

ORDINANCE NO. 5 – 2020

BOROUGH OF WEST CHESTER

CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE OF THE BOROUGH OF WEST CHESTER, CHESTER COUNTY, PENNSYLVANIA, AMENDING THE CODE OF THE BOROUGH OF WEST CHESTER TO PROVIDE FOR A NEW CHAPTER ENTITLED “CHAPTER 92 – SMALL WIRELESS FACILITIES” TO PROVIDE FOR NEW ORDINANCE PROVISIONS TO ALLOW FOR, AND REGULATE, SMALL WIRELESS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY IN THE BOROUGH.

BE IT ENACTED AND ORDAINED, and it is hereby enacted by authority of the Council of the Borough of West Chester, as follows:

**SECTION 1.** A new Chapter 92 entitled “Small Wireless Facilities” is hereby enacted as part of the Code of the Borough of West Chester and shall include the following ordinance provisions:

**CHAPTER 92  
SMALL WIRELESS FACILITIES**

**§92-1. PURPOSE AND INTENT.**

The purpose of this Ordinance is to establish procedures and standards, consistent with all applicable federal and state, laws, for the consideration, permitting, siting, construction, installation, collocation, modification, operation, regulation and removal of Small Wireless Facilities (“SWF”) in the public right-of-way of streets and roads.

(A) The intent of this section is to:

- (1) Establish basic criteria for applications to install and/or collocate SWF in the public right-of-way;
- (2) Ensure that SWF are appropriately designed, constructed, modified, maintained, and removed when no longer in use in conformance with all applicable health and safety regulations;
- (3) Preserve the character of the Borough by minimizing the potentially adverse visual impact of SWF through careful design, siting, landscaping and camouflaging techniques to blend these facilities into their environment to the maximum extent practicable;

- (4) Establish an application process and structure for payment of fees and charges to be uniformly applied to all applicants, operators and owners of SWF for such facilities;
- (5) Comply with, and not conflict with or preempt, all applicable state and federal laws, as may be amended or superseded, and all FCC rules and regulations to interpret and implement applicable federal statutes.

## **§92-2. APPLICABILITY.**

- (A) Subject to the provisions of this Ordinance and granting of the required permits, an applicant may locate and/or collocate a SWF and construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under a public right-of-way.
- (B) An applicant and/or operator shall comply with this Ordinance and any rules, regulations, and design guidelines adopted by the Borough that are consistent with this Ordinance for the installation and/or collocation of a SWF and construction, maintenance, modification, operation, or replacement of wireless support structures in, along, across, upon, and under the public rights-of-way, unless otherwise prohibited by state or federal law.
- (C) All SWF shall be constructed and maintained so as not to impede or impair public safety or the legal use of the public right-of-way by the Borough, the traveling public, or other public utilities.
- (D) Nothing in this Ordinance precludes the Borough from applying its generally applicable health, safety, and welfare regulations when acting on an application for a permit for a SWF in the public right-of-way.

## **§92-3. DEFINITIONS.**

***COLLOCATION or COLLOCATE.*** The mounting or installing of an antenna facility on a pre-existing structure, and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

***DECORATIVE POLE OR STRUCTURE.*** A pole, arch, or structure placed in the public right-of-way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed or are permitted to be placed in accordance with nondiscriminatory Borough practices except for any of the following:

- (1) Electric lighting;
- (2) Specially designed information or directional signage;
- (3) Temporary holiday or special event attachments;
- (4) Small Wireless Facilities.

**DESIGN GUIDELINES.** Means those detailed design guidelines, specifications and examples promulgated by resolution that address, on a nondiscriminatory basis, the design and installation of facilities in the public rights-of-way, insofar as they do not conflict with any federal or state law, rule and regulation, including this Ordinance.

**TOWN CENTER/HISTORIC DISTRICT.** An area that is zoned or otherwise designated as the Town Center and/or Historic District under municipal, state or federal law and for which the Borough maintains and enforces in an uniform and nondiscriminatory basis with regard to all users of the public right-of-way pursuant to this Ordinance.

**LOCATE.** Means to install, mount, maintain, modify, operate, or replace SWF.

**OWNER.** A provider, operator or owner of SWF (who may also be the applicant).

**PUBLIC RIGHT-OF-WAY.** The surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public way, public alley, public sidewalk, and any other land dedicated or otherwise designated for the same now or hereafter held by the Borough or other governmental entity.

**SMALL WIRELESS FACILITY “SWF”.** A type of Wireless Communication Facility (WCF) as specifically defined by the Federal Communications Commission in Part 1 of Title 47 of the Code of Federal Regulations as follows, or as hereinafter amended:

(A) “Small Wireless Facility” means a facility that meets each of the following conditions:

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

**BOROUGH-OWNED POLE.** Means (i) a Utility Pole owned or operated by the Borough, including a Utility Pole that provides lighting or traffic control functions, or other law enforcement functions, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the Borough such as a Decorative Pole.

**TRANSMISSION POLE.** A pole or similar structure that is used in whole or in part to carry electric transmission (as opposed to distribution) lines.

**UTILITY POLE.** A pole or similar structure that is designed for, or used, for carrying electric distribution lines or for carrying cables or wires for electric, cable, or telecommunications service or for lighting, traffic control, or directional signage.

**WIRELESS SUPPORT STRUCTURE.** A freestanding structure, including a monopole, Decorative Pole, Borough-Owned Pole, Transmission Pole, and Utility Pole, or other existing or proposed structure designed to support or capable of supporting SWF.

#### §92-4. APPLICATION PROCESS.

- (A) *Application Required.* An applicant must apply to the Borough to locate a new SWF and/or collocate any portion of a SWF on an existing Wireless Support Structure or to construct, maintain, modify, operate, or replace Wireless Support Structures in, along, across, upon, and under the Public Right-of-Way. Anyone seeking to perform any of these actions shall first duly file a permit application with the Borough, in accordance with the requirements of this Ordinance and additional requirements as set forth in the Small Wireless Facilities Design Guidelines as adopted by resolution and which may be modified from time to time by further resolution.
- (B) *Permit Required.* No person shall occupy or use the public right-of-way without first obtaining, under this Ordinance, the required permit from the Borough. Before placing SWF in the public right-of-way, an owner must apply for and receive a permit. This provision shall not be construed to waive any application fees or any other construction or work permit necessary for work in the Borough. While notice to the Borough is required, a permit from the Borough shall not be required for routine maintenance or same-size and type replacement of Small Wireless Facilities that do not interfere with pedestrian or vehicular traffic.
- (C) *Required Application Materials.* Unless otherwise required by state or federal law, all applicants shall submit to the Borough all materials and information associated with each application as outlined below for the application to be considered complete:
  - (1) The Applicant's name, address, telephone number and e-mail address;

- (2) Facility owner's name, address, telephone number and email address, if different from Applicant;
- (3) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the application, and if warranted written authorization for those consultants to speak on behalf of the applicant.
- (4) A description of the Small Wireless Facilities being proposed in order for the Borough to verify that the proposed facilities are Small Wireless Facilities as specifically defined by the FCC;
- (5) A mapping showing the exact location of the proposed Small Wireless Facilities in the case of multi-site applications and photo simulations/depictions of the type and style of the proposed Small Wireless Facilities (which should be in compliance with the Borough's Small Wireless Facility Design Guidelines).
- (6) A description of the proposed scope of work for the location or Collocation of the SWF. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters, including but not limited to sub-surface utilities, likely to be affected or impacted by the work proposed;
- (7) Verification that the SWF shall comply with this Ordinance, including all applicable Small Wireless Facilities Design Guidelines;
- (8) Verification of payment of the application fees, annual municipal consent or administrative fee for use of Public Rights-of-Way and acknowledgment of its continuing annual obligation;
- (9) Evidence the Applicant has received any necessary certificate of public convenience and necessity or other required authority from the Federal Communications Commission, or a statement that it is not required;
- (10) A copy of an approved Pennsylvania Department of Transportation permit and all documents required by PennDOT as part of the encroachment permit application, if the proposed location is within a PennDOT Right-of-Way; and,
- (11) The applicant must provide a statement that the applicant has a lease, attachment agreement or other authorization from the owner of the Wireless Support Structure proposed for Collocation.

## §92-5. FEES AND COSTS.

- (A) *Rights-of-Way Access Fees:* Each individual Applicant will be subject to an annual Rights-of-Way access fee if locating within a Borough owned Public Right-of-Way. Such fees shall not be in excess of those amounts deemed reasonable by the Federal Communications Commission.
- (B) *Application processing costs.* Unless otherwise provided by law, all applications for permits pursuant to this Ordinance shall be accompanied by an application processing cost which shall be the following: 1) application costs for Small Wireless Facilities addressed in a consolidated application shall be \$500 which may include up to five Small Wireless Facilities, and an additional \$100 for each Small Wireless Facility beyond five, up to and including 30 total Small Wireless Facilities per one application, and 2) application costs of \$1,000 for a new pole (not a collocation) intended to support one or more Small Wireless Facilities.
- (C) *Compensation.* In addition to the applicable fee as specified above, every permit shall include as a condition the Applicant's agreement to pay a Right-of-Way access fee of \$200 per Small Wireless Facility per year, and/or other taxes and fees as may now or hereafter be lawfully imposed on other businesses within the Borough. Additionally, if the Small Wireless Facilities is proposed to be located upon a Borough-Owned Pole, and the Borough consents to such Collocation, an additional annual fee of \$70 per Small Wireless Facility shall be payable to the Borough for such placement.
- (D) Small Wireless Facilities collocated on Borough-owned utility poles or structures outside the Borough rights-of-way are not subject to the rate limitations in this Ordinance. Additionally, if the rate limitations imposed by the Federal Communications Commission is altered in the future, the Borough may alter its fees by resolution to be consistent with the Federal Communications Commission's determinations or as might be otherwise altered by the state or federal governments.
- (E) *Cease Payment.* Upon thirty (30) days written notice to the Borough, an Owner is authorized to remove its Small Wireless Facility from a Borough-Owned Pole and cease paying the annual fee to the Borough as of the next due date for payment following the removal, provided; however, the Owner shall pay its pro-rata share of the remaining term and expenses, if any.
- (F) *Make-ready.* For Borough-Owned Poles, the applicant shall reimburse the Borough for expenses for any reasonable make-ready work, if any are required. The Borough shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested SWF, including pole replacement if necessary, within thirty (30) days after receipt of a completed request. The Borough may also require the Applicant to perform the make-ready work, including pole replacement if necessary, and the Applicant would be responsible for its own costs incurred for such work.

- (G) There may be the occasion whereby the Borough has already prepared Borough-Owned Poles for collocation or multiple collocations via a relationship with a third-party contractor. In such circumstances, if deemed a reasonable and feasible alternative, the applicant may be required to site its Small Wireless Facility within/upon such Borough-Owned Poles, and the applicant shall reimburse the Borough for the applicant's percentage of costs incurred to make such Borough-Owned Pole collocation-ready for the applicant.

**§92-6. APPLICATION REVIEW TIME FRAMES.**

(A) Permit Application Review.

- (1) Collocation of SWF. Absent a written agreement to the contrary between the Borough and the Applicant, the Borough shall grant or deny an application to collocate, or to replace or modify any portion of a SWF on, or associated with, an existing wireless support structure not later than sixty (60) days after the date of filing by an entity of a completed application.
- (2) Installation of New SWF. Absent a written agreement to the contrary between the Borough and the Applicant, the Borough shall grant or deny an application for a SWF on a new structure within the Public Right-of-Way not later than ninety (90) days after the date of filing by an entity of a completed application.
- (3) Removal of SWF. The Borough shall act on requests to remove Wireless Support Structures associated with SWF from the Public Right-of-Way typical to the review timeframes for the Public Right-of-Way permit required for this activity.
- (4) Completeness. Within ten (10) business days of receiving an application, the Borough will determine and notify the Applicant whether the application is complete; or if an Application is incomplete, the Borough must specifically identify the missing information.
- (5) *Application Denials.*
  - (a) The Borough shall not unreasonably withhold or deny an application for a permit to place a SWF within the Public Right-of-Way.
  - (b) If an application is denied, the Borough will provide in writing its reasons for denying the request, including, if applicable, specific references to any applicable law supporting the denial.

- (c) Notwithstanding an initial denial, the Applicant may cure the deficiencies identified by the Borough and resubmit the Application within thirty (30) days of the denial, and the Borough will approve or deny the revised Application within thirty (30) days of receipt of it, unless additional deficiencies are discovered.

**§92-7. CONSOLIDATED APPLICATION FOR MULTIPLE SWF.**

- (A) Applicants seeking to construct, modify, collocate, or replace more than one SWF, may file, at the applicant's discretion, a consolidated application for up to 30 requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the SWF subject to the following:
  - (1) This single application may be filed for multiple SWF only if they are of substantially the same type.
  - (2) The Borough must separately address SWF for which incomplete information has been received or which are denied and it must grant a permit for any and all sites in a single application that it does not deny subject to the requirements of this Ordinance.

**§92-8. MAXIMUM HEIGHT, PROXIMITY OF SWF AND ALTERNATE LOCATIONS.**

- (A) Maximum Height. The maximum height of a new pole for the installation of a SWF is limited to a maximum height of fifty (50) feet, subject to any restrictions imposed by the Small Wireless Facility Design Guidelines. Applicant may collocate on existing Wireless Support Structures provided the Small Wireless Facility's height still qualifies as a Small Wireless Facility as defined by this Ordinance and as by the Federal Communications Commission.
- (B) Alternate Locations. If an applicant is seeking to install a new Wireless Support Structure as part of its application, the Borough may propose that the Small Wireless Facility be located on an existing utility pole or existing Wireless Support Structure within one hundred (100) feet of the proposed location. The Applicant shall accept the proposed alternate location so long as it has the right to use the location on reasonable terms and conditions, unless the alternate location imposes technical limits, acts as an effective prohibition under federal law, or additional unreasonable costs will be incurred as determined by the Applicant. If the Applicant refuses an alternate location based on the foregoing, the Applicant shall provide legally competent evidence in the form of a written certification describing the property rights, technical limits or cost reasons that prevent the alternate location from being utilized.
- (C) The Borough may reserve space on Borough-Owned Poles for future public safety uses or for Borough electric utility uses. Such reservation may preclude collocation

of Small Wireless Facilities if the Borough reasonably determines that the Borough's poles cannot accommodate both uses, or if the collocation cannot be accommodated due to physical limitations of the Borough-Owned Poles.

- (D) In certain circumstances, collocation is not feasible and a new pole needs to be installed by the Applicant. In such cases, a Small Wireless Facility located on a new pole shall be separated by 150 feet from any other Small Wireless Facility located upon a pole with that singular purpose (meaning it is not a collocation but another stand-alone SWF pole).

**§92-9. GENERAL DESIGN REQUIREMENTS.**

- (A) The Borough has, or shall, adopt Small Wireless Facility Design Guidelines with objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area.
- (B) The Small Wireless Facility Design Guidelines will provide examples of SWF preferences including visual depictions (if such depictions are readily available and identified by the Borough).
- (C) The provisions in this Ordinance shall not limit or prohibit the Borough's discretion to promulgate and make publicly available other information, materials or requirements in addition to, and separate from, Small Wireless Facility Design Guidelines so long as the information, materials, or requirements do not conflict with state or federal law.
- (D) All Small Wireless Facilities and associated equipment located within the Public Right-of-Way shall be located such that it meets ADA requirements and does not hinder, obstruct or impede usual pedestrian and vehicular travel.
- (E) The Borough shall have authority to update or supplement the Small Wireless Facility Design Guidelines to address relevant changes in law, technology, or administrative processes.
- (F) Wireless Support Structure Design Standards
  - (1) General Guidance
    - (a) SWF equipment must be indistinguishable from the support pole or structure to the greatest degree possible using matching colors, textures, and materials. The antennas and related equipment shall be in a color that will provide the most camouflage.
    - (b) All wires, antennas, and other small wireless facility equipment shall be enclosed and not visible.

- (c) Screening and equipment enclosures shall blend with or enhance the surrounding context in terms of scale, form, texture, materials, and color. Equipment shall be concealed as much as possible by blending into the natural and/or physical environment.
- (d) Casing to enclose all wires, antennas, and other small wireless facility equipment may be mounted on top of existing and new poles in a cylinder shape to look like an extension of the pole.
- (e) Brand logos and other signage are prohibited on all SWF except contact information to be used by workers on or near the SWF and as otherwise required by federal or state law. Signage will be no larger than required to be legible from street level.

**§92-10. TOWN CENTER AND HISTORIC DESIGNATED DISTRICTS.**

- (A) This Ordinance may not be construed to limit the Borough's authority to enforce historic preservation zoning regulations consistent with the local, state or federal law including the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.
- (B) As a condition for approval of new Small Wireless Facilities or new Wireless Support Structure in a Town Center District or Historic District, the Applicant shall comply, to the greatest extent possible, with the design and aesthetic standards of Town Center District and Historic District to minimize the negative impact to the aesthetics in these districts.
- (C) New Districts. Nothing in this Ordinance shall prohibit or otherwise limit the Borough from establishing subsequent new town center or historic districts, provided however, that facilities and structures for which a permit was approved or deemed approved pursuant to this Ordinance prior to the establishment of the new district remain subject to the provisions of this Ordinance, including routine maintenance and replacement of those facilities and structures. If a wireless services provider or a wireless infrastructure provider replaces such facilities in a manner that does not comply with this Ordinance, or if a wireless services provider or a wireless infrastructure provider relocates such facilities, such replacement or relocation is subject to the then-existing provisions and requirements of the newly established district.

**§92-11. GENERAL CONDITIONS AND REQUIREMENTS OF PERMIT APPROVAL.**

- (A) *Permit Effect and Duration.* The Borough's approval term for collocation or a new pole shall be for a period of nine (9) months. If construction or installation is not begun within nine (9) months of the permit issuance, the Owner shall be required to submit a new application and associated fees. A permit from the Borough

authorizes an Owner to undertake only certain activities in accordance with the Ordinance and does not create a property right or grant any authority whatsoever to the Owner to impinge upon the rights of others.

- (B) *Compliance with all applicable laws and Borough Code.* Owner shall always maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules. If state or federal standards and regulations are amended, the owners of any portion of SWF governed by this ordinance shall bring any facilities and/or structures into compliance with the revised standards and regulations within the time mandated by such amendment or, if no time is mandated, as soon as practicable under the circumstances, but no longer than ninety (90) days. The Borough is not required to provide notice of any amendments in order to trigger this responsibility. Failure to bring SWF into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.
- (C) *Inspections; emergencies.* The Borough or its designee may inspect any portion of SWF in the right-of-way upon reasonable notice to the Owner. The Owner shall cooperate with all inspections. The Borough reserves the right to support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. If circumstances permit, the Borough shall notify the Owner and provide the opportunity to move such facilities, poles, or support structures prior to the Borough doing so, and the Borough shall notify the Owner after doing so.
- (D) *Relocation or adjustment as requested by Borough.* If requested by the Borough, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an Owner shall relocate or adjust its facilities within the Public Right-of-Way at no cost to the Borough, as long as such request similarly binds all users in or on such public way. Such relocation or adjustment shall be completed in accordance with law.
- (E) *Contact information for responsible parties.* Within 10 days of any changes to any of the contact information provided in the application, the Owner shall provide notice of the change to the Borough.
- (F) *Indemnification.* Any entity who owns or operates SWF in the Public Right-of-Way shall indemnify, protect, defend, and hold the Borough and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the entity who owns or operates the SWF and wireless service in the right- of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the operator, or their

respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in the right-of-way.

- (G) *Good condition required.* SWF 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 menace or endanger the health, safety or welfare of any person or property. All SWF shall be subject to generally applicable property maintenance requirements and to visual inspection by code enforcement officers.
- (H) *Relocation for public improvement projects.* To the extent that the Borough requires it to do so in the reasonable exercise of its police powers, Owner shall remove and relocate the permitted SWF at Owner's sole expense to accommodate construction of a public improvement project by the Borough.

#### **§92-12. REMOVAL OF SWF IF USE DISCONTINUED OR ABANDONED.**

- (A) If a SWF is discontinued for a period of 120 days or is abandoned without notice from the owner, it shall be considered abandoned and the Borough may remove it at the owner's expense if the Borough provides written notice of its intent to remove under this section and, within thirty (30) days after receipt of such written notice, the Owner of the SWF does not reply to the Borough in writing that the SWF continues to be in operation. Costs for such removal shall be as collectible as provided by law.
- (B) The Borough reserves the right to inspect and to request information from the Owner, which the Owner shall provide following such request, as to the continued use of the operator's SWF(s) within the right-of-way.

#### **§92-13. SAFETY REQUIREMENTS.**

- (A) Prevention of failures and accidents. Any person who owns or operates a portion of a SWF sited in the Public Right-of-Way shall always employ ordinary and reasonable care and install and maintain it using industry standard technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.
- (B) Compliance with fire safety and FCC regulations. All SWF, including, but not limited to wires, cables, fixtures, and other equipment, shall be installed and maintained in compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property or any existing public/private utilities or public safety systems.
- (C) Each attachment of wireless facilities should bear a marker or insignia legible at street level, identifying the Owner of the SWF and contact information

**§92-14. EXCEPTIONS TO APPLICABILITY.**

- (A) Nothing in this Ordinance authorizes the collocation of small wireless facilities on:
- (1) Property owned by a private party without the written consent of the property owner;
  - (2) Property owned or controlled by a unit of local government that is not located within Public Rights-of-Way without the written consent of the unit of local government (local governments are, however, required to authorize the collocation of small wireless facilities on utility poles owned or controlled by the local government or located within rights-of-way to the same extent the local government permits access to utility poles for other commercial projects or uses);
  - (3) A privately-owned utility pole or wireless support structure, without the consent of the property owner; or
  - (4) Property owned, leased or controlled by a park district, forest preserve district, or conservation district for public park, recreation or conservation purposes, without the consent of the affected district.

**§92-15. APPEALS AND CONSISTENCY WITH STATE AND FEDERAL LAWS.**

The appeals process shall be as provided for, and as set forth, by state and federal laws including Rulings issued by the Federal Communications Commission. The provisions contained herein regulating Small Wireless Facilities are intended to comply with federal and state laws and regulations in effect as of the date of adoption of this section. To the extent that any of the provisions in this section conflict with any federal or state statute or regulations, the federal or state statutes or regulations shall control unless the applicable federal or state statutes or regulations allow for more stringent provisions in local ordinances. In which case, the more stringent provisions of local ordinances shall remain in effect and shall control in such instances.

**§92-16. SEVERABILITY.**

The provisions of this Ordinance are severable. If any provision or subsection, or the application of any provision or subsection to any person or circumstances is held invalid, the remaining provisions, subsection, and applications of such Ordinance to other persons or circumstances shall not be made invalid as well. It is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this chapter when originally adopted by Council.

## **§92-17. PENALTIES.**

Any person or corporation who shall be convicted of a violation of any of the provisions of this chapter before any District Justice shall be sentenced to pay a fine of not more than \$1,000, together with costs of prosecution, or to imprisonment in the county jail for a term not to exceed 30 days, or both. Each day or portion thereof that such violation continues or is permitted to continue shall constitute a separate offense, and each day or portion thereof that such violation continues or is permitted to continue shall constitute a separate offense, and each section of this Chapter that is violated shall also constitute a separate offense. Nothing herein shall prevent the Borough from taking any other lawful action, including civil actions at law or equity, including temporary restraining orders, preliminary injunctions and permanent injunctions, as is necessary to prevent or remedy any violations.

**SECTION 2. SEVERABILITY.** If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof. It is hereby declared as the intent of Council of the Borough of West Chester that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

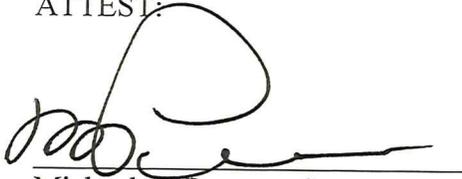
**SECTION 3. GENERAL CODE.** General Code is hereby authorized to make any necessary formatting and numbering changes needed in order for this Ordinance to be made consistent with the formatting and numbering standards applicable to the Borough Code as published by General Code.

**SECTION 4. REPEALER.** All Ordinances or parts of Ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

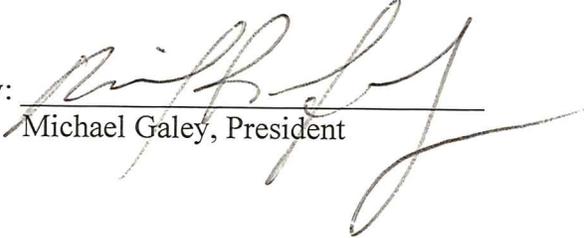
**SECTION 5. EFFECTIVE DATE.** This Ordinance shall become effective upon enactment as provided by law.

ENACTED AND ORDAINED THIS 16th DAY OF JUNE, 2020.

ATTEST:

  
\_\_\_\_\_  
Michael A. Perrone, Secretary

**COUNCIL FOR THE BOROUGH  
OF WEST CHESTER**

By:   
\_\_\_\_\_  
Michael Galey, President

APPROVED THIS 16th DAY OF JUNE, 2020.

  
\_\_\_\_\_  
Dianne T. Herrin, Mayor