

CITY OF DOVER ORDINANCE #2020-13

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

That Appendix B – Zoning, Article 5 – Supplementary Regulations of the Dover Code, be amended by inserting a new Section 23 – Wireless Communications Facilities, as follows:

Section 23. Wireless Communications Facilities

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

23.11 By enacting these provisions, the City intends to:

- (a) Promote the deployment of wireless communications facilities in the City while regulating their location and number to ensure the provision of necessary services;
- (b) Provide for the managed development of wireless communications facilities in a manner that enhances the benefits of wireless communication and accommodates the needs of both City residents and wireless carriers in accordance with federal and state laws and regulations;
- (c) Address new wireless technologies, including but not limited to, distributed antenna systems, data collection units, small cells, cable Wi-Fi and other wireless communications facilities;
- (d) Establish procedures for the design, siting, construction, installation, maintenance and removal of small wireless communications facilities, non-tower based wireless communications facilities, and tower-based wireless communications facilities, in the City, including facilities both inside and outside the public rights-of-way;
- (e) Preserve the character of the City’s neighborhoods and corridors;
- (f) 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 wireless support structures where feasible;
- (g) Promote the health, safety and welfare of the City's residents.

23.2 Definitions.

Accessory Equipment. Any equipment serving or being used in conjunction with a wireless communications facility or wireless support structure. The term “Accessory Equipment” includes but is not limited to utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

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.

Changes in height. Changes in height is measured from the original wireless support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act (47 CFR §1.4001(b)(7)(i)(A)).

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.

Eligible Facilities Request. Any request for modification of an existing WCF that does not constitute a substantial change. Such request may involve: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

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.

Equipment Compound. An area surrounding or adjacent to a wireless support structure within which base stations, power supplies, or accessory equipment are located.

FCC. Federal Communications Commission.

Height of a Tower-Based WCF. The vertical distance measured from the ground level, including any base pad, to the highest point on a tower-based WCF, including antennae mounted on the tower and any other appurtenances.

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.

Non-Tower Wireless Communications Facility (Non-Tower WCF). A wireless communications facility located or collocated on existing structures, such as, but not limited to buildings, water towers, electrical transmission towers, utility poles, light poles, traffic signal poles, flag poles and other similar structures that do not require the installation of a new tower. This term includes the replacement of an existing structure with a similar structure that is required to support the weight of the proposed WCF. This definition excludes any installation constituting a Small Wireless Communications Facility.

Person. Individuals, corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, corporations and other entities established pursuant to statutes of the State of Delaware, provided that “Person” does not include or apply to the City, or to any department or agency of the City.

Replacement. The replacement of existing wireless communications facilities on an existing wireless support structure or within an existing equipment compound due to maintenance, repair or technological advancement with equipment that does not result in increased wind or structural loading, is substantially similar in size and weight as the wireless communications facilities initially installed, and that does not substantially change the physical dimensions of the existing wireless support structure.

Small Wireless Communications Facility (Small WCF). A wireless communications facility that meets the following criteria:

- (1) The structure on which antenna facilities are mounted
 - a) is 50 feet or less in height, or
 - b) is no more than 10 percent taller than other adjacent structures, or
 - c) is not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and
- (2) Each antenna associated with the deployment (excluding the associated equipment) is no more than three cubic feet in volume; and
- (3) All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
- (4) The facilities do not require antenna structure registration under 47 CFR Part 17; and
- (5) The facilities are not located on Tribal lands, as defined under 36 CFR §800.16(x);
and
- (6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR §1.1307(b).

Stealth Technology. Camouflaging or screening methods applied to wireless communications facilities and accessory equipment which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in a manner appropriate to the site’s context and surrounding environment. Such methods include, but are not limited to, architecturally screened roof-mounted antennae, building-mounted antennae painted to match the existing structure and facilities constructed to resemble trees, shrubs, and light poles.

Substantial Change. A modification to an existing WCF substantially changes the physical dimensions of a wireless support structure if it meets any of the criteria set forth in 47 CFR §1.6100, as amended.

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

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

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.

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

Wireless Support Structure. A freestanding structure, pole, tower, or other building, whether or not it has an existing antenna facility, that is used or to be used to support the placement or installation of a wireless communication facility for the provision of wireless service (whether on its own or comingled with other types of services).

23.3 *Applicability.* The terms and provisions of this section shall apply to wireless communication facilities in the City. As defined, each type of WCF has specific allowable locations, development regulations, and design standards as follows:

- (a) Small WCF described in Article 5, Section 23.6.
- (b) Non-Tower WCF described in Article 5, Section 23.7.
- (c) Tower WCF described in Article 5, Section 23.8.

23.31 *Exceptions.* The activities by City residents to utilize satellite dishes, citizen and/or band radios, and Antennae for the purpose of maintaining television, phone, and/or internet connections at their residences for non-commercial activity shall be exempt from the regulations enumerated in this Section 23.

23.32 *Nonconforming Uses.* The following provisions shall apply to all buildings, support structures, and uses as related to wireless communication facilities:

- (a) All types of WCFs shall be permitted to collocate upon existing non-conforming WCFs, wireless support structures, and other non-conforming structures subject to the provisions of this Section 23.
- (b) Collocation of Antennae is permitted on non-conforming structures.
- (c) Collocation of Non-Tower WCFs upon existing Tower-Based WCFs is encouraged even if the Tower-Based WCF is non-conforming as to use within a zoning district.
- (d) 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 23.

23.4 *Type of Activity Determination.* The following provisions outline the types of wireless communication facility applications.

23.41 *Eligible Facilities Request.* The WCF Application Type is classified as an Eligible Facilities Request if the request for modification of an existing WCF that does not constitute a Substantial Change under 47 CFR §1.6100, as amended. The request may involve: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

23.42 *Substantial Change Activity.* The WCF Application Type is classified as a Substantial Change Activity if the modification substantially changes the physical dimensions of a wireless support structure by meeting any of the criteria set forth in 47 CFR §1.6100, as amended, relating to height of the support structure or addition of new appurtenances or equipment cabinets.

23.43 *New Facility.* The WCF Application Type is classified as a New Facility if it involves the construction and placement of a new wireless support structure and does not meet the definition of Small WCF.

23.44 *Small WCF.* The WCF Application Type is classified as a Small WCF if the proposed antennas, accessory equipment and support structure (whether an existing, replacement or new structure) comply with the volume and height parameters set forth in the definition of Small WCF.

23.5 *Application Procedures.* The following provisions outline the procedures for wireless communication facility applications. Policies and procedures for the administration of the WCF permitting and review process shall be developed by the City Manager and City Planner.

23.51 *Location within Public Right-of-way.* WCF Applicants proposing a WCF to be located within the public right-of-way, shall be required to obtain application approvals as follows:

- (a) *Pole Attachment Process.* Compliance with the procedures found in Dover Code Ordinances, Chapter 110 – Utilities, Section 110-32 Pole Attachment, for a WCF proposed for attachment to Dover Electric Department facilities.
- (b) *Master license agreement required.* Any WCF Applicant for a WCF proposed for attachment to a utility pole owned or controlled by the City of Dover Electric Department shall first enter into a valid Master License Agreement with the City authorizing such attachment. No WCF shall be permitted to be attached to such utility poles without proof a valid Master License Agreement being provided as part of the permit application.
- (c) *Permit – Use of Rights-of-Way.* Obtain a Right-of-Way Use Permit from the City in accordance with permit policies and procedures pursuant to Dover Code of Ordinances, Chapter 98 – Streets, Sidewalks, Storm Sewers and Other Public Spaces, for a WCF proposed with City rights-of-way.
- (d) *Permit.* Obtain a WCF Building Permit from the City in accordance with applicable permit policies and procedures pursuant to Appendix B, Article 8, Section 1 – Building Permit of the City of Dover Code.

- (e) *Documentation.* WCF application shall also be accompanied by documentation demonstrating that the proposed WCF complies with all applicable provisions of this Section 23 for the type of WCF.
- (f) *Fee.* Each application to be approved under this section shall be accompanied by fees as provided for in Appendix F – Fees and Fines.

23.52 *Compliance with Zoning Ordinance.* The following section of the zoning ordinance shall be adhered to, as applicable, in the approval of a WCF application:

- (a) *Architectural Review Certificate.* WCF located within the Historic District (H) shall be required to obtain an Architectural Review Certificate pursuant to Article 3, Section 21 and Article 10, Section 3 of this ordinance.
- (b) *Airport environs.* Locations within the Airport Environs Overlay Zone (AEOZ) shall document compliance pursuant to Article 3, Section 22 of this ordinance.
- (c) *Environmentally sensitive areas.* Location shall document compliance with the environmental protection measures for flood hazard areas and waterbodies and wetlands pursuant to Article 5, Section 11 of this ordinance.

23.53 *Eligible Facilities Request.* WCF Applicants proposing an Eligible Facilities Request shall be required to obtain application approvals as follows:

- (a) *Type.* WCF Applicant shall designate in writing that the application constitutes an Eligible Facilities Request pursuant to 47 CFR §1.6100 and as defined by this Section 23.
- (b) *Permit.* Obtain a WCF Building Permit from the City in accordance with applicable permit policies and procedures pursuant to Appendix B, Article 8, Section 1 – Building Permit of the City of Dover Code.
- (c) *Documentation.* WCF application shall also be accompanied by documentation demonstrating that the proposed WCF complies with all applicable provisions of this Section 23 for the type of WCF.
- (d) *Fee.* Each application to be approved under this section shall be accompanied by fees as provided for in Appendix F – Fees and Fines.

23.54 *Substantial Change Activity.* WCF Applicants proposing a Substantial Change Activity shall be required to obtain application approvals as follows:

- (a) *Type.* WCF Applicant shall designate in writing that the application constitutes a Substantial Change Activity as defined by this Section 23.
- (b) *Permit.* Obtain a WCF Building Permit from the City in accordance with applicable permit policies and procedures pursuant to Appendix B, Article 8, Section 1 – Building Permit of the City of Dover Code.
- (c) *Documentation.* WCF application shall also be accompanied by documentation demonstrating that the proposed WCF complies with all applicable provisions of this Section 23 based on the type of facility.
- (d) *Fee.* Each application to be approved under this section shall be accompanied by fees as provided for in Appendix F – Fees and Fines.

23.55 *New Facilities.* WCF Applicants proposing a New Facility located in a public right-of-way shall be subject to the provisions of Section 23.51. WCF Applicants proposing a New Facility meeting the definition of Tower-Based WCF outside of a public right-of-way of shall be required to obtain application approvals as follows:

- (a) *Conditional use authorization required.* Any WCF Applicant proposing the construction of a new facility shall first obtain conditional use authorization pursuant to Appendix B, Article 10 Section 1 of the Dover Code.
- (b) *Documentation.* The conditional use application shall demonstrate that the proposed WCF complies with all applicable provisions of Section 23 based on the type of facility.
- (c) *Conditional use application requirements.* The additional requirements for conditional use applications shall include the following:
 - i. A description of the type and manufacturer of the proposed transmission/radio equipment, the power in watts at which the WCF Applicant transmits, and any relevant related tests conducted by the WCF Applicant in determining the need for the proposed site and installation.
 - ii. Documentation demonstrating that the proposed Tower-Based WCF complies with all applicable state and federal laws and regulations concerning aviation safety.
 - iii. Evidence that the owner of the property on which the Tower-Based WCF is proposed has granted authorization to construct and operate the Tower-Based WCF.
 - iv. Written certification from a structural engineer licensed in the State of Delaware that 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.
 - v. 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 Planning Commission may deny an application to construct a new Tower-Based WCF if the WCF Applicant has not made a good faith effort to mount the Antenna(s) on an existing structure. The WCF Applicant shall address the viability of any existing Wireless Support Structures within a one quarter (1/4) mile radius of the site proposed and demonstrate that such alternative candidates are inferior with respect to technical feasibility, cost, or terms of use.
- (b) *Permit.* Obtain a WCF Building Permit from the City in accordance with applicable permit policies and procedures pursuant to Appendix B, Article 8, Section 1 – Building Permit of the City of Dover Code.
- (c) *Documentation.* WCF application shall also be accompanied by documentation demonstrating that the proposed WCF complies with all applicable provisions of this Section 23 based on the type of WCF.
- (d) *Fee.* Each application to be approved under this section shall be accompanied by fees as provided for in Appendix F – Fees and Fines.

23.56 *New Small WCF.* WCF Applicants proposing a new Small WCF that does not qualify as an Eligible Facilities Request shall be required to obtain application approval as follows:

- (a) *Type.* WCF Applicant shall designate in writing that the application constitutes a Small WCF as defined by this Section 23.
- (b) *Permit.* Obtain a WCF Building Permit from the City in accordance with applicable permit policies and procedures pursuant to Appendix B, Article 8, Section 1 – Building Permit of the City of Dover Code.
- (c) *Documentation.* WCF application shall also be accompanied by documentation demonstrating that the proposed WCF complies with all applicable provisions of this Section 23 based on the type of facility.
- (d) *Fee.* Each application to be approved under this section shall be accompanied by fees as provided for in Appendix F – Fees and Fines.
- (e) *New Wireless Support Structures.* An application involving installation of a new Wireless Support Structure shall demonstrate that the proposed Small WCF cannot be reasonably accommodated on an existing or approved structure or building within the right-of-way. The WCF Applicant shall address the viability of any existing Wireless Support Structures within 100 feet of the site proposed and demonstrate that such alternative candidates are inferior with respect to technical feasibility, cost, or terms of use.

23.57 *Timing of Approvals.* Each specific type of WCF is subject to specific approval timeframes. Such timeframes shall be subject to the tolling procedures established by the FCC.

- (a) *Small WCF: Timing of Approval for all Small WCF facilities that do not meet the definition of Eligible Facilities Request.* Once a WCF application is submitted these are the approval time lines:
 - i. *Notification of Incomplete Applications for Small WCF.* Within ten (10) days of receipt of an application for a Small WCF, the City shall notify the WCF Applicant in writing of any additional information required to complete application.
 - ii. *Approval Timeframe – Collocation.* Within sixty (60) days of receipt of an application for a collocation of a Small WCF on a preexisting Wireless Support Structure, the City shall make a final decision on whether to approve the application and the City shall notify the WCF Applicant in writing of such decision.
 - iii. *Approval Timeframe – New Facility.* Within ninety (90) days of receipt of an application for a Small WCF requiring the installation of a new Wireless Support Structure, the City Planning Department shall make a final decision on whether to approve the application and shall notify the WCF Applicant in writing of such decision.
- (b) *Non-Tower WCF: Timing of Approval for all Non-Tower WCF facilities that do not meet the definition of Eligible Facilities Request.* Once a WCF application is submitted these are the approval time lines:
 - i. *Notification of Incomplete Applications for Non-Tower WCF.* Within thirty (30) days of receipt of an application for a WCF on a preexisting wireless

- support structure, the City shall notify the WCF Applicant in writing of any additional information required to complete application.
- ii. *Approval Timeframe – Substantial Change.* Within ninety (90) days of receipt of an application for a Non-Tower WCF on a preexisting Wireless Support Structure that Substantially Changes the Wireless Support Structure to which it is attached, the City shall make a final decision on whether to approve the application and the City shall notify the WCF Applicant in writing of such decision.
 - iii. *Approval Timeframe – Not Substantial Change.* Within sixty (60) days of receipt of an application for a Non-Tower WCF on a preexisting Wireless Support Structure that does not Substantially Change the Wireless Support Structure to which it is attached, the City Planning Department shall issue the required building permit authorizing construction of WCF.
- (c) *Tower-Based WCF: Timing of Approval* for all Tower-Based WCF facilities that do not meet the definition of Eligible Facilities Request. Once a WCF application is submitted these are the approval time lines:
- i. *Notification of Incomplete Applications for Tower-Based WCF.* Within thirty (30) days of receipt of an application for a Tower-Based WCF, the City shall notify the WCF Applicant in writing of any additional information required to complete application.
 - ii. *Approval Timeframe -* All applications for Tower-Based WCFs shall be acted upon within one hundred fifty (150) days of the receipt of a fully completed application for the approval of such Tower-Based WCF and the City shall advise the WCF Applicant in writing of its decision. If additional information was requested by the City Planning Department 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

23.58 *Fees.* Each application for permit or plan approval shall be accompanied by a fee as provided for in Appendix F – Fees and Fines.

- (a) *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 WCF, as well as related inspection, monitoring and related costs. Such permit fees shall be established by Appendix F – Fees and Fines and shall comply with the applicable requirements of the FCC.
- (b) *Reimbursement for WCF in Right-of-way.* In addition to permit fees as described in this section, every Small WCF in the right-of-way is subject to the City's right to recover its actual costs incurred as a result of the Small WCF's presence in the right-of-way, including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other right-of-way management activities by the City. The owner of each Small WCF shall reimburse the City for the City's costs reasonably incurred in connection with the activities described above. All fees shall comply with applicable state and federal law and not exceed amounts presumed reasonable by the FCC.

23.6 *Small Wireless Communication Facilities (Small WCF)*. The following regulations shall apply to all Small WCF and associated Wireless Support Structures as defined by this Section 23.

(a) *Location*.

- i. Small WCF are permitted to be located in all City zoning districts subject to the application requirements of this Section 23.
- ii. Small WCF are subject to compliance with Zoning Ordinance provisions outlined in Section 23.52.
- iii. Small WCF are permitted to be located within the public right-of-way subject to application requirements of this Section 23.

(b) *Development Regulations*.

- i. *Sizing*. To be considered as Small WCF, the WCF must comply with the criteria established in the definition of Small Wireless Communications Facility in Section 23.2.
- ii. *Height*. The total height of a Small WCF shall comply with the maximum height permitted in the zoning district of the property to the extent technically feasible. In accordance with industry standards, Small WCF Applicants must submit documentation to the City justifying the total height of the WCF.
- iii. *Height*. The total height of a Small WCF when located in the public right-of-way shall be no more than ten percent taller than the tallest existing utility pole or wireless support structure within a two hundred fifty (250) radius of the proposed WCF or fifty (50) feet above ground level, whichever is greater.
- iv. *Placement*. All Small WCF shall comply with the applicable requirements of the Americans with Disabilities Act and all applicable requirements pertaining to streets and sidewalks, as codified in Chapter 98 of the Dover Code.
- v. *Placement*. Small WCF in the public right-of-way requiring the installation of a new Wireless Support Structure shall not be located directly in front of any building entrance or exit such that it would interfere with ingress or egress.
- vi. *Accessory equipment*. Small WCF and Accessory Equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, create safety hazards to pedestrians and/or motorists, or to otherwise inconvenience public use of the ROW as determined by the City.

- (c) *Design standards*. All Small WCF shall be designed to meet applicable requirements of the City “Small Wireless Communications Facility Design Manual,” a copy of which is kept on file at the City Planning Department.

23.7 *Non-Tower Wireless Communication Facilities (Non-Tower WCF)*. The following regulations shall apply to all Non-Tower WCFs as defined by this Section 23 and that do not meet the definition of a Small WCF.

(a) *Location*.

- i. Non-Tower WCF are permitted to locate in all City zoning districts subject to the application requirements of this Section 23.
- ii. Non-Tower WCF are subject to compliance with Zoning Ordinance provisions outlined in Section 23.52.

- iii. Non-Tower WCF are permitted to be located within the public right-of-way subject to application requirements of this Section 23.
 - iv. Non-Tower WCF shall be collocated on existing wireless support structures, such as poles, certain existing buildings or Tower-Based WCF.
 - v. *Historic buildings.* Non-Tower WCF may be located within one hundred (100) feet of any property, or on a building or structure that is listed on the National Register of Historic Places if an approved Architectural Review Certification is obtained pursuant to Article 10, Section 3 of this ordinance.
- (b) *Prohibitions on certain structures.* Non-Tower WCF shall not be located on one-family detached dwellings, one-family attached dwellings, semi-detached dwellings, duplexes, townhouses, manufactured homes, mobile homes, modular homes, or any residential accessory structure.
- (c) *Development Regulations.*
- i. *Sizing.* To be considered as Non-Tower WCF, the WCF must comply with the criteria established in the definition of Non-Tower Wireless Communications Facility in Section 23.2.
 - ii. *Height.* The total height of a Non-Tower WCF shall not exceed the maximum height permitted in the zoning district. In accordance with industry standards, Non-Tower WCF Applicants must submit documentation to the City justifying the total height of the WCF.
 - iii. *Replacement of Existing Support Structure.* The replacement of an existing support structure with a similar structure that is required to support the weight of the proposed WCF is allowed.
 - iv. *Accessory Equipment Buildings.* If Accessory Equipment is to be located in a separate building, the building shall comply with the minimum requirements for accessory structure in the applicable zoning district.
 - v. *Fences.* A security fence with a minimum height of six (6) feet and a maximum height of eight (8) feet shall surround any separate equipment compound located outside the right-of-way.
 - vi. *Access.* Vehicular access to the accessory equipment building or equipment compound shall not interfere with the parking or vehicular circulations on the site for the principal use.
- (d) *Design Standards.* Where appropriate, Non-Tower WCF shall employ Stealth Technology and be treated to match the Wireless Support Structure in order to minimize aesthetic impact. The Stealth Technology utilized by the WCF Applicant shall be subject to the application approval process.

23.8 *Tower-Based Wireless Communication Facilities (Tower-Based WCF).* The following regulations shall apply to all Tower-Based WCFs as defined by this Section 23 and that do not meet the definition of a Small WCF.

- (a) *Conditional uses.* Tower-Based WCF are permitted outside the public Rights-of-Way in certain zoning districts upon conditional use approval of the Planning Commission in accordance with the procedures and subject to the general conditions set forth in Article 10 Section 1 of this ordinance.

- i. In approving the conditional use, the Planning Commission may take into consideration the following:
 - a. the aesthetic impact of the proposed facility, including but not limited to whether its decision upon the subject application will promote the harmonious and orderly development of the zoning district involved;
 - b. encourage compatibility with the character and type of development existing in the area;
 - c. prevent a negative impact on the aesthetic character of the community;
 - d. preserve woodlands and trees existing at the site to the greatest possible extent; and
 - e. encourage sound engineering and land development design and construction principles, practices and techniques.
- ii. *Additional antennae.* As a condition of approval for all Tower-Based WCF, the WCF Applicant shall provide with a written commitment that it will allow a minimum of two (2) other service providers the opportunity to Collocate Antennae on Tower-Based WCF where technically feasible.

(b) *Location.*

- i. Tower-Based WCF are conditionally permitted to locate in the nonresidential zones. Nonresidential zones are defined in Article 12 – Definitions of this ordinance.
- ii. *Exception.* Tower-Based WCF in the IPM3 (Industrial Park Manufacturing Zone – Industrial Aviation and Aeronautics Center) zoning district are only allowed in support of aviation, aeronautics, or related operation per Article 3, Section 20B of the ordinance.
- iii. Tower-Based WCF are subject to the application requirements of this Section 23.
- iv. Tower-Based WCF are subject to compliance with zoning ordinance provisions outlined in Section 23.52.
- v. *Historic places.* Tower-Based WCF may be located within one hundred (100) feet of any building or structure that is listed on the National Register of Historic Places if an approved Architectural Review Certification is obtained pursuant to Article 10, Section 3 of this ordinance.

(c) *Uses on Property.*

- i. *Principal use.* A Tower-Based WCF shall be permitted as a sole principal use on a lot.
- ii. *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 permitted use.
- iii. *Existing uses.* The existing use on the property may be any permitted use in the applicable zoning district and need not be affiliated with the WCF.
- iv. *Ability to use.* Where applicable, the WCF owner shall present documentation that the property owner has granted an easement or other property right for the proposed facility.

(d) *Development Regulations.*

- i. *Minimum lot area.* The minimum lot area 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.
- ii. *Height.* Tower-Based WCFs shall be designed and kept at the minimum functional height. The maximum total height of a Tower-Based WCF shall not exceed the one hundred fifty (150) feet. 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.
- iii. *Minimum setbacks.* The minimum distance between the base of a Tower-Based WCF and any property line or street Right-of-Way line shall equal 110% of the proposed height of the Tower-Based WCF, unless the WCF Applicant shows to the satisfaction of the Planning Commission that the proposed Tower-Based WCF has been designed in such a manner that a lesser setback will have no negative effects on public safety.

(e) *Design Standards.*

- i. *Multiple Antennae.* Any proposed Tower-Based WCF shall be designed structurally to accommodate both the WCF Applicant's Antennae and at least two (2) comparable Antennae for future users.
- ii. *Security.* Any Tower-Based WCF shall be equipped with an anti-climbing device, as approved by the manufacturer.
- iii. *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.
- iv. *Surrounding environs.* Existing vegetation, trees and shrubs located within proximity to the Tower-Based WCF structure shall be preserved to the maximum extent possible.
- v. *Fences.* A security fence having a minimum height of six (6) feet and a maximum height of eight (8) feet shall surround any Tower-Based WCF, as well as guy wires, equipment compound or housing WCF equipment.
- vi. *Screening.* A screen of evergreen trees planted eight (8) feet on center, each at least four (4) feet in height, shall surround the Tower-Based WCF and security fence. Existing vegetation shall be preserved to the maximum extent possible and landscaping is not required where landscaping already exists.
- vii. *Accessory equipment.* Where feasible, Accessory Equipment associated, or connected, with a Tower-Based WCF shall be placed underground. Any above-ground Accessory Equipment associated or connected with a Tower-Based WCF shall be 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.
- viii. *Accessory equipment buildings.* If Accessory Equipment is to be located in a separate building, the building shall comply with the minimum requirements for accessory structures in the applicable zoning district.

- ix. *Accessory equipment.* Accessory Equipment not exceeding five hundred (500) square feet in area shall be permitted for each unrelated company sharing space on the Tower-Based WCF.
- x. *Access road.* Where necessary, an access road, turnaround space and parking shall be provided to ensure adequate Emergency and service access to Tower-Based WCF. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road grades shall closely follow natural contours to assure minimal visual disturbance and minimize soil erosion.
- xi. *Visual Appearance.* Tower-Based WCF shall employ Stealth Technology which may include painting or finish of the tower portion. 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.

23.9 *General Requirements for Wireless Communication Facilities.* The following shall apply to all types of wireless communication facilities. Each application for a WCF shall require proof of compliance with the following.

23.91 *Standards for Wireless Communication Facilities.*

- (a) *Wind and ice.* Each 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.
- (b) *Aviation safety.* WCF shall comply with all federal and state laws and regulations concerning aviation safety.
- (c) *Interference.* WCF shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services by occupants of nearby properties.
- (d) *Radio frequency emissions.* WCF shall not, by itself or in conjunction with other WCFs existing on the same structure at the time of installation, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled “Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields,” as amended.
- (e) *Signage.* WCF owners shall post a sign in a readily visible location identifying the name, phone number of a party to contact in the event of an Emergency, and permit number. The only other signage permitted on the WCF shall be those required by the FCC, or any other federal or state agency.
- (f) *Noise.* WCF shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and the City Code, except in Emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.
- (g) *Engineer seal and signature.* All plans and drawings for a WCF shall contain a seal and signature of a professional structural engineer, licensed in the State of Delaware.

- (h) *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.

23.92 Maintenance and Care of Wireless Communications Facilities.

- (a) *Standard of care.* Any 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, National Association of Tower Erectors, or to the industry standard applicable to the structure.
- (b) *Maintenance.* Any WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any Person or damage any property in the City. Such maintenance shall be performed to ensure the upkeep of the WCF in order to promote the safety and security of the City's residents and utilize industry standard technology for preventing failures and accidents. The following maintenance requirements shall apply:
 - i. The WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or Emergency repair.
 - ii. Such maintenance shall be performed to ensure compliance with applicable structural safety standards and radio frequency emissions regulations.
 - iii. All maintenance activities shall conform to industry maintenance standards.
- (c) *Lighting.* The WCF Applicant shall promptly report any outage or malfunction of FAA-mandated lighting to the appropriate governmental authorities and to the City.
- (d) *Graffiti.* Any graffiti on the WCF or on any Accessory Equipment shall be removed at the sole expense of the owner within thirty (30) days of notification by the City.

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

23.94 Construction and Repairs in the Right-of-way.

- (a) *Work in Right-of-Way.* The City of Dover Electric Department and the City of Dover Public Works Department, in consultation with the City Planning Department, shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Small WCF in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. All construction, maintenance, repair and/or removal of Small WCF shall comply with the applicable requirements of the City code.
- (b) *Pole Repairs.* In the event of damage to a Small WCF attached to a utility pole owned or controlled by the City of Dover Electric Department, the owner of the Small WCF shall be solely responsible for all costs associated with the repair of the Small WCF, unless such damage was caused by the City's own negligence or willful misconduct.

- (c) *Repairs of City property.* In the event of damage to City property during installation of any WCF, including utility poles, streets, sidewalks, streetlights, signs, or other infrastructure, the company responsible for the damage shall make repairs accepted by the City or shall reimburse the City for the cost of such repairs.
- (d) *Change or Alteration Required.* Within ninety (90) days following written notice from the City, or such longer period as the City determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a Small WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the City, consistent with its police powers and applicable Public Utility Commission regulations, determines that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
- i. The construction, repair, maintenance or installation of any City or other public improvement in the right-of-way;
 - ii. The operations of the City or other governmental entity in the Right-of-Way;
 - iii. Vacation of a street or road or the release of a utility easement; or
 - iv. An Emergency as determined by the City.
- In such cases the City will make reasonable efforts to assist the WCF owner in identifying and permitting an alternate location for the WCF.

23.95 *Removal.* In the event that use of a WCF is to be discontinued, the owner shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued and removed. Unused or abandoned WCF, or portions of WCF, shall be removed as follows:

- (a) Complete removal of the structure of a Tower-Based WCF shall require a Demolition Permit in accordance with permit policies and procedures pursuant to Appendix B, Article 8, Section 1 – Building Permit.
- (b) Any unused portions of Tower-Based WCF, including Antennae, shall be removed within ninety (90) days of the time of cessation of operations. All Replacements of portions of a Tower-Based WCF previously removed are subject to the provisions of this Section 23.
- (c) All used or abandoned WCFs and Accessory Equipment shall be removed from the wireless support structure within ninety (90) days of the cessation of operations at the site unless a time extension is approved by the City.
- (d) If the WCF or Accessory Equipment is not removed from the wireless support structure within ninety (90) days of the cessation of operations at a site, or within any longer period approved by the City, the WCF and/or associated facilities and equipment may be removed by the City and the cost of removal assessed against the owner of the WCF.

BE IT FURTHER ORDAINED:

That Appendix B – Zoning, Article 12 – Definitions of the Dover Code, be amended by inserting the following in correct alphabetical order:

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.

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.

BE IT FURTHER ORDAINED:

That Appendix B – Zoning, Article 3 Section 20B – Industrial park manufacturing zone – Industrial aviation and aeronautics center (IPM3), 20B.1 – Uses permitted of the Dover Code, be amended to read as follows:

20B.1 *Uses permitted.* In an IPM3 zone, no building or premises shall be used and no building or part of a building shall be erected, which is arranged, intended or designed to be used, in whole or in part, for any purpose, except the following, and in accordance with performance standards review procedure as set forth in article 5 sections 8.2 and 8.6, and subject to site development plan approval as set forth in article 10, section 2:

20B.11 Airports, spaceports, and related facilities, including passenger terminals, cargo facilities, hangars, refueling operations, parking facilities and other uses integral to airport or spaceport operations.

20B.12 Commercial or industrial uses that are related to aviation or aeronautics and/or require direct access to an airport, spaceport, or aviation/aeronautics services, including assembly or sale of aircraft or spacecraft, air frames, aircraft or spacecraft engines, associated parts and components, radios or navigational equipment, and similar products or services.

20B.13 Public and institutional uses that support the aviation or aeronautics industries such as aviation or aeronautics technical schools, security services, and inspection facilities.

20B.14 Bulk storage of fuel, lubricants, fire suppression and other materials integral to design, construction, testing, maintenance, or operation of aircraft or spacecraft.

20B.15 Printing, publishing, binding, packaging, storage, warehousing, and transshipment and distribution.

20B.16 Business, professional, or administrative offices. 20B.17 Radio or television broadcasting towers, telecommunications towers, antenna arrays, and receiving satellite dishes that support aviation, aeronautics, or related operations.

BE IT FURTHER ORDAINED:

That Appendix B – Zoning, Article 3 Section 20B – Industrial park manufacturing zone – Industrial aviation and aeronautics center (IPM3), 20B.2 – Uses permitted of the Dover Code, be amended to read as follows:

20B.2 *Conditional uses.* The following uses are permitted, conditional upon the approval of the planning commission in accordance with the procedures and subject to the general conditions set forth in article 10, section 1. The application for conditional use shall clearly demonstrate the relationship of the proposed use to an existing or proposed airport or spaceport.

20B.21 Service establishments such as auto rental and travel agencies, commercial parking lots and garages, automobile service stations, car washes, banks, gift shops, newsstands, bookstores, restaurants, bars, medical offices, postal facilities, laundry services, and similar facilities available to airport or spaceport users and employees.

20B.22 Radio or television broadcasting towers, tower based wireless communications facilities, antenna arrays, and receiving satellite dishes that support aviation, aeronautics, or related operations.

BE IT FURTHER ORDAINED:

That Appendix B – Zoning, Article 5 Section 21 – Public utility infrastructure of the Dover Code, be amended to read as follows:

Section 21. - Public utility infrastructure.

Public utility infrastructure shall be permitted in all zones and generally exempt from the requirements of Article 4—Zoning Bulk and Parking Regulations, except as provided in this section.

21.1 *Setback.* The minimum setback for public utility structures shall be equal to the setback of the zone in which the structure is located.

21.2 *Fences.* Fences shall be limited to a maximum height of eight feet above ground.

21.3 *Site development plan required.* Site development plan approval in accordance with article 10, section 2 hereof shall be required prior to the issuance of building permits for the erection or enlargement of all structures and related accessory structures.

21.4 *Exceptions.*

21.41 Electric power generation facilities shall be subject to all zoning requirements.

21.42 Wireless communication facilities as defined in Article 5, Section 23 shall not be considered public utility infrastructure under the provisions of this subsection, and shall be subject to the provisions of Article 5, Section 23.

BE IT FURTHER ORDAINED:

That Chapter 98 – Street, Sidewalks, Storm Sewers and Other Public Places of the Dover Code, be amended by inserting a new Section 98-11 - Placement of wireless communications facilities within rights-of-way, as follows:

Sec. 98-11. – Placement of wireless communications facilities within rights-of-way.

- (a) *Applicability.* The provisions of this section shall apply to the use of rights-of-way as dedicated to the city or as otherwise maintained by the city.
- (b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

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.

Wireless Support Structure. A freestanding structure, pole, tower, or other building, whether or not it has an existing antenna facility, that is used or to be used to support the placement or installation of a wireless communication facility for the provision of wireless service (whether on its own or comingled with other types of services).

- (c) *Uses of Rights-of-way Permit required.* It shall be unlawful for any person to construct, erect or affix any wireless support structure within or that encroaches upon any right-of-way owned or maintained by the city, unless and until such use of the right-of-way shall have been approved. A Rights-of-Way Use Permit shall be obtained from the city manager or their designee.
- (1) *Permit Fees.* Each application for permit shall be accompanied by a fee as provided for in Appendix F – Fees and Fines.
- (2) *Annual Fee for Rights-of-Way Use.* Each wireless support structure not owned or maintained by the city located within or that encroaches upon any right-of-way owned or maintained city shall be subject to an annual fee as provided for in Appendix F – Fees and Fines.
- (d) *Approval required.* Construction, erection or placement any wireless communication facility or wireless support structure within or encroaches upon any right-of-way owned or maintained by the city shall be in accordance with the provisions of Appendix B – Zoning, Article 5 Section 23.

BE IT FURTHER ORDAINED:

That Appendix F – Fees and Fines of the Dover Code, be amended by inserting new sections, as follows:

Chapter 98. – Streets, Sidewalks and Other Public Places

Chapter 98. Streets, Sidewalks and Other Public Places	Fees and Fines
<i>Article I. In General</i>	
Sec. 98-11 Placement of wireless communications facilities within rights-of-way (c) Use of Rights of Way Permit	
(1) Permit Fee	\$25 for ROW Permit
(2) Annual Fee for Rights-of-way Use	No charge for WCF placement on existing City owned wireless support structure in City ROW \$220 for Placement of new wireless support structure/pole in City ROW \$220 for WCF placement on a third party/non-City wireless support structure/pole in City ROW

Chapter 110. – Utilities

Chapter 110. Utilities	Fees and Fines
<i>Article II. Electric Service</i>	
Sec. 110-32. Pole attachment fee; use of Dover Electric Department facilities	
If payment is not received for any fee or other amount owed within 30 calendar days after it becomes due, the licensee shall pay interest at the rate of one and one-half percent per month, on the amount due (subsec. (f)).	
Subsection (4) Fees and charges	
Annual pole attachment fee	\$8.17 per attachment
Wireless Communications Facility Attachment	\$50 Annual Fee per Attachment on City owned wireless support structure/pole

Appendix B. Zoning

Appendix B. Zoning	Fees and Fines
<i>Article 5. Supplementary Regulations</i>	
Sec. 23 Wireless Communications Facilities	
Subsec. 23.5 Application Procedures	
23.51 Location within Public Right-of-way	

(f) Fee	WCF Building Permit Fee is \$25.00 for first \$1,000.00 of costs and \$8.00 for each additional \$1,000.00 of costs or multiples thereof up to \$10,000,000.00 of costs
23.53 Eligible Facilities Request	
(d) Fee	WCF Building Permit Fee is \$25.00 for first \$1,000.00 of costs and \$8.00 for each additional \$1,000.00 of costs or multiples thereof up to \$10,000,000.00 of costs
23.54 Substantial Change Activity	
(d) Fee	WCF Building Permit Fee is \$25.00 for first \$1,000.00 of costs and \$8.00 for each additional \$1,000.00 of costs or multiples thereof up to \$10,000,000.00 of costs
23.55 New Facilities	
(a) Conditional use authorization required.	\$425.00, plus \$25.00 per acre of the area or multiple thereof involved in the Conditional Use Permit application
(d) Fee	WCF Building Permit Fee is \$25.00 for first \$1,000.00 of costs and \$8.00 for each additional \$1,000.00 of costs or multiples thereof up to \$10,000,000.00 of costs
23.56 New Small WCF	
(d) Fee	WCF Building Permit Fee is \$25.00 for first \$1,000.00 of costs and \$8.00 for each additional \$1,000.00 of costs or multiples thereof up to \$10,000,000.00 of costs

BE IT FURTHER ORDAINED:

That this Ordinance shall become effective immediately upon adoption.

ADOPTED: November 9, 2020

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SYNOPSIS

This proposed Ordinance adds provisions for Wireless Communications Facilities (WCF) by adding a new Section 23 – Wireless Communication Facilities to the *Zoning Ordinance* and completing other amendments to the *Dover Code of Ordinances*. This proposed Ordinance provides definitions; establishes certain general and specific standards relating to the location, placement, construction and maintenance of Small WCF, Non-Tower Based WCF, and Tower-Based WCF; provides for the regulations of WCF within the public rights-of-ways and outside

public rights-of-way on properties; and provides for the enforcement of said regulations. Also associated with this Ordinance is the development of the City of Dover “Small Wireless Communications Facility (SWCF) Design Manual” as referenced for design standards for Small Wireless Communications Facilities.

Actions History:

2/11/2020 – Update on Provisions and Development of Ordinance: Wireless Communication Facilities at Council Committee of the Whole – Utility Committee. Referred to Staff for continued work.

7/14/2020 – Update and Presentation of Preliminary Draft Wireless Communications Facilities (WCF) Ordinance Version 1A – Planning 7-8-2020 at Council Committee of the Whole – Utility Committee. Referred to Staff for continued work.

9/15/2020 – Update and Presentation of Draft Wireless Communications Facilities (WCF) Ordinance Version 2 – Planning 9-9-2020 at Council Committee of the Whole – Utility Committee. Recommend Staff complete refinements and refer to City Council for First Reading and setting of Public Hearing dates.

9/28/2020 – First Reading at City Council

10/19/2020 – Public Hearing and Review for Recommendation by Planning Commission

11/9/2020 – Public Hearing and Final Reading & Action at City Council

11/9/2020 – Adopted by City Council