (6) feet in height. The landscaping shall be continuously maintained and promptly restored, if necessary.
- (k) **Outdoor Storage:**
Overnight outdoor storage of any supplies, vehicles or equipment related to the use of the Wireless Telecommunication Facility is prohibited except during the Facility construction period and to supply emergency power to the Facility only during a power outage.
- (l) **Lighting:**
Except as required by law, a Wireless Telecommunication Antenna or Tower shall **not** be illuminated and lighting fixtures or signs shall not be attached to the Antenna or Tower. If lighting is required by Federal Aviation Administration ("FAA") regulations, white strobe lights shall not be permitted unless no other alternative is permitted by the FAA. Lighting for security purposes shall be permitted at the Wireless Telecommunication Facility with a prior approval of the Board of Zoning Appeals pursuant to a conditional zoning certificate issued pursuant to Section 9 of the Zoning Resolution.
- (m) **Notification to the Fire Department:**
The owner or operator of a Wireless Telecommunication Tower shall notify the Township Fire Department by certified mail of the location and height of the proposed Tower as a condition of issuance of a zoning certificate.
- (n) **FCC Compliance:**
Prior to receiving final inspection by the Zoning Inspector, documented certification shall be submitted to the Zoning Inspector, certifying that the Wireless Telecommunication Facility complies with all current Federal Communications Commission ("FCC") regulations for non-ionizing electromagnetic radiating (NIER).
- (o) **Advertising:**
No advertising shall be permitted on the Wireless Telecommunication Facility.

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- (p) **Time Limit for Commencement and Completion of Construction:**
After issuance of a zoning certificate to construct a Wireless Telecommunication Facility, the applicant shall commence construction within six (6) months and shall complete construction within twelve (12) months or the zoning certificate shall expire. As a condition of issuance of the certificate, the Zoning Inspector shall require the applicant and the owner of the property to certify that if the construction is not commenced within the six (6) months or completed within twelve (12) months, that the site will be available for another Wireless Telecommunication Facility.
- (q) **Removal of Wireless Telecommunication Facilities:**
1. The owner or operator shall agree to remove a nonfunctioning Wireless Telecommunication Facility within one (1) year of ceasing its use. The owner/operator of the Antenna and/or Tower shall, on no less than an annual basis from the date of issuance of the zoning certificate, file a declaration with the with the Zoning Inspector as to the continuing operation of every Facility that is subject to this Section. The owner/operator of the Antenna and/or Tower shall sign a written consent agreeing to permit periodic inspections of the Wireless Telecommunication Facility by the Zoning Inspector or his designatee.
 2. The owner or operator shall be required, as a condition of the issuance of a zoning certificate, to post a cash or surety bond acceptable to the Board of Township Trustees of not less than one hundred dollars (\$100) per vertical foot from the natural grade of the Wireless Telecommunication Tower which bond shall insure that an abandoned, obsolete or destroyed Wireless Telecommunication Antenna or Tower Facility shall be removed within one (1) year of cessation of use and abandonment. A surety bond posted pursuant to this subsection shall be renewed on an annual basis. Any successor-in-interest or assignee of the owner/operator of the Facility shall also post such a bond.

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16.6 ZONING CERTIFICATE FEES:

- (a) The fees for applications for zoning certificates as required by Section 16 shall be specified by the Board of Township Trustees.

- (b) Reimbursement of Expenses. The applicant for a Wireless Telecommunication Tower and/or Antenna Facility shall be responsible for all expenses incurred by the Township for any technical and/or engineering services deemed necessary by the Zoning Inspector, the Board of Zoning Appeals, or the Board of Township Trustees to perform the reviews and/or inspections set forth in Section 16 that are not covered by the application fees established by the Board of Township Trustees. The applicant shall be notified of an estimate of such expenses, if any, prior to such expenses being incurred.

16.7 PUBLIC UTILITY EXEMPTION:

- (a) In the event a Wireless Telecommunication Tower Facility is to be owned or principally used by a public utility engaged in the provision of Telecommunication services, the regulations of this District do not apply when the proposed location of the Tower Facility is in an area of the Township which is not residentially zoned. The proponent of such Tower Facility must file a written application for a zoning certificate with the Zoning Inspector supported in writing by a preponderance of Substantial Evidence that the Tower will be owned or principally used by a public utility engaged in the provision of Telecommunication services. The applicant must also demonstrate by a preponderance of Substantial Evidence that it possesses a sufficient degree of the following attributes associated with being a public utility to be considered a “public utility” for purposes of this exemption:
 - 1. Whether the applicant devotes an essential good or service to the general public which has a legal right to demand or receive this good or service;

 - 2. Whether the applicant provides its good or service to the public indiscriminately and reasonably;

 - 3. Whether the applicant has an obligation to provide the good or service which cannot be arbitrarily or unreasonably withdrawn;

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4. Whether the applicant conducts its operations in such a manner as to be a matter of public concern;
 5. Whether the good or service offered by the applicant is vital;
 6. Whether there is a lack of competition in the local marketplace for the good or service;
 7. Whether there is a regulation by a governmental authority and the extent of that regulation; and
 8. Whether the applicant possesses the power of eminent domain.
- (b) No single factor set forth above is controlling as to whether the applicant is a "public utility engaged in the provision of Telecommunication services". Each factor should be considered and weighed according to the factual circumstances presented and, in specific circumstances, some factors may be given more weight than others.
- (c) If the Zoning Inspector determines to deny the applicant such "public Utility" status, the Inspector shall do so in writing, and state the reasons therefor. Such decision of denial by the Zoning Inspector shall not be a final decision by the Township on this issue. Any determination by the Zoning inspector that the applicant is not a public utility engaged in the provision of Telecommunication services shall be appealable to the Board of Zoning Appeals pursuant to the procedures set forth in the Zoning Resolution. The decision of the Board of Zoning Appeals shall be the final decision of the Township on this issue.
- (d) In the event a Wireless Telecommunication Facility is proposed to be in an area zoned for residential use, and is to be owned or principally used by a public utility engaged in the provision of Telecommunication services, the public utility shall be exempt from the requirements of this Zoning Resolution if it meets all of the criteria in 1, 2 and 3 below, as follows:
1. All of the requirements of Subsection 16.7 (a) through (c) are met;

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2. The public utility provides both of the following by certified mail:
 - a. Written notice to each owner of property, as shown on the County Auditor's current tax list, whose land is contiguous to or directly across a street or roadway from the property on which the Tower is proposed to be constructed, stating all of the following in clear and concise language:
 - * The public utility's intent to construct the Tower;
 - * A description of the property sufficient to identify the proposed location; and
 - * That no later than fifteen (15) days after the date of mailing the notices, any such property owner may give written notice to the Board of Township Trustees requesting that the provisions of this Zoning Resolution apply to the proposed location of the Tower. If the notice to a property owner is returned unclaimed or refused, the person shall mail the notice by regular mail. The failure of delivery of the notice does not invalidate the notice.
 - (b) Written notice to the Board of Township Trustees of the information specified in the Subsection 16.7 (d) 2 a. of this Section. The notice to the Board of Trustees also shall include verification that the person has complied with Subsection 16.7 (d) 2 a. of this Section; and
3. If the Board of Township Trustees receives notice from a property owner under Subsection 16.7 (d) 2 a. of this Section within the time specified in that Subsection, or if a Trustee makes an objection to the proposed location of the Wireless Telecommunication Tower within fifteen (15) days after the date of mailing the notice sent under Subsection 16.7 (d) 2 b. of this Section, the Board of Trustees shall request that the Clerk of the Township send the person proposing to construct the Tower written notice that the Tower is subject to the regulations of this Zoning Resolution. The notice shall be sent no later than five (5) days after the earlier of the date the Board of Trustees first receives such a notice from a property owner or the date upon which a Trustee makes an objection.

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Upon the date of mailing of the notice to the person, the provisions of this Zoning Resolution shall apply to the Tower without exception. If the Board of Township Trustees, however, receives no notice under Subsection 16.7 (d) 2 a. of this Section within the time prescribed by that Subsection or no Trustee has an objection as provided under this Subsection 16.7 (d) 3. within the time prescribed by this Subsection, the applicant will be exempt from the regulations of this Zoning Resolution.

16.8 DEFINITIONS:

- (a) **“Collocation”** means the use of a Wireless Telecommunication Facility by more than one wireless telecommunication provider.
- (b) **“Monopole”** means a support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.
- (c) **“Personal Wireless Service”** means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services as defined by federal law at 47 U.S.C. #332(c)(7).
- (d) **“Substantial Evidence”** means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.
- (e) **“Technically Suitable”** means the location of a wireless Telecommunication Antenna(s) reasonably serves the purpose for which it is intended within the band of frequencies for which the owner or operator of the Antenna(s) has been licensed by the FCC to operate without a significant loss of communication capability within developed areas of the Township.
- (f) **“Telecommunication”** means the technology which enables information to be exchanged through the transmission of voice, video, or data signals by means of electrical or magnetic systems and includes the term “Personal Wireless System”.

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- (g) **“Wireless Telecommunication Antenna” or “Antenna”** means the physical device or an array of elements constituting a physical device through which an electromagnetic, wireless telecommunication signal authorized by the Federal Communications Commission is transmitted or received. Antennas used by amateur radio operators are excluded from this definition.

- (h) **“Wireless Telecommunication Equipment Building” or “Equipment Building”** means the structure in which the electronic receiving and relay equipment for a Wireless Telecommunication Facility is housed.

- (i) **“Wireless Telecommunication Facility” or “Facility”** means a facility consisting of the equipment and structures involved in receiving telecommunication or radio signals from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land based telephone lines for the provision of personal wireless services.

- (j) **“Wireless Telecommunication Tower” or “Tower”** means any structure which elevates the wireless telecommunication antenna and may include accessory transmission and receiving equipment.